

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OSCAR ANTONIO FLORES, dba DANIEL SMOG CHECK TEST ONLY

450 N. Waterman Ave. Unit D

San Bernardino, CA 92410

Automotive Repair Dealer Registration No. ARD 287850

Smog Check Test Only Station License No. TC 287850

and

OSCAR ANTONIO FLORES

450 N. Waterman Ave. Unit D

San Bernardino, CA 92410

Smog Check Inspector License No. EO 640105

Respondents.

Case No. 79/19-2470

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DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on December 9, 2021.

IT IS SO ORDERED this 3rd day of November, 2021.

Signature on file
GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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

In the Matter of the Accusation against:

**OSCAR ANTONIO FLORES, DBA DANIEL SMOG CHECK TEST
ONLY, Respondent**

and

OSCAR ANTONIO FLORES, Respondent

Agency Case No. 79/19-2470

OAH No. 2019110784.1

PROPOSED DECISION AFTER REMAND

Glynda B. Gomez, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), heard this matter on remand by video conference on September 27, 2021. A Spanish-language interpreter translated the proceedings.

Michelle Nijm, Deputy Attorney General, represented Patrick Dorais (Complainant), Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department). Michael Levin, Attorney at law, represented Respondent Oscar Antonio Flores, individually (Respondent Flores) and doing business as Daniel Smog Check Test (Daniel Smog) (collectively Respondents).

Oral and documentary evidence was received, argument heard, and the matter was submitted for decision on September 27, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. A. On October 18, 2019, Complainant Patrick Dorais, Chief of the Bureau of Automotive Repair, executed the Accusation bearing case number 79/19-2470. The Accusation and all required notices were served on Respondent. Respondent filed a timely a Notice of Defense, and this matter ensued.

B. ALJ Gomez initially heard this matter by video conference on November 2, 2020. A Spanish language interpreter translated the proceedings. Michelle Nijm, Deputy Attorney General, represented Complainant. Michael Levin, Attorney at law, represented Respondents. Oral and documentary evidence was received, argument heard, and the matter was submitted for decision on November 2, 2020. The proposed decision was issued on November 30, 2020. On January 27, 2021, the proposed decision was rejected, and the matter was remanded to the ALJ to take additional evidence regarding Business and Professions Code section 125.3 and the factors set out in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, relating to the \$8,000 in costs ordered.

2. On June 26, 2017, the Bureau issued Automotive Repair Dealer Registration Number ARD 287850 (ARD) to Respondent Daniel Smog. The ARD was in effect at all relevant times and expired on June 30, 2021, unless renewed.

3. On August 10, 2017, the Bureau issued Smog Check, Test Only, Station License Number TC287850 to Daniel Smog. The license was in effect at all relevant times and expired on June 30, 2021, unless renewed.

4. On March 10, 2017, the Bureau issued Smog Check Inspector License Number EO 640105 to Respondent Flores. The license was in effect at all relevant times and will expire on October 31, 2022, unless renewed.

The Vehicle

5. In September of 2018, Bureau Representative Paul Hsu (Hsu) documented a 1997 Honda Accord (Vehicle) for a Bureau undercover operation. First, Hsu conducted a smog check inspection to make sure that the Vehicle was capable of passing a proper smog inspection. After the Vehicle passed the smog inspection, Hsu modified the vehicle by removing its original catalytic converter and replaced it with a hollow unit that resembled a functional catalytic converter. Hsu marked the modified parts for identification purposes and installed tamper indicators to detect movement or removal of components. Hsu also disabled the Vehicle Malfunction Indicator Light (MIL) so that it would not alert a technician to the modification. After the modifications performed by Hsu, the Vehicle was incapable of passing the tailpipe portion of a properly conducted smog check inspection and had an overall emissions test result exceeding Gross Polluter limits. Hsu photographed the Vehicle and the modification before releasing it to a Bureau representative for an undercover operation.

