

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

In the Matter of the Second Amended Accusation  
Against:

Case No. 79/15-110

OAH No. 2015050364

JAMES GILBERT RICHARDS, Partner,  
MOHAMMAD RAHIM AZAD, Partner,  
doing business as 7 TO 7 SMOG AND AUTO  
REPAIR

Automotive Repair Dealer Registration  
No. ARD 266532

Smog Check Station License No. RC 266532

Lamp Station License No. LS 266532

Brake Station License No. BS 266532,

JAMES GILBERT RICHARDS

Smog Check Inspector License No. EO 630900

Smog Check Repair Technician License  
No. EI 630900

Lamp Adjuster License No. LA 630900

Brake Adjuster License No. BA 630900,

MOHAMMAD RAHIM AZAD

Smog Check Inspector License No. EO 636435

Lamp Adjuster License No. LA 636435

Brake Adjuster License No. BA 636435,

JOSE FRANCISCO LEAL

Smog Check Inspector License No. EO 637039,

STEPHEN BLACKSHEAR

Advanced Emission Specialist Technician License  
No. 634692,

MARK CHARLES MARLEY

Smog Check Inspector License No. EO 631148

Smog Check Repair Technician License No.

EI 631148,

MUHAMMAD ANEES

Smog Check Inspector License No. EO 638053

Brake Adjuster License No. BA 638053,

and

MAHUZINY MAGANA

Smog Check Inspector License No. EO 636474,

Respondents.

## **DECISION AFTER REJECTION OF CORRECTED PROPOSED DECISION**

Adam L. Berg, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on June 9, 2016, in San Diego, California.

Adrian R. Contreras, Deputy Attorney General, Department of Justice, State of California, represented Complainant, Patrick Dorais, in his official capacity as Chief (Complainant), Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs (DCA), State of California.

William D. Ferreira, Attorney at Law, represented Respondents 7 to 7 Smog and Auto Repair, James Gilbert Richards, Mohammad Rahim Azad,<sup>1</sup> Jose Francisco Leal, Stephen Blackshear, Muhammad Anees, and Mahuziny Magana. Respondents were not present at the hearing.

The record was held open until June 16, 2016, for Respondents to submit a written closing. No written closing was received. The matter was submitted for decision on June 17, 2016.

The June 27, 2016 proposed decision of the ALJ was submitted to the Bureau. On July 11, 2016, DCA submitted to OAH an Application to Modify Proposed Decision. On August 4, 2016, the OAH submitted a Notice of No Action Taken on Application to Modify Proposed Decision.

After due consideration thereof, the Director of DCA declined to adopt said Proposed Decision. On August 8, 2016, the Director issued an Order of Rejection of Proposed Decision to decide the case upon the record.

On August 10, 2016, the ALJ submitted a Notice and Order of Correction and Issuance of Corrected Proposed Decision. On August 30, 2016, the Director of DCA issued an Order of Rejection of Corrected Proposed Decision, which was served with copies of the Proposed Decision, Order of Rejection of Proposed Decision, Notice and Order of Correction and Issuance of Corrected Proposed Decision, and Corrected Proposed Decision. The Order of Rejection of Corrected Proposed Decision included a notice of objection to stipulate to not ordering the transcript of the hearing and set the objection deadline for September 10, 2016.

On September 1, 2016, Respondents submitted a Notice of Objection to Stipulation. Accordingly, the Bureau ordered the transcripts of the June 9, 2016, hearing before the ALJ. A notice of deadline for submission of written argument was issued on September 13, 2016, setting the date for submission by October 13, 2016.

On October 12, 2016, the Complainant's Written Argument on Rejection of Proposed Decision was executed and served. Respondents did not submit a written argument.

The Director, after review of the record and Complainant's submissions, pursuant to Section 11517 of the Government Code, hereby makes the following decision and order:

---

<sup>1</sup> On April 25, 2016, Mr. Ferreira filed a motion to withdraw as counsel for respondent Mohammad Rahim Azad citing a conflict of interest. At the hearing, Mr. Ferreira stated that he would continue to represent Mr. Azad. Following the hearing, on June 14, 2016, Mr. Ferreira again filed a motion to withdraw as counsel for Mr. Azad citing a conflict of interest.

## FACTUAL FINDINGS

### *Jurisdictional Matters*

1. On or about April 22, 2015, Complainant made the allegations set forth in the Accusation against Respondents. On or about August 18, 2015, Complainant made the allegations set forth in the First Amended Accusation against Respondents.

