

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 ZACHARY T. FANSELOW
Deputy Attorney General
4 State Bar No. 274129
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2562
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. *79/13-97*

11
12 **RESEDA PETROL, INC.;**
VACHE VARDANIAN – President/Treasurer;
13 **VLADIMAR VARDANIAN – Secretary;**
14 **6801 Reseda Blvd**
Reseda, CA 91335

A C C U S A T I O N
SMOG CHECK

15 **Automotive Repair Dealer Registration No.**
ARD 261141
16 **Smog Check, Test Only, Station License No.**
TC 261141

17
18 **ABOLIAN, ALFRED**
548 E. Providencia Ave. #101
Burbank, CA 91501
19 **Advanced Emission Specialist Technician**
20 **License No. EA 140971 (to be redesignated**
upon renewal as EO 140971 and/or EI 140971)

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

3 8. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or
4 cancellation of a license shall not deprive the Board, Registrar, or Director of jurisdiction to
5 proceed with a disciplinary action during the period within which the license may be renewed,
6 restored, reissued or reinstated.

7 9. Health and Safety Code section 44002, provides, in pertinent part, that the Director
8 has all the powers and authority granted under the Automotive Repair Act for enforcing the
9 Motor Vehicle Inspection Program.

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

14 11. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
15 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
16 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
17 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

18 STATUTORY PROVISIONS

19 12. Section 477 states, in pertinent part:

20 (a) "Board" includes "bureau," "commission," "committee," "department,"
21 "division," "examining committee," "program," and "agency."

22 (b) "License" includes certificate, registration or other means to engage in a
23 business or profession regulated by the Code.

24 13. Section 9884.7 states, in pertinent part:

25 (a) The director, where the automotive repair dealer cannot show there was a
26 bona fide error, may deny, suspend, revoke, or place on probation the registration of
27 an automotive repair dealer for any of the following acts or omissions related to the
28 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.

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

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

....

(4) Any other conduct that constitutes fraud.

....

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] 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 suspend, revoke, or place on probation 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 suspend, revoke, or place on probation 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.

14. Section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer when an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost . . .

REGULATORY PROVISIONS

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

16. Health and Safety Code Section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures

1 prescribed by the department and may require loaded mode dynamometer testing in
2 enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic
3 system, or other appropriate test procedures as determined by the department in
4 consultation with the state board. The department shall implement testing using
5 onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle
6 testing, on model year 2000 and newer vehicles only, beginning no earlier than
7 January 1, 2013. However, the department, in consultation with the state board, may
8 prescribe alternative test procedures that include loaded mode dynamometer or two-
9 speed idle testing for vehicles with onboard diagnostic systems that the department
10 and the state board determine exhibit operational problems. The department shall
11 ensure, as appropriate to the test method, the following:

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

15

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

21 17. Health and Safety Code Section 44015 states, in pertinent part:

22 (b) If a vehicle meets the requirements of Section 44012, a smog check station
23 licensed to issue certificates shall issue a certificate of compliance or a certificate of
24 noncompliance.

25 18. Health and Safety Code Section 44032 states:

26 No person shall perform, for compensation, tests or repairs of emission control
27 devices or systems of motor vehicles required by this chapter unless the person
28 performing the test or repair is a qualified smog check technician and the test or
repair is performed at a licensed smog check station. Qualified technicians shall
perform tests of emission control devices and systems in accordance with Section
44012.

19. Health and Safety Code section 44072.2 states:

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.

. . . .

(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

1 injured.

2

3 (h) Violates or attempts to violate the provisions of this chapter relating to the
4 particular activity for which he or she is licensed.

5 20. Health and Safety Code section 44072.8 states:

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

9 21. California Code of Regulations, title 16, section 3340.30, subdivision (a), provides, in
10 pertinent part, that a licensed technician shall inspect, test and repair vehicles in accordance with
11 section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and
12 section 3340.42 of the California Code of Regulations.

13 22. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides, in
14 pertinent part, that a licensed station shall issue a certificate of compliance or noncompliance to
15 the owner or operator of any vehicle that has been inspected in accordance with the procedures
16 specified in section 3340.42 of the California Code of Regulations and have all the required
17 emission control equipment and devices installed and functioning correctly.

18 23. California Code of Regulations, title 16, section 3340.41, subdivision (c), states that
19 no person shall enter into the emissions inspection system any vehicle identification information
20 or emission control system identification data for any vehicle other than the one being tested. Nor
21 shall any person knowingly enter into the emissions inspection system any false information
22 about the vehicle being tested.

23 24. California Code of Regulations, title 16, section 3340.42 provides, in pertinent part:

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

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

30

31 (C) crankcase emissions controls, including positive crankcase ventilation,

32

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

3 **COST RECOVERY**

4 25. Section 125.3 provides, in pertinent part, that a Board may request the administrative
5 law judge to direct a licentiate found to have committed a violation or violations of the licensing
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
7 case.

8 **UNDERCOVER OPERATION 1 – September 13, 2012**

9 26. On or about September 13, 2012, a Bureau undercover operator (“Operator”) drove a
10 Bureau documented 1995 Ford to Reseda Petrol Inc. and requested a smog inspection. The Air
11 Pump Injection system (“AIR”) components had been removed, causing the vehicle to be
12 incapable of passing a smog inspection. The Operator signed a work order prior to the smog
13 inspection and received an estimate copy. Respondent Abolian performed the smog inspection
14 and improperly passed the vehicle for the visual portion of the smog inspection when the vehicle
15 could not have passed because the AIR components had been removed. An electronic Certificate
16 of Compliance, however, was not issued because the vehicle failed the functional fuel evaporative
17 emissions inspection. The Operator paid Respondent \$60.75, and was provided with a copy of
18 Invoice No. [REDACTED] as well as a Vehicle Inspection Report.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 27. Respondent’s Registration is subject to discipline under section 9884.7, subdivision
22 (a)(1), in that on or about September 13, 2012, Respondent or Respondent’s employee made
23 statements which he knew or which by exercise of reasonable care should have known to be
24 untrue or misleading by entering “Pass” into the emission inspection system for the visual
25 inspection of the Air Pump Injection system, when the vehicle could not have passed the visual
26 portion of the smog inspection because AIR components had been removed from the vehicle.

27 ///

28 ///

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 33. Respondent's Registration is subject to discipline under section 9884.7, subdivision
4 (a)(4), Respondent's Station License is subject to discipline pursuant to Health & Safety Code
5 section 44072.2, subdivision (d), and Respondent Abolian's Technician License(s) is/are subject
6 to discipline pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or
7 about October 16, 2012, Respondent and Respondent Abolian committed acts constituting fraud
8 whereby another was injured by issuing electronic Certificate of Compliance No. [REDACTED] for
9 the 1995 Ford without performing a bona fide inspection of the emission control devices and
10 systems on the vehicle, thereby depriving the People of the State of California of the protection
11 afforded by the Motor Vehicle Inspection Program

12 **SEVENTH CAUSE FOR DISCIPLINE**

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

14 34. Respondent's Station License is subject to discipline pursuant to Health & Safety
15 Code section 44072.2, subdivision (a), in that on or about October 16, 2012, regarding the 1995
16 Ford, Respondent failed to comply with the following sections of the Health and Safety Code:

17 a. **Section 44012, subdivision (f):** Respondent failed to perform emission control
18 inspections of the vehicle in accordance with procedures prescribed by the department.

19 a. **Section 44032:** Respondent issued electronic Certificate of Compliance No.
20 [REDACTED] for the vehicle without properly inspecting the vehicle to determine if it was in
21 compliance with Health & Safety Code section 44012.

22 **EIGHTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations)**

24 35. Respondent's Station License is subject to discipline pursuant to Health & Safety
25 Code section 44072.2, subdivision (c), in that on or about October 16, 2012, regarding the 1995
26 Ford, Respondent failed to comply with provisions of California Code of Regulations, title 16, as
27 follows:

1 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
2 Compliance No. [REDACTED] for the 1995 Ford, even though the vehicle had not been inspected in
3 accordance with section 3340.42.

4 b. **Section 3340.42:** Respondent failed to perform an emission control inspection of the
5 vehicle in accordance with procedures prescribed by the department.

6 **NINTH CAUSE FOR DISCIPLINE**

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

8 36. Respondent Abolian's Technician License(s) is/are subject to discipline pursuant to
9 Health and Safety Code section 44072.2, subdivision (a), in that on or about October 16, 2012,
10 regarding the 1995 Ford, Respondent Abolian violated the following sections of the Health and
11 Safety Code:

12 a. **Section 44012, subdivision (f):** Respondent Abolian failed to perform emission
13 control inspections of the vehicle in accordance with procedures prescribed by the department.

14 b. **Section 44032:** Respondent Abolian failed to perform an inspection of the emission
15 control devices and systems on the vehicle in accordance with section 44012 of the Health and
16 Safety Code.

17 **TENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations)**

19 37. Respondent Abolian's Technician License(s) is/are subject to discipline pursuant to
20 Health and Safety Code section 44072.2, subdivision (c) in that, on or about October 16, 2012,
21 regarding the 1995 Ford, Respondent Abolian violated the following sections of the California
22 Code of Regulations, title 16:

23 a. **Section 3340.30, subdivision (a):** Respondent Abolian failed to perform the
24 emission control inspection in accordance with Health and Safety Code section 44012.

25 b. **Section 3340.41, subdivision (c):** Respondent Abolian entered false information into
26 the Emissions Inspection System unit by entering "Pass" for the visual portion of the inspection
27 when the vehicle could not have passed the visual portion of the smog inspection because the AIR
28 components had been removed from the vehicle.

1 c. **Section 3340.42:** Respondent Abolian failed to perform an emission control
2 inspection of the vehicle in accordance with the Bureau's specifications.

3 **DISCIPLINE CONSIDERATIONS: PRIOR CITATIONS**

4 38. To determine the degree of discipline, if any, to be imposed on Respondents,
5 Complainant alleges the following:

6 a. On or about February 23, 2011, the Bureau issued Citation No. C2011-0937 against
7 Respondent for violating Health and Safety Code section 44012(f) (failure to determine that
8 emission control devices and systems required by State and Federal law are installed and
9 functioning correctly in accordance with test procedures). The Bureau assessed civil penalties
10 totaling \$1,000.00 against Respondent for the violations. The citation was appealed on March 15,
11 2011, and was upheld following a hearing on February 16, 2012. Respondent complied with this
12 citation on May 3, 2012.

13 b. On or about September 9, 2011, the Bureau issued Citation No. C2012-0208 against
14 Respondent for violating Health and Safety Code section 44012(f) (failure to determine that
15 emission control devices and systems required by State and Federal law are installed and
16 functioning correctly in accordance with test procedures). The Bureau assessed civil penalties
17 totaling \$1,500.00 against Respondent for the violations. Respondent complied with this citation
18 on October 31, 2011.

19 c. On or about January 12, 2012, the Bureau issued Citation No. C2012-0706 against
20 Respondent for violating Health and Safety Code section 44012(f) (failure to determine that
21 emission control devices and systems required by State and Federal law are installed and
22 functioning correctly in accordance with test procedures). The Bureau assessed civil penalties
23 totaling \$1,500.00 against Respondent for the violations. The citation was appealed on February
24 13, 2012. A default decision was sent to the Department of Consumer Affairs on September 20,
25 2012. Respondent complied with this citation on August 13, 2012.

26 d. On or about July 29, 2002, the Bureau issued Citation No. M03-0132 against
27 Respondent Abolian's Technician License for violating Health and Safety Code section 44032
28 (qualified technicians shall perform tests of emission control systems and devices in accordance

1 with section 44012 of the H&S Code) and California Code of Regulations, title 16, section
2 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance
3 with Health and Safety Code sections 44012 and 44035 as well as California Code of
4 Regulations, title 16, section 3340.42). Respondent was required to attend an 8-hour training
5 course. On or about September 11, 2002, Respondent completed the required training course.

6 e. On or about May 2, 2008, the Bureau issued Citation No. M08-0970 against
7 Respondent Abolian's Technician License for violating Health and Safety Code section 44032
8 (qualified technicians shall perform tests of emission control systems and devices in accordance
9 with section 44012 of the H&S Code) and California Code of Regulations, title 16, section
10 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance
11 with Health and Safety Code sections 44012 and 44035 as well as California Code of
12 Regulations, title 16, section 3340.42). Respondent was required to attend a 8-hour training
13 course. On or about June 3, 2008, Respondent completed the required training course.

14 f. On or about February 23, 2011, the Bureau issued Citation No. M2011-0938 against
15 Respondent Abolian's Technician License for violating Health and Safety Code section 44032
16 (qualified technicians shall perform tests of emission control systems and devices in accordance
17 with section 44012 of the H&S Code). Respondent was required to attend a 16-hour training
18 course. The citation was appealed on March 14, 2011. Following a hearing held on February 16,
19 2012, the citation was upheld. On or about April 16, 2012, Respondent completed the required
20 training course.

21 g. On or about September 9, 2011, the Bureau issued Citation No. M2012-0209 against
22 Respondent Abolian's Technician License for violating Health and Safety Code section 44032
23 (qualified technicians shall perform tests of emission control systems and devices in accordance
24 with section 44012 of the H&S Code). Respondent was required to attend a 16-hour training
25 course. On or about October 21, 2011, Respondent completed the required training course.

26 h. On or about January 12, 2012, the Bureau issued Citation No. M2012-0707 against
27 Respondent Abolian's Technician License for violating Health and Safety Code section 44032
28 (qualified technicians shall perform tests of emission control systems and devices in accordance

1 with section 44012 of the H&S Code). Respondent was required to attend a 68-hour training
2 course. The citation was appealed on February 13, 2012. A default decision was sent to the
3 Department of Consumer Affairs on September 20, 2012. On or about April 27, 2012,
4 Respondent completed the required training course.

5 **OTHER MATTERS**

6 39. Pursuant to section 9884.7, subdivision (c), the Director may suspend, revoke, or
7 place on probation the registrations for all places of business operated in this state by Reseda
8 Petrol Inc., Vache Vardanian – President/Treasurer and Vladimir Vardanian – Secretary, upon a
9 finding that Respondent has, or is, engaged in a course of repeated and willful violations of the
10 laws and regulations pertaining to an automotive repair dealer.

11 40. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
12 Station License Number TC 261141, issued to Reseda Petrol Inc., Vache Vardanian –
13 President/Treasurer and Vladimir Vardanian – Secretary, doing business as Reseda Petrol Inc., is
14 revoked or suspended, any additional license issued under this chapter in the name of said
15 licensees may be likewise revoked or suspended by the director.

16 41. Pursuant to Health and Safety Code section 44072.8, if Respondent Alfred Abolian's
17 Technician License(s), currently designated as EA 140971 and redesignated upon timely renewal
18 as EO 140971 and/or EI 140971 is/are revoked or suspended, any additional license issued under
19 this chapter in the name of said licensee may be likewise revoked or suspended by the director.

20 **PRAYER**

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

23 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
24 Number ARD 261141, issued to Reseda Petrol Inc., Vache Vardanian – President/Treasurer and
25 Vladimir Vardanian – Secretary, doing business as Reseda Petrol Inc.;

26 2. Revoking, suspending or placing on probation any other automotive repair dealer
27 registration issued to Reseda Petrol Inc., Vache Vardanian – President/Treasurer and Vladimir
28 Vardanian – Secretary;

1 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
2 261141, issued to issued to Reseda Petrol Inc., Vache Vardanian – President/Treasurer and
3 Vladimar Vardanian – Secretary, doing business as Reseda Petrol Inc.;

4 4. Revoking or suspending any additional license issued under chapter 5 of the Health
5 and Safety Code in the name of Reseda Petrol Inc., Vache Vardanian – President/Treasurer and
6 Vladimar Vardanian – Secretary;

7 5. Revoking or suspending Alfred Abolian’s Technician License(s), currently
8 designated as EA 140971 and as redesignated upon his timely renewal as EO 140971 and/or EI
9 140971;

10 6. Revoking or suspending any additional license issued under chapter 5 of the Health
11 and Safety Code in the name of Alfred Abolian;

12 7. Ordering Reseda Petrol Inc., Vache Vardanian – President/Treasurer, Vladimar
13 Vardanian – Secretary and Alfred Abolian to pay the Bureau of Automotive Repair the
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
15 Professions Code section 125.3; and,

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

17
18
19
20 DATED: June 7, 2013

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

21
22
23
24
25 LA2013508714
26 51296580.doc
27
28