

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

In the Matter of the Accusation Against:

TAMARA ADEL HADDAD, Owner
dba A V SMOG STATION
43607 Sierra Hwy
Lancaster, CA 93534

Automotive Repair Dealer Registration No.
ARD 280471
Smog Check, Test Only, Station License No.
TC 280471

JAMAL AYED HADDAD
2028 Krystal Ave.
Lancaster, CA 93536

Smog Check Inspector License No.
EO 622447
Smog Check Repair Technician License No.
EI 622447

IBRAHIM ISSA HADDAD
2435 Carolyn Dr.
Palmdale, CA 93551

Smog Check Inspector License No.
EO 638988

ALAA MUDAR HADDAD
39333 Carolside Ave.
Palmdale, CA 93550

Mailing Address:
45243 17th Street W
Lancaster, CA 93534

Smog Check Inspector License No.
EO 637736

and

Case No. 79/17-6931

OAH No. 2019010250

ISSA HADDAD
2037 Krystal Ave.
Lancaster, CA 93536

Smog Check Inspector License No.
EO 639164

Respondents.

DECISION

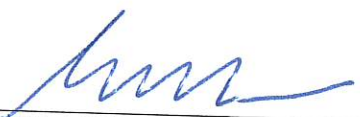
The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517, subdivision (c)(2)(C), technical or other minor changes in the Proposed Decision are made as follows:

1. Page 16, paragraph 20: "44072.2, subdivision (c)" is corrected to "44072.2, subdivision (a)."

The technical or minor change made above does not affect the factual or legal basis of the Proposed Decision.

This Decision shall become effective on October 30, 2019.

DATED: Sept. 25, 2019


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

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ALAA MUDAR HADDAD

Smog Check Inspector License No. EO 637736

And

ISSA HADDAD

Smog Check Inspector License No. EO 639164

Respondents

Case No. 79/17-6931

OAH No. 2019010250

PROPOSED DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 11 and July 3, 2019, in Lancaster, California.

Christina Thomas, Deputy Attorney General, represented complainant, Patrick Dorais, in his official capacity as Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs (department), State of California. Each of the respondents, Tamara Adel Haddad, owner of, and doing business as, A V Smog Station (AVSmog), Jamal Ayed Haddad, Ibrahim Issa Haddad, Alaa Mudar Haddad, and Issa Haddad, was self-represented.

This matter was consolidated for hearing with another case, regarding BAR's denial of respondent technician's applications for a Brake Adjuster license and a Lamp Adjuster license. The consolidated matter is case number 77/18-16859, OAH number 2019060245.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 3, 2019.

SUMMARY

BAR stipulated that its evidence did not support wrongdoing, except with respect to one vehicle's smog check. Respondent technician, Jamal Ayed Haddad, and AVSmog were responsible for that smog check. The evidence does not support a finding of fraud, but respondents reported mistaken data. Probation is appropriate.

FACTUAL FINDINGS

1. The accusation alleges six instances of misconduct in 2016, the first in April, the last in September. Respondents timely requested a hearing.

2. At the July 3, 2019 hearing, BAR stipulated that the evidence did not support a finding of misconduct except with respect to one smog check on September 17, 2019. That smog check was performed by respondent Jamal Ayed Haddad (respondent technician) and resulted in issuance of a smog check certificate of compliance (certificate) by AVSmog. In consequence, as stated in the Order below, the accusation against the other respondents, Ibrahim Issa Haddad, Alaa Haddad, and Issa Haddad, is dismissed, and they are not mentioned further below, except in the Order.

Licensure and Citation

3. On June 5, 2015, BAR issued AVSmog, automotive repair dealer registration number ARD 280471. The registration is set to expire on December 31, 2019.

4. On July 1, 2015, BAR issued AVSmog Smog Check, Test Only, Station license number TC 280471. The license is set to expire on June 30, 2020.

5. On October 25, 2016, BAR cited AVSmog, citation number C2016-1863, for issuing, in violation of Health and Safety Code section 44012, a certificate to a BAR undercover vehicle that was missing a secondary injection pump. After a citation service conference on November 16, 2016, AVSmog requested an informal appeal. On January 12, 2017, BAR affirmed and reissued the citation. On January 24, 2017, AVSmog sent BAR a request for the citation's formal appeal. As of May 5, 2017, the appeal was pending and the evidence did not establish how or whether it was resolved.

6. BAR issued the respondent technician an Advanced Emission Specialist Technician license, which was cancelled by operation of law in 2012 and at respondent's election, replaced on November 13, 2012, by Smog Check Inspector license number EO 622447 and Smog Check Repair Technician license number EI 622447. The licenses are set to expire on December 31, 2019.

Smog Checks

7. BAR has employed Jon Yamashita as a program representative I for approximately six years. He investigates consumer complaints and participates in BAR activities to implement the Motor Vehicle Inspection Program (inspection program), codified in Health and Safety Code sections 44000 through 44126.

8. Mr. Yamashita described, during the hearing and in his May 22, 2017 Investigative Report, Exhibit 7, how smog technicians are required to perform work under the inspection program and the California Code of Regulations (Regulations).

A. A test of a vehicle's mandatory anti-smog equipment, to check whether its gas emissions are within legal limits, is a smog check, smog test, or smog check inspection. A smog check, such as that at issue here, must comply with instructions in

the Smog Check Manual 2013 (manual). (Under Regulation 3340.45, subdivision (a)(2), the manual was in effect until August 2, 2018, when Smog Check Manual 2017 became effective.) The manual's provisions have legal force. Regulation 3340.42 incorporates the manual by reference into the Regulations.

B. Smog checks performed as the manual instructs implement the inspection program. BAR promulgated Regulation 3340.1 and the related Regulations that follow it to enforce the inspection program.

C. On a smog check's finding a vehicle's emissions to be within legal limits, a licensed smog station may properly issue the vehicle owner a certificate. The owner must present a certificate to the Department of Motor Vehicles (DMV) to register the vehicle for operation on public roads.

D. Manufacturers equip passenger vehicles with computers, on-board diagnostic (OBD or updated OBDII) systems. The OBD system ensures engine monitors are working to test engine functions. OBD systems report problems with a vehicle's drivability and the control of emissions and, in case of problems, will alert a driver with a warning light on the dashboard, a Malfunction Indicator Light (MIL), also called the Check Engine Light.

E. During a smog check, OBD systems report electronically to the OIS system. Under the manual, a technician who performs a smog check on most vehicles of model year 2000 or newer, like the vehicle and its smog check described in Findings 9 through 11 below, is required to use an OIS computer system: "OBD Inspection System' or 'OIS' consists of an OBD Data Acquisition Device or (DAD) working in conjunction with commercial off-the-shelf computer, bar code scanner, data entry device, and printer. . . . The OIS computer relays inspection information to and from

the DAD to the Vehicle Information Database (VID)." (Reg. 3340.1.) Section 1.1.0, page 3, of the manual states that entering the technician's unique license number and access code into OIS starts a smog check.

F. Section 1.1.1, page 4, of the manual provides: "No person shall enter any vehicle identification information for any vehicle other than the one being tested. Nor shall any person knowingly enter any false information about the vehicle being tested."