2. On or about May 8, 2015, Respondents 7 to 7 Smog and Auto Repair, James Gilbert Richards, Mohammad Rahim Azad, Jose Francisco Leal, Stephen Blackshear, Muhammad Anees, and Mahuziny Magana (collectively, Respondents) executed and submitted to the Bureau a Notice of Defense.

3. On or about February 1, 2016, Complainant made the allegations set forth in the Second Amended Accusation against Respondents. The Second Amended Accusation was promptly served on Respondents.

4. On or about February 22, 2016, the Notice of Continued Hearing on the Second Amended Accusation was executed and served on Respondents by certified mail with return receipt requested on February 23, 2016. On or about June 6, 2016, Respondents submitted an Amended Notice of Defense.

5. The Notice of Continued Hearing set forth the evidentiary hearing date of June 9-10, 2016, before an Administrative Law Judge of the Office of Administrative Hearings. The hearing in this matter ensued.

6. Respondent Mark Charles Marley (Marley) failed to file a Notice of Defense. On July 1, 2016, the Director of DCA issued a Default Decision and Order revoking Marley's Smog Check Inspector License and Smog Check Repair Technician License. No motion to vacate the Default Decision was received and the Default Decision against Marley became effective on July 26, 2016.

### *License and Registration Histories*

7. On or about September 9, 2011, the Bureau issued Automotive Repair Dealer Registration No. ARD 266532 to James Gilbert Richards (Richards) and Mohammad R. Azad (Azad), partners, doing business as 7 to 7 Smog and Auto Repair (collectively, 7 to 7 Smog and Auto Repair), located in Riverside. On September 22, 2011, the Bureau issued to 7 to 7 Smog and Auto Repair Smog Check Station License No. RC 266532, Lamp Station License No. LS 266532, and Brake Station License No. BS 266532. On August 21, 2013, the Bureau certified 7 to 7 Smog and Auto Repair as a STAR station.<sup>2</sup>

8. On or about March 19, 2009, the Bureau issued Advanced Emission Specialist Technician License No. EA 630900 to Richards. The license was renewed<sup>3</sup> on July 9, 2013, as Smog Check Inspector License No. EO 630900 and Smog Check Repair Technician License No. EI 630900. On or about January 11, 2010, the Bureau issued to Richards Brake Adjuster License No. BA 630900. On or about March 11, 2010, the Bureau issued Lamp Adjuster License No. LA 630900 to Richards.

<sup>2</sup> A STAR certification permits the certified licensee to conduct vehicle inspections not otherwise available to non-STAR certified licensees.

<sup>3</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) and/or Smog Check Repair Technician (EI) license.

9. On or about January 10, 2014, the Bureau issued Smog Check Inspector License No. EO 636435 to Azad. On or about January 17, 2014, the Bureau issued Brake Adjuster License No. BA 636435 to Azad. On or about April 25, 2014, the Bureau issued to Azad Lamp Adjuster License No. LA 636435.

10. On or about June 27, 2014, the Bureau issued Smog Check Inspector License No. EO 637039 to Jose Francisco Leal (Leal). The license expired on December 31, 2015, and has not been renewed.

11. On or about August 24, 2012, the Bureau issued Advance Emission Specialist Technician License No. EA 634692 to Stephen Blackshear (Blackshear). The license expired on October 31, 2014, and has not been renewed.

12. On or about April 16, 2015, the Bureau issued Smog Check Inspector License No. EO 638053 to Muhammad Anees (Anees). On or about August 31, 2015, the Bureau issued Brake Adjuster License No. BA 638053 to Anees.

13. On or about January 21, 2014, the Bureau issued Smog Check Inspector License No. EO 636474 to Mahuziny Magana (Magana).

### ***California's Smog Check Program***

14. California's Smog Check Program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles. In order to perform a smog check emission inspection, a licensed technician uses an Emission Inspection System (EIS), also known as a BAR-97 EIS (BAR97), which is a computer-based, five-gas analyzer that tests vehicles under simulated driving conditions. The BAR97 is connected to the vehicle's tail pipe and measures hydrocarbons, carbon monoxide, oxides of nitrogen, carbon dioxide, and oxygen.