6. On October 17, 2018, Bureau Representative Daniel Durivage (Durivage) provided the Vehicle to an undercover operator and gave him instructions. Pursuant to the instructions, the undercover operator took the Vehicle to a car wash located at 1223 N. Peppertree Lane in San Bernardino, California. The car wash was next to an

automotive repair shop. At the car wash, the undercover operator spoke in Spanish with a man who identified himself as "Jesus" and as being the owner of the car wash. The undercover operator asked Jesus if he could perform a smog check of the Vehicle. Jesus responded that he could not do so, but that he had a friend who could conduct a smog check inspection. The undercover operator provided Jesus with the \$60 fee he requested and the Department of Motor Vehicles (DMV) registration paperwork for the Vehicle. Shortly, thereafter Jesus returned in the Vehicle. He advised the undercover operator that the Vehicle was polluting a lot and would not pass a smog check inspection. The undercover operator asked Jesus what he could do to get the Vehicle smog certified. Jesus advised the undercover operator that he could get the Vehicle to pass the smog inspection for an additional \$140. After some conversation, the undercover operator gave Jesus an additional \$140 and Jesus drove away with the Vehicle.

7. The undercover operator waited for Jesus at a nearby Jack-in-the-Box restaurant. When Jesus returned, he provided the DMV registration paperwork and a Vehicle Inspection Report (VIR) for the Vehicle to the undercover operator.

8. After the undercover operation, the Vehicle was returned to Durivage. Then, Durivage downloaded test details from the Bureau's Vehicle Information Database (VID) of the smog check inspection of the Vehicle using the VIR information. The VID test details revealed that the Vehicle was certified at Daniel Smog and that the license of Respondent Flores was used to perform the smog check inspection for the vehicle. The VID test details showed that the vehicle was issued Certificate of Compliance number HV802253C.

9. Respondent Flores is the only licensed Smog Check Inspector at Daniel Smog. Respondent Flores' password and badge were used to access the smog

inspection machine at Daniel Smog to perform the smog check inspection. There was no evidence that Respondent Flores had misplaced his password or that anyone had gained unauthorized access to his password. When a badge is lost or a password is compromised, a smog inspector is required to contact the Bureau for replacement and to report the issue.

10. Durivage returned the Vehicle to Hsu at the Bureau's forensic lab. Hsu performed a new smog inspection and confirmed that the Vehicle remained incapable of passing a properly performed smog check inspection in its condition at that time. The Vehicle failed the tailpipe portion of the smog inspection with an overall emissions test result exceeding Gross Polluter limits. Hsu confirmed that his previously installed modifications and tamper indicators remained intact.

11. A properly conducted smog check inspection of the Vehicle, in compliance with the Bureau's Smog Check Manual, and state law, required that the smog check technician either scan the Vehicle Identification Number (VIN) from the DMV paperwork or obtain the VIN from the Vehicle label on the door jam and type it in. A technician is required to verify the VIN number of the door jamb with that on the DMV paperwork. If the two do not match, then the technician is to use the VIN on the door jam. A proper smog check inspection of the Vehicle required a visual, functional and tail pipe emissions check. The Vehicle was incapable of passing the tail pipe emissions portion of the inspection. In order to certify the Vehicle and issue a certification of compliance, an inspector would have to obtain passing emissions results from either another automobile, a simulator or some other device and falsely attribute the results to the Vehicle.

12. The Bureau incurred \$11,006.25 in charges by the Attorney General for prosecution of this matter and \$1,497.80 in investigation costs for a total of

\$12,504.05. The prosecution costs are excessive for the prosecution of a single incident. The investigation costs are reasonable. However, a reduction of \$4,504.05 is made to the Attorney General charges and the overall costs are reduced accordingly to \$8,000, which is deemed the reasonable costs of investigation and prosecution of this matter.

13. At the administrative hearing, Respondent Flores gave candid and forthright testimony. Respondent has been self-employed at Daniel Smog since 2017 and has always been the only smog inspector at Daniel Smog during that time. Daniel Smog only has one bay and only one automobile can be inspected at a time. Respondent confirmed that he inspected the Vehicle although he did not have a specific recollection of the Vehicle. He did not know how the Vehicle was able to pass the smog inspection. Respondent acknowledged that at the time of the Vehicle smog inspection, he handled a large volume of smog inspections for car dealers and sellers and that he must have made a mistake when processing the volume of inspections. Respondent testified that he scanned the DMV registration paperwork, but he failed to verify the VIN on the Vehicle. At the hearing, Respondent Flores did not have a recollection of whether it was actually the Vehicle that he inspected or some other automobile. Respondent Flores also testified that he did not know anyone named "Jesus" that brought cars to Daniel Smog.