G. During a smog check, data from a vehicle's OBD system is transmitted to the VID over a live internet connection. The VID holds data from smog checks throughout California.

H. When a vehicle passes a smog check, the OIS prints a Smog Check Vehicle Inspection Report (VIR). On a VIR, such as the last page of Exhibit B, the vehicle's owner is provided information such as: (i) date and time of the smog check; (ii) make, model, and year of the vehicle; (iii) VIN, the vehicle identification number, unique to a vehicle, assigned by its manufacturer, also called in its digital format an eVIN (electronic VIN); (iv) the vehicle's license plate number; (v) its fuel type (gasoline or diesel); (vi) name and license number BAR issued to the smog check station where the smog check was conducted; and (vii) name and license number BAR issued to the technician who performed the smog check.

I. The VID receives a copy of the VIR. The data transmitted to VID only and not available to the technician or vehicle owner is more detailed, as indicated in Exhibit 13, which show OIS Test Details, including: (i) protocol name, that is, the name of a computer language, part of the software with which a manufacturer programs a vehicle's OBD system; and (ii) PID's or PID Count. PID stands for parameter

identification. The PID's or PID Count is the number of parameters that the vehicle's OBD system sends VID. A vehicle's anti-smog system works within certain parameters, like the engine's coolant temperature and the speed at which the engine is working. Different manufacturers program their vehicles' OBD systems to transmit different numbers of PID's during a smog check, but the number of PID's is the same for vehicles of the same make, model, and year and invariable once the vehicle leaves the manufacturer.

J. The smog technician is required to sign the VIR under penalty of perjury, but the technician is not required to scan or otherwise transmit the signature to the VID, which stores only an unsigned copy. The certificate signifies that the vehicle complies with all pertinent emission control regulations.

BAR's Investigation

9. At the hearing, Mr. Yamashita confirmed the truth and accuracy of his Investigative Report, Exhibit 7. BAR investigated respondent technician's September 17, 2016 smog check of a 2002 Lincoln Town Car Executive, referred to at the hearing as Vehicle #6 or Clean Plug #6. During respondent's smog check, Vehicle #6 reported no eVIN, that its protocol was I914, and its PID Count 16. Of 274 comparative vehicles, those of the same make, model, and year as Vehicle #6, 94.9 percent report: (i) an eVIN; (ii) use of the JPWM protocol; and (iii) a PID Count of 20.

10. Respondent technician certified Vehicle #6 and following the smog check on September 17, 2016, AVSmog issued certificate number QE237456C.

11. As Mr. Yamashita opined, the discrepancies between data from respondents' smog check of Vehicle #6 and the great majority of comparative vehicles

demonstrates that respondents are responsible for a certificate that should not have issued to the vehicle.

Respondents' Evidence

12. Respondents' smog check business depends on high volume. They smog check and certify several vehicles each hour of the work day. They acknowledged that in such circumstances a smog check may be in error, resulting in a mistakenly issued certificate. They denied that they have ever intentionally issued a certificate based on false data. They denied clean plugging any vehicle.

13. An example of their mistakenly issuing a certificate occurred on April 13, 2016. Respondent technician intended to smog check a 2006 Honda Ridgeline RTL, referred to at the hearing as Vehicle #1 or Clean Plug #1. Instead of plugging the DAD into Vehicle #1, respondent technician mistakenly plugged it into another vehicle that was also to be smog checked, a 2009 Chevrolet Impala. AVSmog issued certificate ZB783311C to Vehicle #1, but because of the mistake, the certificate recorded data from the Impala. When the Impala shortly afterwards passed its smog check, AVSmog issued the Impala certificate ZB783312C.

14. Realizing the mistake and hoping to correct it, respondent technician called a local BAR office to ask for instruction. There was insufficient reason to delete the mistaken data and certificate issued Vehicle #1 from the VID, but respondent technician understood from discussion with BAR personnel that he should re-check Vehicle #1, being careful to plug the DAD into Vehicle #1, the vehicle to be checked, and not another. Respondent technician did as instructed. He did not intend to certify a vehicle mistakenly. Respondents do not have access to the VID, but information publicly available on BAR's website, which respondents presented at the hearing,

shows that Vehicle #1 was smog checked twice on April 13, 2006 at 3:04 p.m. and that the Impala was smog checked at 3:21 p.m. that day. (Ex. A & B.)

15. Respondents believe that a mistake occurred in certifying Vehicle #6. They sought but were unable to document the nature of the mistake, but believe only a mistake occurred, not clean plugging, not fraud, because, as respondents testified convincingly, they respect the law and the inspection program and consequently have never intentionally violated the anti-emissions laws.

16. Respondents presented photographs of vehicles, Exhibit CC, showing that they have at times encountered vehicles with an altered VIN. Such alteration of a VIN could, in respondents' view, lead to mistaken certification, whereas such a mistake might be avoided if the true VIN were known.

17. Respondent technician presented a July 1, 2019 letter, Exhibit BB, from Richard H. Havunjian, M.D., regarding eye surgeries in 1997 and 1998 to recover from being legally blind. Respondent believes that his medical circumstances, as evidenced by the letter, should excuse or mitigate any mistaken conduct for which he might be responsible.

Costs

18. BAR incurred costs in this matter totaling \$4,647.50. (Ex. 3.)

LEGAL CONCLUSIONS

1. BAR bears the burden of proof. "[P]rocedural due process of law requires a regulatory board or agency to prove the allegations of an accusation filed against a

licensee" (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9 [burden on agency in proceeding against an architect].)

2. The standard BAR must meet is proof 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.)

3. BAR is not to punish, but protect. "Protection of the public shall be the highest priority for [BAR] in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 9880.3.)

4. BAR's mission falls under several mandates:

A. Laws to protect air quality are enforced by an agency network that includes BAR. Under Business and Professions Code section 9882, subdivision (a), BAR's chief, the complainant in this matter, "is responsible to the director" of the department for "enforcing and administering" the Automotive Repair Act (Act). (The Act is codified in Business and Professions Code sections 9880 through 9889.68.)

B. BAR administers and enforces the inspection program. (Health & Saf. Code, § 44001.5, subd. (a).) The department's "director and officers and employees thereof, shall have all the powers and authority granted" by statutes and regulations "for developing and implementing" the inspection program. (Health & Saf. Code, § 44002.)

C. The inspection program encompasses standards adopted in conjunction with other state agencies. The standards assure the quality of work performed by

qualified smog check technicians at smog check stations. One such standard is “[u]se of computerized and tamper-resistant testing equipment, including, but not limited to, test analyzer systems meeting the current requirements of the department.” (Health & Saf. Code, § 44030, subd. (b)(1).)

5. Business and Professions Code section 9884.7 provides that, unless a bona fide error can be shown, discipline of a license or registration is appropriate: (i) under subdivision (a)(1), when a licensee or registered automotive repair dealer makes a statement known to be untrue or misleading or, in the exercise of reasonable care, should have been known to be so; (ii) under subdivision (a)(4), in the case of conduct that constitutes fraud; and (iii) under subdivision (a)(6), in the case of failure in any material respect to comply with the Act or regulations adopted pursuant to the Act.

Statutes Pertinent to Smog Checks

6. Health and Safety Code section 44012, subdivision (a), provides that smog checks must follow prescribed procedures to ensure that “[e]mission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.”