15. Another component of the smog check emission inspection is the visual inspection, which requires the licensed technician to verify that the required emission control devices are present on the vehicle and properly connected. The licensed technician must also perform a functional check and test parts of the emissions control system to determine that all parts work properly. If the vehicle fails any portion of the inspection, the vehicle will fail the overall smog check emission inspection.

16. One part of the functional test requires the technician to test the on-board diagnostics, generation II (OBD II). The OBD II is performed on most 1996 and newer vehicles and requires the technician to connect a test cable from the BAR97 to a diagnostic link connector, which is located in the vehicle's passenger compartment. Through the link, the BAR97 retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the malfunction indicator light (MIL). The readiness indicators tell whether or not the OBD II system has run self-tests on the vehicle's emission and engine control systems to completion. If a readiness monitor is not set, that particular system has not been tested. A trouble code results when the vehicle fails one of these self-tests and identifies the system and/or component which failed. If the trouble code is persistent, the on-board computer will command the MIL to turn on. A failure of one or more of the OBD II functional criteria, depending on the model year of the vehicle, will result in the vehicle failing its smog check emission inspection.

17. During the OBD II functional test, the BAR97 creates a data communication link with the vehicle's powertrain control module (PCM). The PCM is the on-board computer

responsible for electronic engine and emission controls. The data link accesses the internal memory of the PCM to determine if the OBD II system is properly functioning. The OBD II system continuously performs self-diagnostic tests on the PCM and other sensors. These self-diagnostic tests are the vehicle's "readiness monitors." Each monitor is designed to diagnose a specific system within the electronic engine and emission controls. If a malfunction is detected during the monitor's operation, a diagnostic trouble code will be stored. All OBD II codes are five digits long with an alpha character followed by four numbers. With this format, there is the potential for up to 1,000 different manufacturer-specific codes.

18. If the vehicle passes the visual, functional, and tailpipe tests, it passes the overall smog check emission inspection, and a Certificate of Compliance is issued and transmitted electronically to the Vehicle Information Database (VID). The database contains information such as registration data, emissions control system data, smog check history, vehicle profiling data, station and technician data, and certificate data. Each certificate has a unique control number and can be tracked to determine which smog station issued it. Both the Department of Motor Vehicles and the Bureau can access the database to view test data on smog inspections performed at a smog station or retrieve and print records for a particular smog inspection. The Bureau can also access the Vehicle Inspection Report and the Bar97 Test Detail created during the inspection of a vehicle.

19. Licensed Smog Check Inspectors are the only persons authorized by the Bureau to perform official inspections. Each licensed smog check technician or inspector is issued a personal access code and a license, which are used to gain access to the EIS to perform smog check inspections. Unauthorized use of another technician's access code or license is prohibited.

20. "Clean plugging" is an illegal and fraudulent technique used to pass vehicles that should not pass smog check inspections. Clean plugging occurs during the inspection of a vehicle that has an OBD II system. The smog check technician or inspector enters information into the EIS for the vehicle that the technician or inspector wishes to certify, then plugs the OBD II system connection from the EIS into another vehicle that has a properly functioning OBD II system, rather than plugging the connection into the vehicle that was originally identified for testing.

### ***The Bureau's First Investigation – 7 to 7 Smog and Auto Repair***

21. In August 2014, the Bureau initiated an investigation of 7 to 7 Smog and Auto Repair's smog check station based on a review of Bureau's VID data to determine if 7 to 7 Smog and Auto Repair or its employees had engaged in fraudulent smog check inspections.

22. Steve Koch (Koch) is a program representative with the Bureau's field office and has worked for the Bureau for 16 years. Koch was licensed as a smog technician in 1995 and is certified by the US National Institute for Automotive Service Excellence (ASE) as an ASE-certified master mechanic. In August 2014, Koch reviewed 7 to 7 Smog and Auto Repair's certified test results in the VID and found a pattern of OBD II code P0756 being stored in the PCM memory of eight different vehicles receiving smog inspections at 7 to 7 Smog and Auto Repair over an approximate two-week period in July 2014. The pattern of having the same error code is unusual, so Koch initiated a more detailed review of 7 to 7 Smog and Auto Repair's VID data, beginning in January 2014. For the period between April 1, 2014, and December 23, 2014, Koch found 11 incidences where the OBD II functional test data reported to the VID was not supported by the trouble codes applicable to each of the 11 vehicles certified. Using three different sources, the manufacturer's service information and two commercial guides nationally recognized as industry-standard repair information publishers, Alldata and

Mitchell, Mr. Koch could verify whether the OBD II code stored in the BAR97 Test Detail for a particular vehicle was not a code associated with the tested vehicle's year, make, and model.