14. Respondent is a native of El Salvador, and primarily speaks Spanish. He is the sole support for his family which includes his wife and six children (ages 24, 20, 18, 15, 14 and 8). One of Respondent's daughters is disabled and is cared for at home by Respondent's wife. His daughter receives social security benefits that his wife maintains separately in a bank account to which Respondent has no access. Those funds are used by his wife solely for his daughter's needs.

Respondent makes approximately \$38,000 per year from his business at Daniel Smog. Respondent also has expenses to run Daniel Smog including \$500 per month rent and \$650 per month to lease his smog check equipment. Respondent estimates that his net income is approximately \$3500 per month. Respondent does not maintain any business or personal debt. His assets consist of his leased smog equipment and four vehicles, the newest of which is a 2003 model. The combined value of all vehicles is less than \$5,000. His personal expenses include \$1000 per month for rent and expenditures for groceries, utilities, gasoline and occasional assistance for his son who is a college student on scholarship at the University of California, Santa Barbara. On occasion, his eldest son who is now working while attending college, also contributes to the family expenses. Respondent's wife does not work outside the home because she cares for their daughter on a full-time basis. Respondent maintains one business checking account and does not have any personal bank accounts. Respondent's son arranges any electronic payments that must be made for Respondent's household through his own bank account. Respondent pays most of his expenses in cash. Respondent has \$3000 to \$4000 on hand as an emergency fund. He credibly testified that paying the entire \$8000 at one time would be impossible given his budget but acknowledged that he could pay the costs according to a reasonable payment plan.

15. Respondent provided a character reference letter from Cristela Cortez, a long-time customer attesting to his good character and extraordinary customer service.

LEGAL CONCLUSION

1. In an action seeking to impose discipline against the holder of a Bureau-issued registration and license, the burden of proof is on Complainant to establish the

charging allegations by a preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.) A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. The Bureau may discipline a registration for any of the following acts or omissions related to the conduct of the automotive repair dealer's business, whether done by the dealer or any employee, partner, or officer:

(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.;

[¶] . . . [¶]

(4) Any other conduct which constitutes fraud;

[¶] . . . [¶]

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

(Bus. & Prof. Code, § 9884.7, subd. (a).)

3. The Bureau "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.” (Bus. & Prof. Code, § 9884.7, subd. (c).) If the Bureau disciplines any license it has issued under Business and Professions Code sections 9889.1 through 9889.10, it may also discipline any other licenses it has issued. (Bus. & Prof. Code, § 9889.9.)

4. The Bureau may discipline a smog check station license pursuant to Health and Safety Code section 44072.2, subdivision (a) for violating any section of the Motor Vehicle Inspection Program (Health and Safety Code, § 44000, et seq), Health and Safety Code section 44072.2, subdivision (c) for violating any of the regulations adopted pursuant to the Motor Vehicle Inspection Program, and Health and Safety Code section 44072.2, subdivision (d) for committing any act of dishonesty, fraud, or deceit.

5. Health and Safety Code section 44012, subdivision (a) requires a smog check station to determine that all required emission control devices and systems are installed and properly functioning. Health and Safety Code section 44012, subdivision (f) requires a smog check station to perform a visual inspection of the emission control devices. Health and Safety Code section 44015, subdivision (b) requires a smog check station to issue certificates of compliance only after conducting a proper inspection.

6. Health and Safety Code section 39032.5, subdivision (d)(1) provides that a “Gross Polluter” means “a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions”

7. Health and Safety Code section 39032.5, subdivision (d)(2) provides that vehicles with emission levels exceeding the emission standards for Gross Polluters

during an initial inspection will be considered Gross Polluters and the provisions pertaining to Gross Polluters shall apply.

8. Health and Safety Code section 39032.5, subdivision (d)(3e) provides that a gross polluting vehicle shall not be passed or issued a Certificate of Compliance until the emissions are reduced to or below the applicable emissions standards for the vehicle.

9. California Code of Regulations, title 16 (Regulations), section 3340.24, subdivision (c) provides that the Bureau may discipline a licensee, if the licensee falsely or fraudulently issues or obtains a Certificate of Compliance.

10. Regulations, section 3340.30, subdivision (a) provides that a licensed technician shall inspect vehicles in accordance with Health and Safety Code section 44012.

11. Regulations, section 3340.35 provides that a licensed station shall issue a Certificate of Compliance only when the vehicle has been inspected in accordance with proper procedures and the required emission control equipment is installed and functioning.