7. Health and Safety Code section 44015 provides that a licensed smog check station shall not issue a certificate except as authorized by the inspection program.

8. Health and Safety Code section 44059 provides: “The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the

Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

9. Health and Safety Code section 44072.2 provides in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee:

(a) Violates any section of this chapter [which sets out the inspection program] and the regulations adopted pursuant to it, which [are] 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 injured.

Pertinent Regulations

10. Regulation 3340.24, subdivision (c), provides that BAR may discipline a license if the licensee falsely or fraudulently issues a certificate.

11. Under Regulation 3340.30, subdivision (a), a technician must test vehicles as provided in sections 44012 of the Health and Safety Code and Regulation 3340.42.

12. Regulation 3340.35, subdivision (c), requires that smog checks follow the procedures specified in Regulation 3340.42.

13. Regulation 3340.42 sets out smog check standards and methods of different types, including that "[s]mog check inspection methods are prescribed" in the manual and newer passenger vehicles, including Vehicle #6 at issue here, must undergo inspection by means of the vehicles' OBD system.

First Cause for Discipline Against AVSmog: Untrue or Misleading Statements

14. As the employer of respondent technician, AVSmog is vicariously liable for the technician's wrongdoing in the course of his work, under the doctrine of respondeat superior. (*Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 621.) As the court stated in *Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 144-145, "The licensee, if he elects to operate his business through employees must be responsible to the licensing authority for their conduct in the exercise of his license, else we would have the absurd result that [employees' conduct is] . . . forbidden [but] the licensees would be immune to disciplinary action"

15. Cause exists to discipline AVSmog's registration under Business and Professions Code section 9884.7, subdivision (a)(1), in that AVSmog made statements regarding Vehicle #6 described in Findings 9 through 11 that respondent knew to be untrue or misleading or that respondent should have known to be untrue or misleading had respondent exercised reasonable care. The untrue or misleading statements are those in the certificate AVSmog issued to Vehicle #6 and those transmitted to the VID, including the incorrect PID Count and protocol for the vehicle.

Second Cause for Discipline Against AVSmog: Fraud

16. Cause does not exist to discipline AVSmog's registration under Business and Professions Code section 9884.7, subdivision (a)(4). The evidence did not establish

that respondent committed fraud. The evidence indicates that AVSmog issued the certificate for Vehicle #6 based on false information, but it was not proved by a preponderance of facts that the falsehood was intentional. On this record, it is just as likely that the incorrect information upon which the certificate for Vehicle #6 was issued was the result of a mistake like the one that occurred involving Vehicle #1. (Finding 13.)

Third Cause for Discipline Against AVSmog: Failure to Comply with Inspection Program

17. Cause exists to discipline AVSmog's registration under Business and Professions Code section 9884.7, subdivision (a)(6), and Health and Safety Code section 44072.2, subdivision (a), in that, by clean plugging Vehicle #6, respondent failed in material respects to comply with the Act and the inspection program. Instead of data from a smog check of Vehicle #6, data from another source, whether another vehicle or an electronic device, was the basis for AVSmog's issuing a certificate to Vehicle #6. More specifically:

A. Issuing such a certificate was contrary to Health and Safety Code section 44012. Respondent's issuing a certificate to Vehicle #6, which did not undergo a smog check, resulted in BAR's being unable to verify that the vehicle was in compliance with anti-emissions laws and regulations.

B. AVSmog's certificate to Vehicle #6 was contrary to Health and Safety Code section 44015 because the vehicle did not undergo a smog check as required by the inspection program.

C. Cause does not exist to discipline respondent's registration for perjury under Health and Safety Code section 44059. As set out in Conclusions 3 and 4, BAR's mission is to protect, not to prosecute or punish crimes, whether perjury or others.

Fourth Cause for Discipline Against AVSmog: Failure to Comply with Inspection Program Regulations

18. Cause exists to discipline AVSmog's Smog Check, Test Only, Station license under Health and Safety Code section 44072.2, subdivision (c). AVSmog failed to comply with regulations implementing the inspection program. More specifically, the clean plugging for which respondent is responsible constitutes activity contrary to Regulations, including:

A. Regulation 3340.24, subdivision (c): AVSmog's certificate for Vehicle #6 falsely indicated the vehicle had been smog checked and was compliant with anti-emission laws. This conclusion construes the term "falsely" in the Regulation to be different from another of the Regulation's terms, "fraudulently." The certificate issued to Vehicle #6 was false in that respondent mistakenly or neglectfully provided data from another source, but the issuance did not constitute fraud.

B. Regulation 3340.35, subdivision (c): Smog checks must follow procedures referenced in Regulation 3340.42 and set out in the manual. AVSmog issued a certificate to Vehicle #6 though the vehicle was not smog checked according to procedures required by the Regulation.

C. Regulation 3340.42: AVSmog did not follow the required procedures in the manual before issuing the certificate to Vehicle #6.

Fifth Cause for Discipline Against AVSmog: Dishonesty, Fraud, or Deceit

19. Cause does not exist to discipline AVSmog's registration under Health and Safety Code section 44072.2, subdivision (d). The evidence did not establish that respondent engaged in dishonesty, fraud, or deceit in issuing a certificate to Vehicle #6, as described in Findings 9 through 11. It is as likely on this record that Vehicle #6 was mistakenly issued a certificate as that respondent intended to issue a certificate for the vehicle for a wrongful purpose.

Sixth Cause for Discipline Against Respondent Technician: Violations of the Inspection Program

20. Cause exists to discipline respondent technician's Smog Check Inspector license and Smog Repair Technician license under Health and Safety Code section 44072.2, subdivision (c). Respondent violated the law's requirement to perform a smog check according to regulations that implement the inspection program.

Seventh Cause for Discipline Against Respondent Technician: Failure to Comply with Regulations of the Inspection Program

21. Cause exists to discipline respondent technician's Smog Check Inspector license and Smog Repair Technician license under Health and Safety Code section 44072.2, subdivision (c). Instead of performing a smog check of Vehicle #6, respondent submitted data from another source. He failed to comply with regulations implementing the inspection program by means of smog checks, including:

A. Regulation 3340.24, subdivision (c): Respondent technician's certificate for Vehicle #6 falsely indicated the vehicle had been smog checked and was compliant

with anti-emission laws. This conclusion construes the term "falsely" in the Regulation to be different from another of the Regulation's terms, "fraudulently." The certificate issued to Vehicle #6 was false in that respondent mistakenly or neglectfully provided data from another source, but the issuance did not constitute fraud.

B. Regulation 3340.35, subdivision (c): Smog checks must follow procedures referenced in Regulation 3340.42 and set out in the manual. By providing data from a source other than Vehicle #6, respondent technician wrongfully circumvented the required procedures.

C. Regulation 3340.42: Respondent technician did not follow the required procedures in the manual before issuing the certificate to Vehicle #6.

Eighth Cause for Discipline Against Respondent Technician:

Dishonesty, Fraud, or Deceit

22. Cause does not exist to discipline respondent technician's Smog Check Inspector license or Smog Check Repair license under Health and Safety Code section 44072.2, subdivision (d). The evidence did not establish that respondent technician engaged in dishonesty, fraud, or deceit in certifying Vehicle #6, as described in Findings 9 through 11. It is as likely on this record that the vehicle was mistakenly certified compliant as that respondent intended to submit false data for a wrongful purpose.