23. On September 19, 2014, Koch visited 7 to 7 Smog and Auto Repair and requested from Azad all original vehicle inspection reports and invoices for all smog inspections performed from June 1, 2014, through August 31, 2014. Koch set a deadline of September 24, 2016, to comply with this request. On September 26, 2014, Koch returned to 7 to 7 Smog and Auto Repair and was given a box of test records by Azad. Comparing the records to tests 7 to 7 Smog and Auto Repair reported to the VID, 7 to 7 Smog and Auto submitted approximately half of the requested records. On October 17, 2014, Koch returned the records to 7 to 7 Smog and Auto Repair and advised Richards of the missing records and the requirement to have records available for inspection. Koch requested the missing records, which he never received.

24. Koch identified the following 11 vehicles as having received smog certificates where the OBD II functional test data indicated a trouble code not supported for the particular vehicle. Koch testified that, in his opinion, each of these vehicles were smog certified using the clean-plugging method because the diagnostic trouble codes reported for each vehicle on the BAR97 Test Detail were not associated with the vehicle purportedly being smog inspected.

a. Vehicle 1 – 2003 Volvo S40, Vehicle Identification No. (VIN) YV1VS27533F973625 (Volvo). The BAR97 Test Detail from the VID showed that on April 2, 2014, from 1434 hours to 1441 hours, 7 to 7 Smog and Auto Repair and Richards performed a smog check inspection on the Volvo. The Volvo was issued Certificate of Compliance #YD826628C. The BAR97 Test Detail showed that Diagnostic Trouble Code P1238 was stored in the PCM memory of the Volvo during the time of certification. However, Diagnostic Trouble Code P1238 does not apply to the Volvo.

b. Vehicle 2 – 2002 Toyota Sienna, VIN 4T3ZF13CX2U467801 (Sienna). The BAR97 Test Detail from the VID showed that on April 2, 2014, from 1726 hours to 1739 hours, 7 to 7 Smog and Auto Repair and Azad performed a smog check inspection on the Sienna. The Sienna was issued Certificate of Compliance #YD826631C. The BAR97 Test Detail showed that Diagnostic Trouble Code P1238 was stored in the PCM memory of the Sienna during the time of certification. However, Diagnostic Trouble Code P1238 does not apply to the Sienna.

c. Vehicle 3 – 1997 Jeep Grand Cherokee, VIN 1J4FX58S9VC773977 (Grand Cherokee). The BAR 97 Test Detail from the VID showed that on July 3, 2014, from 1947 hours to 1957 hours, 7 to 7 Smog and Auto Repair and Blackshear performed a smog check inspection on the Grand Cherokee. The Grand Cherokee was issued Certificate of Compliance #YH454313C. The BAR97 Test detail showed that Diagnostic Trouble Code P0756 was stored in the PCM memory of the Grand Cherokee during the time of certification. However, Diagnostic Trouble Code P0756 does not apply to the Grand Cherokee.

d. Vehicle 4 – 2000 Volkswagen Jetta, VIN 3VWSA29M5YM013470 (Jetta). The BAR97 Test Detail from the VID showed that on July 10, 2014, from 1734 hours to 1748 hours, 7 to 7 Smog and Auto Repair and Blackshear performed a smog check inspection on the Jetta. The Jetta was issued Certificate of Compliance #YH565002C. The BAR97 Test Detail showed that Diagnostic Trouble Code P0756 was stored in the PCM memory of the Jetta during the time of certification. However, Diagnostic Trouble Code P0756 does not apply to the Jetta.

e. Vehicle 5 – 2006 Nissan Frontier, VIN 1N6AD07U56C464892 (2006 Frontier). The BAR97 Test Detail from the VID showed that on July 12, 2014, from 1255 hours to 1305 hours, 7 to 7 Smog and Auto Repair and Leal performed a smog check inspection on the Frontier. The 2006 Frontier was issued Certificate of Compliance #YH565027C. The

BAR97 Test Detail showed that Diagnostic Trouble Code P0756 was stored in the PCM memory of the 2006 Frontier during the time of certification. However, Diagnostic Trouble Code P0756 does not apply to the 2006 Frontier.