12. Regulations, section 3340.41, subdivision (c) provides that "no person shall enter into the emissions inspection system any vehicle identification information or emission control information or emission control identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested."

13. Regulations, section 3371 provides that:

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading.

14. A. Business and Professions Code section 125.3 provides in pertinent part that the Bureau may request the ALJ to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

B. In evaluating a request for costs, the administrative law judge must consider whether Complainant's investigation was "disproportionately large" compared to the violation, and whether the licensee: (1) committed some misconduct but "used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed;" (2) had a "subjective good faith belief in the merits of his or her position" (3) raised a "'colorable challenge'" to the proposed discipline; and (4) "will be financially able to make later payments." (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [quoting *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 342, 345].)

C. The ALJ determined, that the reasonable costs of prosecution and investigation were \$8,000; a reduction of \$4,504.25 from the \$12,504.05 requested by the Complainant. The reasonable costs include the full investigative costs and a \$4,504 reduction in Attorney General charges. (Factual Finding 12.) In addition to the ALJ's finding about the prosecution's charges, the record established Respondent made good faith use of the hearing process and the proposed discipline. The record also established the payment of costs would be a financial hardship for Respondent, even

after the reduction in costs referenced above, unless Respondent could pay the costs on a payment plan. Accordingly, as a condition of probation Respondent shall pay the Complainant's costs in the amount of \$8,000 on a payment plan approved by the Board with payments of no more than \$300 per month.

15. First Cause for Discipline: Daniel Smog has subjected its ARD to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(1) because Daniel Smog and Respondent Flores made statements which were known to be untrue or misleading or, which by the exercise of reasonable care should have been known to be untrue or misleading, when issuing a smog certificate because Respondent Daniel Smog and Respondent Flores certified that the Vehicle had passed inspection and was in compliance with applicable laws and regulations when in fact, it had not.

16. Second Cause for Discipline: Daniel Smog and Respondent Flores have subjected Daniel Smog's ARD to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that Daniel Smog Check and Respondent Flores committed acts that constitute fraud by issuing an electronic smog Certificate of Compliance for the Vehicle 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.

17. Third Cause for Discipline: Daniel Smog and Respondent Flores have subjected Daniel Smog's ARD to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), because Daniel Smog and Respondent Flores failed in a material respect to comply with the provisions of the Automotive Repair Act and regulations adopted pursuant to it when Daniel Smog and

Respondent Flores issued an electronic Certificate of Compliance for the Vehicle 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.

18. Fourth Cause for Discipline: Daniel Smog and Respondent Flores have subjected Daniel Smog's Smog Check Test Only Station license to disciplinary action pursuant to Health and Safety Code sections 44072.10, subdivision (c), and 44072.2, subdivision (a), because Daniel Smog and Respondent Flores violated the following sections of the health and Safety Code:

A. Section 44012: Daniel Smog and Respondent Flores failed to ensure that the emission control test was performed on the Vehicle in accordance with the procedures prescribed by the Bureau.

B. Section 44015: Daniel Smog and Respondent Flores issued an electronic smog Certificate of Compliance for the Vehicle without ensuring that the Vehicle was properly tested and inspected and compliant with Health and Safety Code section 44012.

19. Fifth Cause for Discipline: Daniel Smog and Respondent Flores have subjected Daniel Smog's Smog Check Test Station license to disciplinary action pursuant to Health and Safety Code sections 44072.10, subdivision (c), and 44072.2, subdivision (c), because Daniel Smog and Respondent Flores violated provisions of the Regulations as follows:

A. Regulations, section 3340.24, subdivision (c): Daniel Smog and Respondent Flores issued a false electronic Certificate of Compliance for the Vehicle.

B. Regulations, section 3340.41, subdivision (c): Daniel Smog and Respondent Flores conducted the inspection of the Vehicle using clean plugging methods and that Daniel Smog and Respondent Flores used a different vehicle, or another source, in order to pass the Vehicle and issue a Certificate of Compliance.

C. Regulations, section 3340.42: Daniel Smog and Respondent Flores failed to ensure that the required smog test was conducted on the Vehicle in accordance with the Bureau's specifications.

D. Regulations, section 3373: Daniel Smog and Respondent Flores inserted statements or information in the records required to be maintained by Regulations, section 3340.15, subdivision (d) that would cause the records to be false or misleading or would tend to mislead or deceive customers, for prospective customers, or the public. Specifically, Daniel Smog and Respondent Flores certified that the Vehicle met all of the specifications required for issuance of a Certificate of Compliance.