Aggravation and Mitigation

23. There is no aggravating factor respecting AVSmog from a previous citation, described in Finding 5, for issuing a certificate to a vehicle missing a required

anti-emission system. The evidence did not establish how or whether the citation was resolved.

24. A mitigating factor is that in the case of Vehicle #1, the mistakenly issued certificate was discovered quickly and respondents consulted BAR personnel to correct the error promptly.

25. There was no mitigation as a result of possible tampering with VIN's, as described in Finding 16. There was no mitigation as a result of respondent technician's medical treatment years ago, as described in Finding 17.

Other Matters

26. Cause does not exist to discipline AVSmog's registration under Business and Professions Code section 9884.7, subdivision (c), by revoking the registrations for all places of business operated by respondent in California. The violation of law noted above was based on one error, which does not indicate that respondent was engaged in a course of willful violation of laws and regulations pertaining to an automotive repair dealer.

27. Cause does not exist to discipline AVSmog's Smog Check, Test Only, Station license under Health and Safety Code section 44072.8, by revoking the station licenses for all places of business operated by respondent in California. While discipline is properly imposed against the license, based on the certificate improperly issued to Vehicle #6, suspending or revoking others would be unduly punitive, given that respondent's conduct was in error, rather than intentionally wrongful.

28. Cause does not exist to discipline respondent technician's Smog Check Inspector license or Smog Repair Technician license under Health and Safety Code

section 44072.8, by revoking all licenses held by respondent issued under the Health and Safety Code. While discipline is properly imposed against the licenses, based on the failure to smog check Vehicle #6, suspending or revoking other licenses would be unduly punitive, given that respondent's conduct was in error, rather than intentionally wrongful.

29. BAR is entitled to reimbursement of reasonable costs under Business and Professions Code section 125.3. However, most of the costs BAR seeks were not related to Vehicle #6. There were five other vehicles it investigated and three respondents against whom BAR did not prove wrongdoing. In the circumstances, it is appropriate that costs be reduced to approximately 10 percent of those incurred, to a total of \$465.

30. There are no grounds for a further reduction of costs under *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.4th 32. Respondents were diligent in presenting substantial documentation and other evidence regarding their conduct. They advanced multiple arguments and thoroughly met the arguments and evidence presented by BAR. Respondents, however, chose not to present evidence that they might have difficulty paying costs or that it would be unfair that they should do so, beyond respondents' assertions that they acted appropriately.

ORDER

Respondent Tamara Adel Haddad-Owner, doing business as A V

Smog Station:

1. The Automotive Repair Dealer registration, number ARD 280471, and the Smog Check, Test Only, Station license number TC 280471, issued to respondent

Tamara Adel Haddad-Owner, doing business as A V Smog Station, are revoked, provided, however, that the revocation as to the registration and the license is stayed and respondent is placed on probation for two years on the following terms and conditions.

OBEY ALL LAWS

2. During the period of probation, respondent shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by respondent.

QUARTERLY REPORTING

3. During the period of probation, respondent shall report either by personal appearance or in writing, as determined by the Bureau of Automotive Repair, on a schedule set by the 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.

REPORT FINANCIAL INTERESTS

4. Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the Bureau of Automotive Repair during the period of probation, report any financial interest which any respondent 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.

ACCESS TO EXAMINE VEHICLES AND RECORDS

5. Respondent shall provide representatives of the Bureau of Automotive Repair unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide BAR representatives unrestricted access to all records pursuant to laws and regulations applicable to the Bureau of Automotive Repair.

TOLLING OF PROBATION

6. If, during probation, respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondent shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

ABEYANCE

7. All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondent is 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 time of 30 days or more in which respondent is 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.

VIOLATION OF PROBATION

8. If respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard, may set aside the stay order and carry out the disciplinary order provided in the decision. Once respondent is served notice of the Bureau of Automotive Repair's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

MAINTAIN VALID LICENSE

9. Respondent shall, at all times while on probation, maintain a current and active registration and licenses with the Bureau of Automotive Repair, including any period during which suspension or probation is tolled. If respondent's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by respondent within 30 days of that date. If respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal respondent's 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.

COST RECOVERY

10. Respondent is jointly and severally liable with respondent Jamal Ayed Haddad to pay the Bureau of Automotive Repair \$465 for the reasonable costs of the investigation and enforcement of case no. 79/17-6931. Respondent shall make payment or installment payments as directed by the Bureau. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six

(6) months before probation terminates. Respondent 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. 79/17-6931. 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. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

COMPLETION OF PROBATION

11. Upon successful completion of probation, respondent's affected registration and licenses will be fully restored or issued without restriction, if respondent meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to BAR.

LICENSE SURRENDER

12. Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request that the stay be vacated. Such request shall be made in writing to the Bureau of Automotive Repair. The Director and the Chief of the Bureau of Automotive Repair reserve the right to evaluate respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

SUBMISSION OF APPLICATION

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

Respondent Jamal Ayed Haddad

14. The Smog Check Inspector license number EO 622447 and the Smog Check Repair Technician license number EI 622447, issued to respondent Jamal Ayed Haddad, are revoked, provided, however, that the revocation as to each license is stayed and respondent is placed on probation for two years on the following terms and conditions.

OBEY ALL LAWS

15. During the period of probation, respondent shall comply with all federal and state statutes, regulations and rules governing all Bureau of Automotive Repair registrations and licenses held by respondent.

QUARTERLY REPORTING

16. During the period of probation, respondent shall report either by personal appearance or in writing, as determined by the Bureau of Automotive Repair, on a schedule set by the 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.

REPORT FINANCIAL INTERESTS

17. Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the Bureau of Automotive Repair during the period of probation, report any financial interest which any respondent 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.

ACCESS TO EXAMINE VEHICLES AND RECORDS

18. Respondent shall provide representatives of the Bureau of Automotive Repair unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide Bureau representatives unrestricted access to all records pursuant to laws and regulations applicable to the Bureau of Automotive Repair.

TOLLING OF PROBATION

19. If, during probation, respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondent shall notify the Bureau of Automotive Repair in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

ABEYANCE

20. All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondent is 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 time of 30 days or more in which respondent is 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.

VIOLATION OF PROBATION

21. If respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard, may set aside the stay order and carry out the disciplinary order provided in the decision. Once respondent is served notice of the Bureau of Automotive Repair's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

MAINTAIN VALID LICENSE

22. Respondent shall, at all times while on probation, maintain a current and active registration and licenses with the Bureau of Automotive Repair, including any period during which suspension or probation is tolled. If respondent's licenses are expired at the time the decision becomes effective, the licenses must be renewed by

respondent within 30 days of that date. If respondent's licenses expire during a term of probation, by operation of law or otherwise, then upon renewal respondent's license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain current and active licenses during the period of probation shall also constitute a violation of probation.

