

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

13 In the Matter of the Accusation Against:

Case No. *79/13-15*

14 **HESPERIA SMOG TEST ONLY**  
15 **JAVED HUSSAIN GHARAY, OWNER**  
17465 Main Street  
Hesperia, CA 92345

**ACCUSATION**

*Smog Check*

16 **Automotive Repair Dealer Reg. No. ARD 239203**  
17 **Smog Check, Test Only, Station License No. TC**  
**239203**

18 and

19 **JAVED HUSSAIN GHARAY**  
8957 Guava Avenue  
20 Hesperia, CA 92345

21 **Advanced Emission Specialist Technician**  
22 **License No. EA 141938**

23 Respondent.

24 Complainant alleges:

25 **PARTIES**

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

28 ///





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

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

4 13. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
5 suspended following a hearing under this article, any additional license issued under this chapter  
6 in the name of the licensee may be likewise revoked or suspended by the director.

7 **COST RECOVERY**

8 14. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request  
9 the administrative law judge to direct a licensee found to have committed a violation or  
10 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
11 and enforcement of the case.

12 **UNDERCOVER OPERATION: 1999 TOYOTA SIENNA**

13 15. On March 22, 2012, an undercover operator with the Bureau ("operator") took the  
14 Bureau's 1999 Toyota Sienna to Respondent's facility and requested a smog inspection. The fuel  
15 evaporative (EVAP) charcoal canister had been removed from the Bureau-documented vehicle.  
16 The operator signed a work order for the inspection, but was not given a copy of the document.  
17 After the inspection was completed, the operator paid the facility \$50 and received copies of an  
18 invoice and vehicle inspection report ("VIR"). The VIR indicated that Respondent had  
19 performed the inspection on the vehicle and that the vehicle passed the inspection. That same  
20 day, electronic smog Certificate of Compliance No. XF360219C was issued for the vehicle.

21 16. On March 23, 2012, the Bureau inspected the vehicle and found that the EVAP  
22 canister was still missing.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

25 17. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
26 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which  
27 he knew, or in the exercise of reasonable care should have known to be untrue or misleading, as  
28 follows: Respondent certified under penalty of perjury on the VIR that the Bureau's 1999 Toyota

1 Sienna had passed the inspection and was in compliance with applicable laws and regulations. In  
2 fact, the EVAP canister was missing on the vehicle and as such, the vehicle would not pass the  
3 inspection required by Health & Saf. Code section 44012.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Failure to Provide Customer with Copy of Signed Document)**

6 18. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
7 Code section 9884.7, subdivision (a)(3), in that Respondent failed to provide the operator with a  
8 copy of the work order as soon as the operator signed the document.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 19. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
12 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes  
13 fraud, as follows: Respondent issued an electronic smog certificate of compliance for the  
14 Bureau's 1999 Toyota Sienna without performing a bona fide inspection of the emission control  
15 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
16 protection afforded by the Motor Vehicle Inspection Program.

17 **FOURTH CAUSE FOR DISCIPLINE**

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

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

22 a. **Section 44012:** Respondent failed to perform the visual inspection of the emission  
23 control devices on the Bureau's 1999 Toyota Sienna in accordance with procedures prescribed by  
24 the department in that Respondent failed to determine that the EVAP canister was missing.

25 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for  
26 the Bureau's 1999 Toyota Sienna without properly testing and inspecting the vehicle to determine  
27 if it was in compliance with Health & Saf. Code section 44012.

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

**FIFTH CAUSE FOR DISCIPLINE**  
**(Failure to Comply with Regulations Pursuant  
to the Motor Vehicle Inspection Program)**

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

a. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate of compliance for the Bureau's 1999 Toyota Sienna even though the vehicle had not been inspected in accordance with section 3340.42.

b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the Bureau's 1999 Toyota Sienna in accordance with the Bureau's specifications.

**SIXTH CAUSE FOR DISCIPLINE**  
**(Dishonesty, Fraud or Deceit)**

22. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an electronic smog certificate of compliance for the Bureau's 1999 Toyota Sienna without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

**SEVENTH CAUSE FOR DISCIPLINE**  
**(Violations of the Motor Vehicle Inspection Program)**

23. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code in a material respect, as follows: Respondent failed to perform the visual inspection of the emission control devices on the Bureau's 1999 Toyota Sienna in accordance with procedures prescribed by the department in that Respondent failed to determine that the EVAP canister was missing.

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

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

7 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's  
8 1999 Toyota Sienna in accordance with Health & Saf. Code sections 44012 and 44035, and  
9 California Code of Regulations, title 16, section 3340.42.

10 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the  
11 Bureau's 1999 Toyota Sienna in accordance with the Bureau's specifications.

12 **NINTH CAUSE FOR DISCIPLINE**

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

14 25. Respondent's technician license is subject to disciplinary action pursuant to Health &  
15 Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent,  
16 or deceitful act whereby another is injured, as follows: Respondent issued an electronic smog  
17 certificate of compliance for the Bureau's 1999 Toyota Sienna without performing a bona fide  
18 inspection of the emission control devices and systems on the vehicle, thereby depriving the  
19 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
20 Program.

21 **MATTERS IN AGGRAVATION**

22 26. To determine the degree of discipline, if any, to be imposed on Respondent,  
23 Complainant alleges as follows:

24 a. On or about December 14, 2009, the Bureau issued Citation No. C2010-0574 against  
25 Respondent, in his capacity as owner of Hesperia Smog Test Only, for violations of Health & Saf.  
26 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission  
27 control devices according to procedures prescribed by the department); and California Code of  
28 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of

1 compliance to a vehicle that was improperly tested). On or about November 19, 2009,  
2 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing  
3 EVAP charcoal canister. The Bureau assessed civil penalties totaling \$500 against Respondent  
4 for the violations. Respondent paid the fine on February 1, 2010.