f. Vehicle 6 – 2006 Subaru Impreza, VIN JF1GD79666G512791 (Impreza). The BAR97 Test Detail from the VID showed that on July 14, 2014, from 1727 to 1734 hours, 7 to 7 Smog and Auto Repair and Leal performed a smog check inspection on the Impreza. The Impreza was issued Certificate of Compliance #YH608456C. The BAR97 Test Detail showed that Diagnostic Trouble Code P0756 was stored in the PCM memory of the Impreza during the time of certification. However, Diagnostic Trouble Code P0756 does not apply to the Impreza.

g. Vehicle 7 – 2005 Kia Rio, VIN KNADC125X56372289 (Rio). The BAR97 Test Detail from the VID showed that on October 7, 2014, from 1916 hours to 1921 hours, 7 to 7 Smog and Auto Repair and Leal performed a smog check inspection on the Rio. The Rio was issued Certificate of Compliance #YL063719C. The BAR97 Test Detail showed that Diagnostic Trouble Code P1155 was stored in the PCM memory of the Rio during the time of certification. However, Diagnostic Trouble Code P1155 does not apply to the Rio.

h. Vehicle 8 – 2000 Saturn LW, VIN 1G8JW82R7YY669757 (LW). The BAR97 Test Detail from the VID showed that on October 24, 2014, from 1620 hours to 1635 hours, 7 to 7 Smog and Auto Repair and Leal performed a smog check inspection on the LW. The LW was issued Certificate of Compliance #YL353306C. The BAR97 Test Detail showed that Diagnostic Trouble Code P1258 was stored in the PCM memory of the LW during the time of certification. However, Diagnostic Trouble Code P1258 does not apply to the LW.

i. Vehicle 9 – 1998 Nissan 200SX, VIN 1N4AB42D0WC513736 (200SX). The BAR97 Test Detail from the VID showed that on December 20, 2014, from 1414 hours to 1422 hours, 7 to 7 Smog and Auto Repair and Leal performed a smog check inspection on the 200SX. The 200SX was issued Certificate of Compliance #YN072164C. The BAR97 Test Detail showed that Diagnostic Trouble Code P0012 was stored in the PCM memory of the 200SX during the time of certification. However, Diagnostic Trouble Code P0012 does not apply to the 200SX.

j. Vehicle 10 – 2004 Jeep Wrangler, VIN 1J4FA49S84P794238 (Wrangler). The BAR 97 Test Detail from the VID shows that On December 20, 2014, from 1716 hours to 1724 hours, 7 to 7 Smog and Auto Repair and Leal performed a smog check inspection on the Wrangler. The Wrangler was issued Certificate of Compliance #YN072166C. The Bar97 Test Detail showed that Diagnostic Trouble Code P0012 was stored in the PCM memory of the Wrangler during the time of certification. However, Diagnostic Trouble Code P0012 does not apply to the Wrangler.

k. Vehicle 11 – 2001 Nissan Altima, VIN 1N4DL01D41C203523 (Altima). The BAR97 Test Detail from the VID showed that on December 20, 2014, from 1734 hours to 1748 hours, 7 to 7 Smog and Auto Repair and Leal performed a smog check inspection on the Altima. The Altima was issued Certificate of Compliance #YN072167C. The Bar97 Test Detail showed that Diagnostic Trouble Code P0012 was stored in the PCM memory of the Altima during the time of certification. However, Diagnostic Trouble Code P0012 does not apply to the Altima.

## ***The Bureau's Second Investigation – 7 to 7 Smog, Rialto, California***

25. In January 2015, the Bureau initiated an investigation of 7 to 7 Smog in Rialto, California (7 to 7 Smog-Rialto)<sup>4</sup> based on a review of information from the Bureau's VID to determine if 7 to 7 Smog-Rialto or its employees had engaged in fraudulent smog check inspections.