COST RECOVERY

23. Respondent is jointly and severally liable with respondent Tamara Adel Haddad-owner of, doing business as, A V Smog Station, to pay the Bureau of Automotive Repair \$465 for the reasonable costs of the investigation and enforcement of case no. 79/17-6931. Respondent shall make payment or installment payments as directed by the Bureau. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondent 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. 79/17-6931. 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. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

COMPLETION OF PROBATION

24. Upon successful completion of probation, respondent's affected registration and licenses will be fully restored or issued without restriction, if respondent meets all current requirements for licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau of Automotive Repair.

LICENSE SURRENDER

25. Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request that the stay be vacated. Such request shall be made in writing to the Bureau of Automotive Repair. The Director and the Chief of the Bureau reserve the right to evaluate respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

SUBMISSION OF APPLICATION

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

Respondents Ibrahim Issa Haddad, Alaa Mudar Haddad, and Issa Haddad

27. The accusation as against each of respondents Ibrahim Issa Haddad, Alaa Mudar Haddad, and Issa Haddad is dismissed.

DATE: August 1, 2019

DocuSigned by:
Thomas Lucero
3DA9A8E2A6304BD...

THOMAS Y. LUCERO
Administrative Law Judge
Office of Administrative Hearing

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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/17-6931

13 **TAMARA ADEL HADDAD-OWNER DBA**
14 **A V SMOG STATION**
43607 Sierra Hwy
15 Lancaster, CA 93534
Automotive Repair Dealer Registration No.
16 **ARD 280471**
Smog Check, Test Only, Station License No.
17 **TC 280471**

A C C U S A T I O N

18 **JAMAL AYED HADDAD**
2028 Krystal Ave.
19 Lancaster, CA 93536
Smog Check Inspector License No. EO
20 **622447**
Smog Check Repair Technician License
Number EI 622447

21 **IBRAHIM ISSA HADDAD**
2435 Carolyn Dr.
22 Palmdale, CA 93551
Smog Check Inspector License No. EO
23 **638988**

24 **ALAA MUDAR HADDAD**
39333 Carolside Ave.
25 Palmdale, CA 93550
MAILING ADDRESS
26 **45243 17th Street W**
Lancaster, CA 93534
27 **Smog Check Inspector License No. EO**
28 **637736**

1 and

2 **ISSA HADDAD**
3 **2037 Krystal Ave.**
4 **Lancaster, CA 93536**
5 **Smog Check Inspector License No. EO**
6 **639164**

Respondents.

7 Complainant alleges:

8 **PARTIES**

9 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity
10 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

11 **Tamara Adel Haddad-Owner dba A V Smog Station**

12 **Automotive Repair Dealer Registration**

13 2. On or about June 5, 2015, the Bureau issued Automotive Repair Dealer Registration
14 Number ARD 280471 ("registration") to Tamara Adel Haddad-Owner dba A V Smog Station
15 ("Respondent A V Smog"). The Automotive Repair Dealer Registration was in full force and
16 effect at all times relevant to the charges brought herein and will expire on June 30, 2018, unless
17 renewed.

18 **Smog Check, Test Only, Station License**

19 3. On or about July 1, 2015, the Bureau issued Smog Check, Test Only, Station License
20 Number TC 280471 to Respondent A V Smog. The Smog Check, Test Only, Station License was
21 in full force and effect at all times relevant to the charges brought herein and will expire on June
22 30, 2018, unless renewed.

23 **STAR Station Certification**

24 4. On or about October 30, 2015, the Bureau certified A V Smog Station as a STAR
25 Station. The certification will remain active unless ARD 280471 and/or TC 280471 is revoked,
26 canceled, become delinquent, or the certification is invalidated.

27 ///

28 ///

///

1 **Jamal Ayed Haddad**

2 **Technician License/Inspector License**

3 **(formerly Advanced Emission Specialist Technician License Number EA 622447)**

4 5. In or about 1997, the Bureau issued Advanced Emission Specialist Technician
5 License Number EA 622447 to Jamal Ayed Haddad ("Respondent Ayed"). Respondent Ayed's
6 Advanced Emission Specialist Technician License was cancelled on November 13, 2012.
7 Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e)¹, the license
8 was renewed, pursuant to Respondent Ayed's election, as Smog Check Inspector License Number
9 EO 622447 ("inspector license") and Smog Check Repair Technician License Number EI 622447
10 ("repair technician license"), effective November 13, 2012. Respondent Ayed's inspector license
11 and repair technician license were in full force and effect at all times relevant to the charges
12 brought herein and will expire on December 31, 2018, unless renewed.

13 **Ibrahim Issa Haddad**

14 **Smog Check Inspector License**

15 6. On or about February 11, 2016, the Bureau issued Smog Check Inspector License No.
16 EO 638988 ("inspector license") to Ibrahim Issa Haddad ("Respondent Issa"). The Smog Check
17 Inspector License was in full force and effect at all times relevant to the charges brought herein
18 and will expire on January 31, 2020, unless renewed.

19 **Alaa Mudar Haddad**

20 **Smog Check Inspector License**

21 7. On or about January 12, 2015, the Bureau issued Smog Check Inspector License No.
22 EO 637736 ("inspector license") to Alaa Mudar Haddad ("Respondent Mudar"). The Smog
23 Check Inspector License was in full force and effect at all times relevant to the charges brought
24 herein and will expire on September 30, 2018, unless renewed.

25 **Issa Haddad**

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

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 which constitutes fraud.

6 ...

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

11 14. Section 44012 of the Health and Safety Code states:

12 “The test at the smog check stations shall be performed in accordance with procedures
13 prescribed by the department and may require loaded mode dynamometer testing in enhanced
14 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other
15 appropriate test procedures as determined by the department in consultation with the state board.
16 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
17 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
18 no earlier than January 1, 2013. However, the department, in consultation with the state board,
19 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
20 idle testing for vehicles with onboard diagnostic systems that the department and the state board
21 determine exhibit operational problems. The department shall ensure, as appropriate to the test
22 method, the following:

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

26 “(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
27 the vehicle's emission control system.

28 ///

1 “(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
2 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded
3 mode are tested in accordance with procedures prescribed by the department. In determining how
4 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure
5 that the emission reduction targets for the enhanced program are met.

6 “(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and
7 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic
8 compound emissions, in accordance with procedures prescribed by the department.

9 “(e) For diesel-powered vehicles, a visual inspection is made of emission control devices
10 and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the
11 department that may include, but are not limited to, onboard diagnostic testing. The test may
12 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon
13 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

18 “(g) A determination as to whether the motor vehicle complies with the emission standards
19 for that vehicle's class and model-year as prescribed by the department.

20 “(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and
21 a tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would
22 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or
23 would have passed a tailpipe test.

24 “(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle
25 that would be unsafe to test, or that cannot physically be inspected, as specified by the department
26 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the
27 vehicle from compliance with all applicable requirements of this chapter.”

28 ///

1 15. Section 44015 of the Health and Safety Code states:

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

4 16. Section 44059 of the Health and Safety Code states:

5 "The willful making of any false statement or entry with regard to a material matter in any
6 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
7 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
8 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

9 17. Section 44072.2 of the Health and Safety Code states:

10 "The director may suspend, revoke, or take other disciplinary action against a license as
11 provided in this article if the licensee, or any partner, officer, or director thereof, does any of the
12 following:

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

16 ...