20. Sixth Cause for Discipline: Daniel Smog and Respondent Flores have subjected Daniel Smog's Smog Check Station license to disciplinary action pursuant to Health and Safety Code sections 44072.2, subdivision (d) and 44017.10, subdivision (c) because Daniel Smog and Respondent Flores committed dishonest and fraudulent acts whereby others were subject to harm by issuing an electronic Certificate of Compliance for the Vehicle 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.

21. Seventh Cause for Discipline: Respondent Flores' Smog Check Inspector License is subject to disciplinary action pursuant to Health and Safety Code sections

44072.2, subdivision (a) and 44072.10, subdivision (c), because Respondent Flores violated the following sections of the Health and Safety Code:

A. Section 44012: Respondent Flores failed to perform emission control tests on the Vehicle in accordance with procedures prescribed by the Bureau.

B. Section 44032: Respondent Flores failed to perform emission control tests on the vehicle in accordance with the requirements of Code section 44012.

22. Eighth Cause for Discipline: Respondent Flores's Smog Check Inspector license is subject to disciplinary action pursuant to Health and Safety Code sections 44072.10, subdivision (c), and 44072.2, subdivision (c) and (d), because Respondent Flores violated provisions of the Regulations as follows:

A. Section 3340.24, subdivision (c): Respondent Flores falsely and fraudulently issued an electronic Certificate of Compliance for the Vehicle.

B. Section 3340.30, subdivision (h): Respondent Flores failed to inspect and test the Vehicle in accordance with Health and Safety Code sections 44012 and 44035, and Regulations, section 3340.42.

C. Section 3340.41, subdivision (c): Respondent Flores knowingly entered false information into the emissions inspection system for the Vehicle.

D. Section 3340.42: Respondent Flores failed to conduct the required smog test on the Vehicle, in accordance with the Bureau's specifications.

E. Section 3373, Respondent Flores inserted statements or information in records required to be maintained by Regulations, section 3340.15,

subdivision (e), that would cause the records to be false or misleading or would tend to mislead or deceive customers, prospective customers or the public.

23. Ninth Cause for Discipline: Respondent Flores's Smog Check Inspector License is subject to disciplinary action pursuant to Health and Safety Code sections 44072.2, subdivision (d) and 44072.10, subdivision (c), because Respondent Flores committed dishonest, fraudulent, or deceitful acts whereby another was subject to injury by issuing an electronic Certificate of Compliance for the Vehicle, 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.

24. At a minimum, Respondent Flores, exercised poor judgment and was sloppy in performing his inspection of the Vehicle and did not properly ascertain the VIN number of the vehicle he tested resulting in a smog inspection of the wrong automobile. It is also possible, but on this record, not proven by a preponderance of the evidence, that Respondent Flores and Daniel Smog were involved in some more sinister and organized fraud. Respondent Flores' failure to conduct a proper smog inspection is a serious offense and shows a failure to competently perform the core duties of a smog inspector. Respondent Flores' deficient smog inspection requires discipline and education in order to ensure public protection and to avoid any further such incidents. In mitigation, Respondent has no prior history of warnings, discipline, citations or office conferences with the Bureau. Additionally, there was no evidence that Respondent Flores engaged in any direct harm to a consumer or a fraudulent pattern and practice or was uncooperative with the Bureau in any way. Respondent Flores gave forthright testimony admitting that he conducted the deficient smog inspection and that he had no explanation for the erroneous issuance of a Certificate

of Compliance for the Vehicle, a Gross Polluter. Respondent has changed his business practices and now only conducts smog inspections for consumers and not for automobile wholesalers or sellers. There was no evidence of aggravating factors. Because of Respondent Flores' candor and his change of business practice, and this being the first and only such incident, it is reasonable to conclude that his deficiencies can be remediated. Based upon the totality of the evidence, all licenses and the ARD will be revoked, but the revocations shall be stayed, and Respondent Flores and Daniel Smog placed on probation for a period of three years on terms and conditions which include additional education and payment of a portion of the Bureau's costs.

ORDER

A. Automotive Repair Dealer Registration Number 287850 issued to Respondent Oscar Antonio Flores dba Daniel Smog Check Test Only is revoked.