26. Koch reviewed 7 to 7 Smog-Rialto's certified test results in the VID for inspections purportedly performed between November 1, 2014, and February 5, 2015, and found 18 different vehicles where OBD II codes were supposedly stored in the PCM memory of these vehicles even though the codes were not supported by the manufacturer of the specific vehicle certified. Koch identified the following three vehicles as having received smog certificates issued by Richards using OBD II functional test data from another vehicle. Koch testified that, in his opinion, these vehicles were smog certified using the clean-plugging method because the diagnostic trouble codes reported for each vehicle on the BAR97 Test Detail were not associated with the vehicle purportedly being smog inspected.

a. Vehicle 1 – 2003 Chevrolet Silverado 2500 Diesel, VIN 1GCHC23153F114779 (Silverado). The BAR97 Test Detail from the VID showed that on December 23, 2014, from 1819 hours to 1824 hours, 7 to 7 Smog-Rialto and Richards performed a smog check inspection on the Silverado. The Silverado was issued Certificate of Compliance #YN069671C. The BAR97 Test Detail showed that Diagnostic Trouble Code P1564 was stored in the PCM memory of the Silverado during the time of certification. However, Diagnostic Trouble Code P1564 does not apply to the Silverado.

b. Vehicle 2 – 2004 Toyota Camry Solara, VIN 4T1CE38P34U842729 (Solara). The BAR97 Test Detail from the VID showed that on January 10, 2015, from 1717 hours to 1754 hours, 7 to 7 Smog-Rialto and Richards performed a smog check inspection on the Solara. The Solara was issued Certificate of Compliance #YN399009C. The BAR97 Test Detail showed that Diagnostic Trouble Code P1564 was stored in the PCM memory of the Solara during the time of certification. However, Diagnostic Trouble Code P1564 does not apply to the Solara.

c. Vehicle 3 – 2005 Honda Pilot, VIN 2HKYF18485H537451 (Pilot). The BAR97 Test Detail from the VID showed that on January 22, 2015, from 1458 hours to 1502 hours, 7 to 7 Smog-Rialto and Richards performed a smog check inspection on the Pilot. The Pilot was issued Certificate of Compliance #YN399037C. The BAR97 Test Detail showed that Diagnostic Trouble Code P1740 was stored in the PCM memory of the Pilot during the time of certification. However, Diagnostic Trouble Code P1740 does not apply to the Pilot.

### ***California's Updated Smog Check Program***

27. Beginning on or about March 9, 2015, California's Smog Check Program was updated to require use of an on-board diagnostic inspection system (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of the State when inspecting 1998 and newer diesel-powered vehicles, most model-year 2000 and newer gasoline-powered vehicles, and all hybrid vehicles.

---

<sup>4</sup> On November 27, 2013, the Bureau issued Automotive Repair Dealer License No. ARD 274912 to Joy Alina Richards, doing business as 7 to 7 Smog in Rialto, California. The Bureau also licensed that station as a Smog Check Station, Lamp Station, and Brake Station. 7 to 7 Smog-Rialto was not a subject of the Second Amendment Accusation.



28. BAR-OIS consists of a Bureau-certified Data Acquisition Device (DAD), computer, bar code scanner, and printer. The BAR-OIS uses software to communicate with the Bureau's central database through an Internet connection. The bar code scanner is used to input the technician, VIN, and DMV renewal information. The printer provides a Vehicle Inspection Report containing inspection results for motorists and a Smog Check Certificate of Compliance number for passing vehicles. The smog check technician or inspector is required to connect the DAD to the vehicle during the smog check inspection, as well as perform a visual, functional, fuel link, and smoke test on the vehicle in accordance with Bureau guidelines. The DAD is an on-board diagnostic scan tool that, when requested by the BAR-OIS software, connects to the vehicle's on-board computer through the vehicle's diagnostic link connector (DLC). The DAD retrieves the vehicle's electronic VIN (eVIN), which is programmed into the vehicle's PCM memory by the vehicle manufacturer. Under normal circumstances, the eVIN matches the physical VIN on the vehicle.

29. Protocol is the language used to communicate with a vehicle's computer and is a computer interface. This automated determination of the communication interface, or protocol, is built into the DAD unit and does not change. This automatic function identifies protocols used by vehicles manufactured and sold in the United States that are subject to the Smog Check Inspection Program. Electronic control units (ECUs) and transmission control units (TCUs), along with other control units on modern vehicles, can only communicate using the protocol for which they were designed. Thus, the specific protocol used to access a vehicle's computer can be used to profile the vehicle itself.

30. Parameter Identifications (PIDs) are data points reported by the vehicle's OBD II system ECU to the DAD. Examples of PIDs are the vehicle's engine speed, vehicle speed, engine temperature, and other input and output values utilized by the OBD II system ECU. The PID count is the number of data points reported by the OBD II. It is programmed during manufacture and does not change. Each vehicle reports a specific PID count with slight variations based on whether the vehicle is equipped with an automatic or manual transmission and, in rare occurrences, vehicle trim variations.