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

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

19 18. Section 44072.8 of the Health and Safety Code states:

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

23 **REGULATORY PROVISIONS**

24 19. California Code of Regulations, title 16, section 3340.24, subdivision (c) states:

25 ...

26 "(c) The bureau may suspend or revoke the license of or pursue other legal action against a
27 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
28 certificate of noncompliance."

1 20. California Code of Regulations, title 16, section 3340.30, subdivision (a) states:

2 "A licensed smog check inspector and/or repair technician shall comply with the following
3 requirements at all times while licensed:

4 "(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
5 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
6 article."

7 21. California Code of Regulations, title 16, section 3340.35, subdivision (c) states:

8 "A licensed station shall issue a certificate of compliance or noncompliance to the owner or
9 operator of any vehicle that has been inspected in accordance with the procedures specified in
10 section 3340.42 of this article and has all the required emission control equipment and devices
11 installed and functioning correctly."

12 22. California Code of Regulations, title 16, section 3340.42, states:

13 "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
14 section 3340.45.

15 "(a) All vehicles subject to a smog check inspection, shall receive one of the following test
16 methods:

17 "(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year
18 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The
19 loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of
20 nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of
21 Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode
22 (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

23 "On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection
24 shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table
25 (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby
26 incorporated by reference. If the emissions standards for a specific vehicle are not included in
27 this table then the exhaust emissions shall be compared to the emissions standards set forth in
28 TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its

1 measured emissions are less than or equal to the applicable emission standards specified in the
2 applicable table.

3 “(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999
4 model-year vehicles, except diesel-powered, registered in all program areas of the state, except in
5 those areas of the state where the enhanced program has been implemented. The two-speed idle
6 mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high
7 RPM and again at idle RPM, as contained in the bureau's specifications referenced in subsection
8 (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection
9 shall be measured and compared to the emission standards set forth in this section and as shown
10 in TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are
11 less than or equal to the applicable emissions standards specified in Table III.

12 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
13 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
14 The OBD test failure criteria are specified in section 3340.42.2.

15 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
16 receive the following:

17 “(1) A visual inspection of emission control components and systems to verify the vehicle's
18 emission control systems are properly installed.

19 “(2) A functional inspection of emission control systems as specified in the Smog Check
20 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
21 operation.

22 “(c) The bureau may require any combination of the inspection methods in sections (a) and
23 (b) under any of the following circumstances:

24 “(1) Vehicles that the department randomly selects pursuant to Health and Safety Code
25 section 44014.7 as a means of identifying potential operational problems with vehicle OBD
26 systems.

27 “(2) Vehicles identified by the bureau as being operationally or physically incompatible
28 with inspection equipment.

1 vehicle communication protocol and different Parameter Identification² (PID) count. All of the
 2 following inspections were performed by Respondents Ayed, Issa, Mudar and Haddad. The data
 3 from the certified vehicles were compared to the OIS test data of similar vehicles of the same
 4 year, make and model that received passing Smog Check inspections and received smog
 5 certificates. The data comparison showed multiple discrepancies with six (6) vehicles that were
 6 all certified with different e-VINs, different vehicle communication protocols³ and different PID
 7 count, which confirms the vehicles receiving smog certificates were fraudulently tested during the
 8 smog inspection using the clean plugging method⁴. The following chart illustrates the clean
 9 plugging activities of Respondents A V Smog, Ayed, Issa, Mudar and Haddad between April 13,
 10 2016 to September 17, 2016. All of the following inspections were performed by Respondents
 11 Ayed, Issa, Mudar and Haddad.

12 **TABLE 1**

13 Test No.	13 Test Date	13 Vehicle Certified & License No.	13 Certificate No.	13 Technician License No.	13 OIS Test Data Details
14 1.	14 04/13/2016	14 2006 Honda Ridgeline 15 RTL 16 T8TUM	14 ZB783311C	14 EO 622447 15 (Respondent 16 Ayed)	14 Comm. 15 Protocol: 16 ICAN11bt5 17 (expected I914) 18 PID Count: 19 39/7 (expected 20 24) 21 VIN No.: 22 2G1WT57N491 23 153071 24 (Expected 25 e-VIN- 26 2HJYK16596H 27 512085)

23 ² Parameter Identifications (PIDs) are data points reported by the OBD II computer to the scan tool or BAR
 24 OIS.

25 ³ Protocol is simply the language used to communicate with a vehicle's computer(s). Protocol is a
 26 communication interface. This automated determination of the communication interface, or protocol, is built into the
 27 Data Acquisition Device (DAD) unit. This automatic function identifies five (5) protocols used by vehicles
 28 manufactured and sold in the United States that are subject to the Smog Check program.

⁴ 'Clean Plugging' refers to the use of another vehicle's properly functioning On Board Diagnostic,
 generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing
 fraudulent smog Certificates of Compliance to vehicles that are not in smog compliance and/or not present for
 testing.

1	2.	06/28/2016	2006 Ford Econoline E150 8D09611	QC883438C	EO 638988 (Respondent Issa)	Comm. Protocol: JVPW (expected ICAN11bt5) PID Count: 18 (expected 47) VIN No.: 3C4FY48B54T 314266 (Expected e-VIN- 1FTRE14W86 DA70490)
2						
3						
4						
5						
6						
7						
8						
9	3.	07/18/2016	2006 Mercedes Benz S350 DP099JD	ZH146923C	EO 637736 (Respondent Mudar)	Comm. Protocol: I914 (expected KWPF) PID Count: 18 (expected 24) VIN No.: Not Transmitted (Expected e-VIN- WDBNF67J46 A478493)
10						
11						
12						
13						
14						
15						
16						
17	4.	08/05/2016	2008 Lincoln MKX AWD 6GGL182	ZH633240C	EO 639164 (Respondent Haddad)	Comm. Protocol: I914 (expected ICAN11bt5) PID Count: 18 (expected 43) VIN No.: 1NXBR32E26Z 595259 (Expected e-VIN- 2LMDU88C98 BJ30145)
18						
19						
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1	5.	08/20/2016	2007 Lexus ES 350 6ADY948	ZJ298765C	EO 622447 (Respondent Ayed)	Comm. Protocol: JVPW (expected ICAN11bt5) PID Count: 19 (expected 46/16 or 46/17 or 46/20) VIN No.: 2G1WW15E42 9125720 (Not Expected e-VIN- JTHBJ46G4721 31804)
2						
3						
4						
5						
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8						
9						
10	6.	09/17/2016	2002 Lincoln Town Car Executive 5VGW828	QE237456C	EO 622447 (Respondent Ayed)	Comm. Protocol: I914 (expected JPWM) PID Count: 16 (expected 20) VIN No.: Not Transmitted (Expected e-VIN- Not Expected)
11						
12						
13						
14						
15						
16						
17						

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

25. Respondent A V Smog's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that between April 13, 2016, through September 17, 2016, Respondent A V Smog made or authorized statements which she knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent A V Smog certified that vehicles 1 through 6, set forth above in Table 1, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent A V Smog conducted the inspections on the vehicles using the clean plugging method by substituting or using different vehicles or another source during the OBD II functional tests in order to issue