B. Smog Check, Test Only, Station License Number TC 287850, issued to Respondent Oscar Antonio Flores dba Daniel Smog Check Test Only, is revoked.

C. Smog Check Inspector License Number EO 640105 issued to Respondent Oscar Antonio Flores is revoked.

D. The revocations are stayed, and the Registration and Licenses are placed on probation for three years on the following terms and conditions. The terms of probation are also extended to any agents, employees, or partners now or anytime in the future affiliated with Respondent Flores and Daniel Smog Check, test Only (referred to collectively as Respondents in this Order).

Terms and Conditions of Probation

1. Obey All Laws: Respondents shall comply with all federal and state statutes, regulations and rules governing all Bureau registrations and licenses held by Respondents.
2. Quarterly Reporting: During the period of probation, Respondents shall report either by personal appearance or in writing as determined by the Bureau on a schedule set by Bureau, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
3. Report Financial Interests: Respondents shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the Bureau during the period of probation, report any financial interest which any Respondents or any partners, officers, or owners of any Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
4. Access to Examine Vehicles and Records: Respondents shall provide Bureau representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondents shall also provide Bureau representatives unrestricted access to all records pursuant to Bureau laws and regulations.
5. Tolling of Probation: If, during probation, Respondents leave the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, they shall notify the Bureau in writing within

10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that Respondents obey all laws, shall be held in abeyance during any period of time of 30 days or more in which Respondents are not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of 30 days or more in which Respondents are not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

6. Violation of Probation: Respondents shall, at all times while on probation, maintain a current and active registration and/or license(s) with the Bureau, including any period during which suspension or probation is tolled. If Respondents' registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by Respondents within 30 days of that date. If Respondents' registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal Respondents' registration and license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

7. Maintain Valid License: Respondents shall, at all times while on probation, maintain a current and active registration and/or license(s) with the Bureau,

including any period during which suspension or probation is tolled. If Respondents' registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by Respondents within 30 days of that date. If Respondents' registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal Respondents' registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

8. Supervision Requirements: Respondents shall not delegate supervisory duties, as they relate to the business activities relevant to the probationary registration and/or license, to another person during the period of probation. Any persons employed by Respondents to carry out such business activities shall be directly supervised by Respondent Flores. In the event that a bona fide medical condition arises during the period of probation, which temporarily prevents Respondent Flores from exercising direct supervision over employees, notice and medical substantiation of the condition shall be submitted to the Bureau within 10 days of the medical affirmation of the condition.

9. Training Course: During the period of probation, Respondent Flores shall attend and successfully complete a Bureau-specified and approved training course in the diagnosis and/or repair of emission systems failures and engine performance applicable to the class of license held by the Respondent Flores. Respondent Flores shall provide the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. Failure to provide proof of enrollment and/or successful course completion to the Bureau within the timeframes specified

shall constitute a violation of probation, and Respondents shall be prohibited from issuing any Certificate of Compliance or noncompliance until such proof is received.

10. Cost Recovery: Respondents shall pay the Bureau's costs of investigation and enforcement in the amount of \$8,000 pursuant to a payment plan approved by Bureau, but at a rate not greater than \$300 per month. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six months before probation terminates. Respondents shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No. 79/19-2470. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. The Bureau reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to acting based upon the violation of probation.

11. Completion of Probation: Upon successful completion of probation, Respondents' affected registration and licenses will be fully restored or issued without restriction, if Respondents meet all current requirements for registration or licensure and have paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

12. License Surrender: Following the effective date of a decision that orders a stay of invalidation or revocation, if Respondents cease business operations or are otherwise unable to satisfy the terms and conditions of probation, Respondents may request that the stay be vacated. Such request shall be made in writing to Bureau. The Director and the Bureau Chief reserve the right to evaluate the Respondents' requests and to exercise discretion whether to grant the requests or take any other action

deemed appropriate or reasonable under the circumstances. Upon formal granting of the requests, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

13. Reinstatement: Respondents may not petition the Director for reinstatement of the surrendered registration and license or apply for a new registration or license under the jurisdiction of the Bureau at any time before the date of the originally scheduled completion of probation. If Respondents apply to the Bureau for a registration or license at any time after that date, Respondents must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to Bureau left outstanding at the time of surrender.

DATE: 10/12/2021

Glynda Gomez

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings