

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
4 State Bar No. 267200
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephonic: (619) 645-2634
7 Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **76 SMOG CENTER,**
14 **MICHAEL ISSA BATARSEH, OWNER**
15 **1000 N State College Blvd**
Anaheim, CA 92806

16 **Automotive Repair Dealer Registration No.**
17 **ARD 200012**

18 **Smog Check Station License No. RC 200012**

19 **and**

20 **MICHAEL ISSA BATARSEH**
21 **1000 N State College Blvd**
Anaheim, CA 92806

22 **Advanced Emission Specialist Technician**
23 **No. EA 313498**

24 Respondent.

Case No. 79/13-14

ACCUSATION

Smog Check

25 Complainant alleges:

26 **PARTIES**

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

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 “(6) Failure in any material respect to comply with the provisions of this chapter or
8 regulations adopted pursuant to it.

9 “... .

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

14 13. Code section 9884.8 states:

15 “All work done by an automotive repair dealer, including all warranty work, shall be
16 recorded on an invoice and shall describe all service work done and parts supplied. Service work
17 and parts shall be listed separately on the invoice, which shall also state separately the subtotal
18 prices for service work and for parts, not including sales tax, and shall state separately the sales
19 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice
20 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt
21 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
22 statement indicating whether any crash parts are original equipment manufacturer crash parts or
23 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
24 given to the customer and one copy shall be retained by the automotive repair dealer.”

25 14. Section 44072.2 of the Health and Safety Code states:

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

1 (TAC) system and presented it to Respondent at 76 Smog Center for a smog inspection.
2 Respondent performed the smog inspection, entered his smog technician license number into the
3 EIS, and Certificate of Compliance XD226455C was issued. The operator was never given an
4 invoice for the inspection. After the smog inspection, Bureau representatives inspected the truck
5 and the TAC system was still missing so that the truck should have failed a proper smog
6 inspection.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 19. Respondent's Registration is subject to disciplinary action under Code section 9884.7,
10 subdivision (a)(1) in that Respondent made or authorized statements which Respondent knew or
11 in the exercise of reasonable care should have known to be untrue or misleading as follows:
12 Respondent certified that the truck had passed a smog inspection and was in compliance with
13 applicable laws and regulations when, in fact, the truck's TAC system was missing and should
14 have failed a proper inspection.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 20. Respondent's Registration is subject to disciplinary action under Code section 9884.7,
18 subdivision (a)(4) in that Respondent committed acts that constitute fraud by issuing a certificate
19 of compliance for the truck without performing a bona fide inspection of the emission control
20 devices and systems on the truck.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Code)**

23 21. Respondent's Registration is subject to disciplinary action under Code section 9884.7,
24 subdivision (a)(6), in that Respondent failed to comply with the Code section 9884.8 because
25 Respondent never gave the operator an invoice for the smog inspection for the truck.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent's Smog Check Station License is subject to disciplinary action under
4 Health and Safety Code sections 44072.10 and 44072.2, subdivision (a), in that Respondent failed
5 to comply with the following sections of that Code:

6 a. **Section 44012**: Respondent failed to ensure that the emission control tests were
7 performed on the truck in accordance with procedures prescribed by the department.

8 b. **Section 44015**: Respondent issued a certificate of compliance for the truck without
9 properly testing and inspecting it to determine if it was in compliance with Health & Safety Code
10 section 44012.

11 c. **Section 44035**: Respondent failed to meet or maintain the standards prescribed for
12 qualification, equipment, performance, or conduct by failing to properly perform a smog
13 inspection on the truck.

14 **FIFTH CAUSE FOR DISCIPLINE**

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

16 23. Respondent's Smog Check Station License is subject to disciplinary action under
17 Health & Safety Code section 44072.10 and 44072.2, subdivision (c), in that Respondent failed to
18 comply with the following sections of Title 16, California Code of Regulations:

19 a. **Section 3340.35, subdivision (c)**: Respondent failed to inspect and test the truck in
20 accordance with the procedures specified in section 3340.42 of the Regulations and failed to
21 ensure that it had all the required emission control equipment and devices installed and
22 functioning correctly.

23 b. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the EIS false
24 information about the truck for the condition of the TAC system.

25 c. **Section 3340.42**: Respondent failed to conduct the required smog test on the truck in
26 accordance with the Bureau's specifications.

27 ///

28 ///

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

NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

27. Respondent's Smog Technician License is subject to disciplinary action under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent, or deccitful acts whereby another is injured by issuing a smog certificate of compliance for the truck without performing a bona fide inspection of the emission control devices and systems on it, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SECOND UNDERCOVER RUN – FEBRUARY 13, 2012

28. On or about February 13, 2012, a Bureau undercover operator drove a Bureau documented 1991 Toyota Truck (the Toyota) with missing air suction system components (PAIR) and presented it to Respondent at 76 Smog Center for a smog inspection. Respondent performed the smog inspection, entered his smog technician license number into the EIS, and Certificate of Compliance XD666004C was issued. The operator was never given an invoice for the inspection. After the smog inspection, Bureau representatives inspected the Toyota and the air suction system components (PAIR) were still missing so that the Toyota should have failed a proper smog inspection.

TENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

29. Respondent's Registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(1) in that Respondent made or authorized statements which Respondent knew or in the exercise of reasonable care should have known to be untrue or misleading as follows:
Respondent certified that the Toyota had passed a smog inspection and was in compliance with applicable laws and regulations when, in fact, the Toyota's air suction system components (PAIR) were missing and it should have failed a proper inspection.

///
///
///

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

ELEVENTH CAUSE FOR DISCIPLINE

(Fraud)

30. Respondent's Registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(4) in that Respondent committed acts that constitute fraud by issuing a certificate of compliance for the Toyota without performing a bona fide inspection of the emission control devices and systems on the Toyota.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Code)

31. Respondent's Registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with the Code section 9884.8 because Respondent never gave the operator an invoice for the smog inspection for the Toyota.

THIRTEENTH CAUSE FOR DISCIPLINE

(Violations of Motor Vehicle Inspection Program)

32. Respondent's Smog Check Station License is subject to disciplinary action under Health and Safety Code sections 44072.10 and 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

- d. **Section 44012**: Respondent failed to ensure that the emission control tests were performed on the Toyota in accordance with procedures prescribed by the department.
- e. **Section 44015**: Respondent issued a certificate of compliance for the Toyota without properly testing and inspecting it to determine if it was in compliance with Health & Safety Code section 44012.
- f. **Section 44035**: Respondent failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog inspection on the Toyota.

///
///
///
///

1 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

3 33. Respondent's Smog Check Station License is subject to disciplinary action under
4 Health & Safety Code section 44072.10 and 44072.2, subdivision (c), in that Respondent failed to
5 comply with the following sections of Title 16, California Code of Regulations:

6 a. **Section 3340.35, subdivision (c)**: Respondent failed to inspect and test the Toyota in
7 accordance with the procedures specified in section 3340.42 of the Regulations and failed to
8 ensure that it had all the required emission control equipment and devices installed and
9 functioning correctly.

10 b. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the EIS false
11 information about the Toyota for the condition of the air suction system components (PAIR).

12 c. **Section 3340.42**: Respondent failed to conduct the required smog test on the Toyota
13 in accordance with the Bureau's specifications.

14 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

16 34. Respondent's Smog Check Station License is subject to disciplinary action under
17 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that Respondent
18 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog
19 certificate of compliance for the Toyota without performing a bona fide inspection of the
20 emission control devices and systems on it, thereby depriving the People of the State of California
21 of the protection afforded by the Motor Vehicle Inspection Program.

22 **SIXTEENTH CAUSE FOR DISCIPLINE**

23 **(Violations of Motor Vehicle Inspection Program)**

24 35. Respondent's Technician License is subject to disciplinary action under Health and
25 Safety Code sections 44072.10 and 44072.2, subdivision (a), in that Respondent failed to comply
26 with sections 44012 and 44035 of that Code as follows: Respondent failed to perform the
27 emission control tests on the Toyota in accordance with procedures prescribed by the department.

28 ///

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

SEVENTEENTH CAUSE FOR DISCIPLINE

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

36. Respondent's Smog Technician License is subject to disciplinary action under Health & Safety Code section 44072.10 and 44072.2, subdivision (c), in that Respondent failed to comply with the following sections of Title 16, California Code of Regulations:

- a. **Section 3340.35, subdivision (c)**: Respondent failed to inspect and test the Toyota in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that it had all the required emission control equipment and devices installed and functioning correctly.
- b. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the EIS false information about the Toyota for the condition of the air suction system components (PAIR).
- c. **Section 3340.42**: Respondent failed to conduct the required smog test on the Toyota in accordance with the Bureau's specifications.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

37. Respondent's Smog Technician License is subject to disciplinary action under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the Toyota without performing a bona fide inspection of the emission control devices and systems on it, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

MATTERS IN AGGRAVATION

38. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about June 25, 2007, Citation No. C07-1051 in the amount of \$500.00 was issued to Respondent. The citation was paid on July 9, 2007.

39. Complainant further alleges that on or about September 25, 2007, Citation No. C08-0273 was issued to Respondent in the amount of \$1,000.00. The citation was paid on October 15, 2007.

- 1 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 200012
2 issued to Michael Issa Batarsch, Owner of 76 Smog Center;
3 2. Revoking or suspending Smog Check Station No. RC 200012, issued to Michael Issa
4 Batarseh, Owner of 76 Smog Center;
5 3. Revoking or suspending Advanced Emission Specialist Technician No. 313498
6 issued to Michael Issa Batarseh;
7 4. Ordering Michael Issa Batarsch, Owner of 76 Smog Center, to pay the Bureau of
8 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3; and
10 5. Taking such other and further action as deemed necessary and proper.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: 9/10/12

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

SD2012703816
70610482.doc