1 smog certificates of compliance for the 6 vehicles, and did not test or inspect the 6 vehicles as
2 required by Health and Safety Code section 44012.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 26. Respondent A V Smog's registration is subject to discipline pursuant to Code section
6 9884.7, subdivision (a)(4), in that between April 13, 2016, through September 17, 2016,
7 Respondent A V Smog committed acts which constitute fraud by issuing electronic smog
8 certificates of compliance for vehicles 1 through 6, set forth above in Table 1, without performing
9 bona fide inspections of the emission control devices and systems on those vehicles, thereby
10 depriving the People of the State of California of the protection afforded by the Motor Vehicle
11 Inspection Program.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with the Motor Vehicle Inspection Program)**

14 27. Respondent A V Smog's registration and smog check station license are subject to
15 discipline pursuant to Code section, subdivision 9884.7(a)(6) and Health and Safety Code section
16 44072.2, subdivision (a), in that between April 13, 2016, through September 17, 2016, regarding
17 vehicles 1 through 6, set forth above in Table 1, Respondent A V Smog failed to comply with the
18 following sections of that Code:

19 a. **Section 44012:** Respondent A V Smog failed to ensure that the emission control tests
20 were performed on vehicles 1 through 6, in accordance with procedures prescribed by the
21 department.

22 b. **Section 44015:** Respondent A V Smog issued electronic smog certificates of
23 compliance for vehicles 1 through 6, without ensuring that the vehicles were properly tested and
24 inspected to determine if they were in compliance with Health and Safety Code section 44012.

25 c. **Section 44059:** Respondent A V Smog willfully made false entries for the electronic
26 smog certificates of compliance by certifying that those vehicles had been inspected as required
27 when, in fact, they had not.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

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

4 28. Respondent A V Smog's smog check, test only, station license is subject to discipline
5 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between April 13,
6 2016, through September 17, 2016, regarding vehicles 1 through 6, set forth above in Table 1,
7 Respondent A V Smog failed to comply with provisions of California Code of Regulations, title
8 16, as follows:

9 a. **Section 3340.24, subdivision (c)**: Respondent A V Smog falsely or fraudulently issued
10 electronic smog certificates of compliance for those vehicles without performing bona fide
11 inspections of the emission control devices and systems on the vehicles as required by Health and
12 Safety Code section 44012.

13 b. **Section 3340.35, subdivision (c)**: Respondent A V Smog issued electronic smog
14 certificates of compliance even though those vehicles had not been inspected in accordance with
15 section 3340.42 of that Code.

16 c. **Section 3340.42**: Respondent A V Smog failed to conduct the required smog tests and
17 inspections on those vehicles in accordance with the Bureau's specifications.

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 29. Respondent A V Smog's smog check, test only, station license is subject to discipline
21 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that between April 13,
22 2016, through September 17, 2016, regarding vehicles 1 through 6, set forth above in Table 1,
23 Respondent A V Smog committed acts involving dishonesty, fraud or deceit whereby another was
24 injured by issuing electronic smog certificates of compliance for those vehicles without
25 performing bona fide inspections of the emission control devices and systems on the vehicles,
26 thereby depriving the People of the State of California of the protection afforded by the Motor
27 Vehicle Inspection Program.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 30. Respondent Ayed's smog check inspector license and repair technician license are
4 subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that
5 between April 13, 2016, through September 17, 2016, regarding vehicles number 1, 5 and 6, set
6 forth above in Table 1, he failed to comply with section 44012 of that Code in a material respect,
7 as follows: Respondent Ayed failed to perform the emission control tests on those vehicles in
8 accordance with procedures prescribed by the department.

9 **SEVENTH CAUSE FOR DISCIPLINE**

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

12 31. Respondent Ayed's smog check inspector license and repair technician license are
13 subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that
14 between April 13, 2016, through September 17, 2016, regarding vehicles number 1, 5 and 6, set
15 forth above in Table 1, he failed to comply with provisions of California Code of Regulations,
16 title 16, as follows:

17 a. **Section 3340.24, subdivision (c)**: Respondent Ayed falsely or fraudulently issued
18 electronic smog certificates of compliance without performing bona fide inspections of the
19 emission control devices and systems on those vehicles as required by Health and Safety Code
20 section 44012.

21 b. **Section 3340.30 subdivision (a)**: Respondent Ayed failed to inspect and test those
22 vehicles in accordance with Health and Safety Code sections 44012.

23 c. **Section 3340.42**: Respondent Ayed failed to conduct the required smog tests and
24 inspections on those vehicles in accordance with the Bureau's specifications.

25 **EIGHTH CAUSE FOR DISCIPLINE**

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

27 32. Respondent Ayed's smog check inspector license and repair technician license are
28 subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that

1 between April 13, 2016, through September 17, 2016, regarding vehicles number 1, 5 and 6, set
2 forth above in Table 1, he committed acts involving dishonesty, fraud or deceit whereby another
3 was injured by issuing electronic smog certificates of compliance without performing bona fide
4 inspections of the emission control devices and systems on those vehicles, thereby depriving the
5 People of the State of California of the protection afforded by the Motor Vehicle Inspection
6 Program.

7 **NINTH CAUSE FOR DISCIPLINE**

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

9 33. Respondent Issa's smog check inspector license is subject to discipline pursuant to
10 Health and Safety Code section 44072.2, subdivision (a), in that on June 28, 2016, regarding
11 vehicle number 2, set forth above in Table 1, he failed to comply with section 44012 of that Code
12 in a material respect, as follows: Respondent Issa failed to perform the emission control tests on
13 the vehicle in accordance with procedures prescribed by the department.

14 **TENTH CAUSE FOR DISCIPLINE**

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

17 34. Respondent Issa's smog check inspector license is subject to discipline pursuant to
18 Health and Safety Code section 44072.2, subdivision (c), in that on June 28, 2016, regarding
19 vehicle number 2, set forth above in Table 1, he failed to comply with provisions of California
20 Code of Regulations, title 16, as follows:

21 a. **Section 3340.24, subdivision (c)**: Respondent Issa falsely or fraudulently issued an
22 electronic smog certificate of compliance without performing bona fide inspections of the
23 emission control devices and systems on the vehicle as required by Health and Safety Code
24 section 44012.

25 b. **Section 3340.30 subdivision (a)**: Respondent Issa failed to inspect and test the vehicle
26 in accordance with Health and Safety Code sections 44012.

27 c. **Section 3340.42**: Respondent Issa failed to conduct the required smog test and
28 inspection on the vehicle in accordance with the Bureau's specifications.

1 **ELEVENTH CAUSE FOR DISCIPLINE**

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

3 35. Respondent Issa's smog check inspector license is subject to discipline pursuant to
4 Health and Safety Code section 44072.2, subdivision (d), in that on June 28, 2016, regarding
5 vehicle number 2, set forth above in Table 1, he committed acts involving dishonesty, fraud or
6 deceit whereby another was injured by issuing an electronic smog certificate of compliance
7 without performing a bona fide inspection of the emission control devices and systems on the
8 vehicle, thereby depriving the People of the State of California of the protection afforded by the
9 Motor Vehicle Inspection Program.