5 b. On or about May 3, 2010, the Bureau issued Citation No. C2010-1142 against  
6 Respondent, in his capacity as owner of Hesperia Smog Test Only, for violations of Health & Saf.  
7 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission  
8 control devices according to procedures prescribed by the department); and Regulation 3340.35,  
9 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On  
10 or about April 6, 2010, Respondent had issued a certificate of compliance to a Bureau undercover  
11 vehicle with a missing EVAP charcoal canister. The Bureau assessed civil penalties totaling  
12 \$1,500 against Respondent for the violations. Respondent paid the fine on June 23, 2010.

13 c. On or about November 1, 2010, the Bureau issued Citation No. C2011-0536 against  
14 Respondent, in his capacity as owner of Hesperia Smog Test Only, for violations of Health & Saf.  
15 Code section 44012, subdivision (f) (failure to determine that emission control devices and  
16 systems required by State and Federal law are installed and functioning correctly in accordance  
17 with test procedures); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance  
18 to a vehicle that was improperly tested). On or about October 5, 2010, Respondent had issued a  
19 certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond  
20 specifications. The Bureau assessed civil penalties totaling \$2,500 against Respondent for the  
21 violations. Respondent paid the fine on January 19, 2012.

22 d. On or about December 14, 2009, the Bureau issued Citation No. M2010-0575 against  
23 Respondent as to his technician license for violations of Health & Saf. Code section 44032  
24 (qualified technicians shall perform tests of emission control systems and devices in accordance  
25 with Health & Saf. Code sections 44012); and Regulation 3340.30, subdivision (a) (qualified  
26 technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections  
27 44012 and 44035 and Regulation 3340.42). On or about November 19, 2009, Respondent had  
28 issued a certificate of compliance to a Bureau undercover vehicle with a missing EVAP charcoal

1 canister. Respondent was directed to complete an 8 hour training course and to submit proof of  
2 completion to the Bureau within 30 days from receipt of the citation. Respondent completed the  
3 training on February 10, 2010.

4 e. On or about May 3, 2010, the Bureau issued Citation No. M2010-1143 against  
5 Respondent as to his technician license for violations of Health & Saf. Code section 44032  
6 (qualified technicians shall perform tests of emission control systems and devices in accordance  
7 with Health & Saf. Code sections 44012); and Regulation 3340.30, subdivision (a) (qualified  
8 technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections  
9 44012 and 44035 and Regulation 3340.42). On or about April 6, 2010, Respondent had issued a  
10 certificate of compliance to a Bureau undercover vehicle with a missing EVAP charcoal canister.  
11 Respondent was directed to complete a 16 hour training course and to submit proof of completion  
12 to the Bureau within 30 days from receipt of the citation. Respondent completed the training on  
13 May 28, 2010.

14 f. On or about November 1, 2010, the Bureau issued Citation No. M2011-0537 against  
15 Respondent as to his technician license for violations of Health & Saf. Code section 44032  
16 (qualified technicians shall perform tests of emission control systems and devices in accordance  
17 with Health & Saf. Code sections 44012); and Regulation 3340.30, subdivision (a) (qualified  
18 technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections  
19 44012 and 44035 and Regulation 3340.42). On or about October 5, 2010, Respondent had issued  
20 a certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted  
21 beyond specifications. Respondent was directed to complete the Basic Clean Air Car Course and  
22 to submit proof of completion to the Bureau. Respondent completed the training on December 8,  
23 2011.

#### 24 **OTHER MATTERS**

25 27. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
26 suspend, revoke, or place on probation the registration for all places of business operated in this  
27 state by Respondent Javed Hussain Gharay, owner of Hesperia Smog Test Only, upon a finding

28 ///

1 that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and  
2 regulations pertaining to an automotive repair dealer.

3 28. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station  
4 License Number TC 239203, issued to Respondent Javed Hussain Gharay, owner of Hesperia  
5 Smog Test Only, is revoked or suspended, any additional license issued under this chapter in the  
6 name of said licensee may be likewise revoked or suspended by the Director.

7 29. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist  
8 Technician License Number EA 141938, issued to Respondent Javed Hussain Gharay, is revoked  
9 or suspended, any additional license issued under this chapter in the name of said licensee may be  
10 likewise revoked or suspended by the Director.

11 **PRAYER**

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

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
15 239203, issued to Javed Hussain Gharay, owner of Hesperia Smog Test Only;

16 2. Revoking or suspending any other automotive repair dealer registration issued to  
17 Javed Hussain Gharay;

18 3. Revoking or suspending Smog Check, Test Only, Station License Number TC  
19 239203, issued to Javed Hussain Gharay, owner of Hesperia Smog Test Only;

20 4. Revoking or suspending Advanced Emission Specialist Technician License Number  
21 EA 141938, issued to Javed Hussain Gharay;

22 5. Revoking or suspending any additional license issued under Chapter 5 of the Health  
23 and Safety Code in the name of Javed Hussain Gharay;

24 6. Ordering Javed Hussain Gharay, individually, and as owner of Hesperia Smog Test  
25 Only, to pay the Director of Consumer Affairs the reasonable costs of the investigation and  
26 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

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

DATED: 9/19/12

*John Wallauch by [Signature]*  
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*DEUC-BALAH,*  
*Complainant*

SD2012703431