10 **TWELVTH CAUSE FOR DISCIPLINE**

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

12 36. Respondent Mudar's smog check inspector license is subject to discipline pursuant to
13 Health and Safety Code section 44072.2, subdivision (a), in that on July 18, 2016, regarding
14 vehicle number 3, set forth above in Table 1, he failed to comply with section 44012 of that Code
15 in a material respect, as follows: Respondent Mudar failed to perform the emission control tests
16 on the vehicle in accordance with procedures prescribed by the department.

17 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

20 37. Respondent Mudar's smog check inspector license is subject to discipline pursuant to
21 Health and Safety Code section 44072.2, subdivision (c), in that on July 18, 2016, regarding
22 vehicle number 3, set forth above in Table 1, he failed to comply with provisions of California
23 Code of Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c)**: Respondent Mudar falsely or fraudulently issued an
25 electronic smog certificate of compliance without performing bona fide inspections of the
26 emission control devices and systems on those vehicles as required by Health and Safety Code
27 section 44012.

28 ///

1 b. Section 3340.30 subdivision (a): Respondent Mudar failed to inspect and test the
2 vehicle in accordance with Health and Safety Code sections 44012.

3 c. Section 3340.42: Respondent Mudar failed to conduct the required smog tests and
4 inspections on the vehicle in accordance with the Bureau's specifications.

5 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

7 38. Respondent Mudar's smog check inspector license is subject to discipline pursuant to
8 Health and Safety Code section 44072.2, subdivision (d), in that on July 18, 2016, regarding
9 vehicle number 3, set forth above in Table 1, he committed acts involving dishonesty, fraud or
10 deceit whereby another was injured by issuing an electronic smog certificate of compliance
11 without performing bona fide inspections of the emission control devices and systems on the
12 vehicle, thereby depriving the People of the State of California of the protection afforded by the
13 Motor Vehicle Inspection Program.

14 **FIFTEEN CAUSE FOR DISCIPLINE**

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

16 39. Respondent Haddad's smog check inspector license is subject to discipline pursuant
17 to Health and Safety Code section 44072.2, subdivision (a), in that on August 5, 2016, regarding
18 vehicle number 4, set forth above in Table 1, he failed to comply with section 44012 of that Code
19 in a material respect, as follows: Respondent Haddad failed to perform the emission control tests
20 on the vehicle in accordance with procedures prescribed by the department.

21 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

24 40. Respondent Haddad's smog check inspector license is subject to discipline pursuant
25 to Health and Safety Code section 44072.2, subdivision (c), in that on August 5, 2016, regarding
26 vehicle number 4, set forth above in Table 1, he failed to comply with provisions of California
27 Code of Regulations, title 16, as follows:

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1 a. **Section 3340.24, subdivision (c)**: Respondent Haddad falsely or fraudulently issued an
2 electronic smog certificate of compliance without performing bona fide inspections of the
3 emission control devices and systems on the vehicle as required by Health and Safety Code
4 section 44012.

5 b. **Section 3340.30 subdivision (a)**: Respondent Haddad failed to inspect and test the
6 vehicle in accordance with Health and Safety Code sections 44012.

7 c. **Section 3340.42**: Respondent Haddad failed to conduct the required smog test and
8 inspection on the vehicle in accordance with the Bureau's specifications.

9 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

11 41. Respondent Haddad's smog check inspector license is subject to discipline pursuant
12 to Health and Safety Code section 44072.2, subdivision (d), in that on August 5, 2016, regarding
13 vehicle number 4, set forth above in Table 1, he committed acts involving dishonesty, fraud or
14 deceit whereby another was injured by issuing an electronic smog certificate of compliance
15 without performing a bona fide inspection of the emission control devices and systems on the
16 vehicle, thereby depriving the People of the State of California of the protection afforded by the
17 Motor Vehicle Inspection Program.

18 **PRIOR CITATIONS**

19 **Tamara Adel Haddad-Owner doing business as A V Smog Station**

20 42. To determine the degree of discipline, if any, to be imposed on Respondent A V
21 Smog, Complainant alleges that on or about October 25, 2016, in a prior action, the Bureau issued
22 Citation Number C2016-1863 and ordered A V Smog Station to pay a citation fine of \$1,000.00.
23 A Citation Service conference was held on November 16, 2016. A request for informal appeal of
24 Citation C2016-1863 was received on December 9, 2016. On January 12, 2017, Citation C2016-
25 1863 was affirmed and reissued. A request for formal appeal of Citation C2016-1863 was
26 received on January 24, 2017. The appeal is final and affirmed on March 13, 2018. The
27 \$1,000.00 fine was paid on March 22, 2018

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1 48. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
2 License No. EO 637736, issued to Alaa Mudar Haddad, is revoked or suspended, any additional
3 license issued under this Chapter 5 of Part 5 of Div 26 of the Health and Safety Code in the name
4 of said licensee may be likewise revoked or suspended by the director.

5 49. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
6 License No. EO 639164, issued to Issa Haddad, is revoked or suspended, any additional license
7 issued under this Chapter 5 of Part 5 of Div 26 of the Health and Safety Code in the name of said
8 licensee may be likewise revoked or suspended by the director.

9 **PRAYER**

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

12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
13 280471, issued to Tamara Adel Haddad-Owner doing business as A V Smog Station;

14 2. Revoking, suspending, or placing on probation any other automotive repair dealer
15 registration issued to Tamara Adel Haddad-Owner;

16 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
17 280471, issued to Tamara Adel Haddad-Owner doing business as A V Smog Station;

18 4. Revoking or suspending any additional license issued under Chapter 5, Part 5, Div 26
19 of the Health and Safety Code in the name of Tamara Adel Haddad;

20 5. Revoking or suspending Smog Check Inspector License Number EO 622447, issued
21 to Jamal Ayed Haddad;

22 6. Revoking or suspending Smog Check Repair Technician License Number EI 622447,
23 issued to Jamal Ayed Haddad;

24 7. Revoking or suspending any additional license issued under Chapter 5, Part 5, Div 26
25 of the Health and Safety Code in the name of Jamal Ayed Haddad;

26 8. Revoking or suspending Smog Check Inspector License Number EO 638988, issued
27 to Ibrahim Issa Haddad;

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- 1 9. Revoking or suspending any additional license issued under Chapter 5, Part 5, Div 26
2 of the Health and Safety Code in the name of Ibrahim Issa Haddad;
- 3 10. Revoking or suspending Smog Check Inspector License Number EO 637736, issued
4 to Alaa Mudar Haddad;
- 5 11. Revoking or suspending any additional license issued under Chapter 5, Part 5, Div 26
6 of the Health and Safety Code in the name of Alaa Mudar Haddad;
- 7 12. Revoking or suspending Smog Check Inspector License Number EO 639164, issued
8 to Issa Haddad;
- 9 13. Revoking or suspending any additional license issued under Chapter 5, Part 5, Div 26
10 of the Health and Safety Code in the name of Issa Haddad;
- 11 14. Ordering Tamara Adel Haddad-Owner doing business as A V Smog Station, Jamal
12 Ayed Haddad, Ibrahim Issa Haddad, Alaa Mudar Haddad and Issa Haddad to pay the Bureau of
13 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
14 pursuant to Business and Professions Code section 125.3; and
- 15 15. Taking such other and further action as deemed necessary and proper.

16
17
18 DATED: May 1, 2018



PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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