31. As with the BAR97, the smog check inspector or technician performs a visual, functional, fuel link, and smoke test on the vehicle. Like the BAR97, the BAR-OIS prints a Vehicle Inspection Report, which is the physical record of the test results and shows the Certificate of Compliance number that is issued to a passing vehicle. The smog check inspector or technician must sign the Vehicle Inspection Report to indicate the inspection was performed within Bureau guidelines.

### ***The Bureau's Third Investigation***

32. Beginning in the second quarter of 2015, Koch continued his investigation into 7 to 7 Smog and Auto Repair, which had hired new smog check inspectors since Koch's first investigation. After reviewing the OIS test data for 7 to 7 Smog and Auto Repair, Koch believed the station continued to fraudulently issue smog check certificates to vehicles that were not in compliance or were not present for testing. Koch found evidence of over 200 vehicles that were certified at 7 to 7 Smog and Auto Repair with differences between the VIN on the certified vehicle and the eVIN that was transmitted as part of the inspection. Many of the vehicles also had incorrect communication protocols and PID counts.

33. Jonathan Gee (Gee), a Bureau air quality engineer, has worked for the Bureau since 1997, with a three-year absence. Gee was one of three Bureau engineers involved in the initial implementation of the OIS program; he participated in writing the specifications and requirements for the program and followed it through to the eventual implementation of the program on March 9, 2015. Before statewide implementation of the BAR-OIS, the system was

beta-tested at various smog stations in the State. Using the historic data collected by the Bureau, Gee developed an OBD-II data analysis software tool that could report, decode, and verify/analyze the VIN, eVIN, communications protocol, and PID count of all vehicles tested in the State within a particular year, make, and model. From this, Gee could then determine the percentage of vehicles that contained a matching eVIN and expected communication protocols and PID counts for the specific year, make, and model. Koch used this program to compare the data from vehicles receiving smog inspections at 7 to 7 Smog and Auto Repair.

34. During Koch's review of 7 to 7 Smog and Auto Repair's certified test results in the VID for inspections purportedly performed on the BAR-OIS system between May and October 2015, Koch identified the following 25 smog check inspections that stored information in the VID that did not apply to the vehicles being inspected. For this reason, Koch testified that, in his opinion, these vehicles were smog certified using the clean-plugging method.

35. For several of these vehicles, the DAD reported the eVIN as "OZEN ELEKTRO 2.01." This corresponded to data that would be reported by an OBD ECU simulator marketed by OZEN Elektronik, a retailer of OBD test equipment and ECU simulators. A simulator is used to mimic a vehicle's ECU. Koch testified that there is no legitimate reason a smog inspection station should have an OBD ECU simulator on the premises.

a. Vehicle 1 – 2004 Ford Mustang, VIN 1FAFP40634F167656 (Mustang). The OIS Test Detail from the VID showed that on May 30, 2015, from 0922 hours to 0937 hours, 7 to 7 Smog and Auto Repair and Anees performed a smog check inspection on the Mustang. The Mustang was issued Certificate of Compliance #PS445472C. The OIS Test Detail showed that eVIN JTEGD20V550050129 was transmitted and recorded on the VID. Bureau records indicate that eVIN JTEGD20V550050129 is assigned to a 2005 Toyota RAV4, which was issued a Certificate of Compliance on September 3, 2015, by 7 to 7 Smog and Auto Repair and Azad. The communication protocol transmitted for the Mustang was I9140808, and the PID count was 17. Comparative OIS data for 2,888 2004 Ford Mustangs shows that 98.88 percent report the correct vehicle eVIN (none report the eVIN of a 2005 Toyota RAV4), have an expected communication protocol of JPWM1850, and report a PID count of 22. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the 2004 Ford Mustang that was certified.

b. Vehicle 2 – 2002 Dodge Intrepid SE, VIN 2B3HD46R72H290354 (Intrepid). The OIS Test Detail from the VID showed that on June 13, 2015, from 1004 hours to 1009 hours, 7 to 7 Smog and Auto Repair and Anees performed a smog check inspection on the Intrepid. The Intrepid was issued Certificate of Compliance #YR970493C. The OIS Test Detail showed that eVIN 2T2GK31U98C031790 was transmitted and recorded on the VID. However, eVIN 2T2GK31U98C031790 is assigned to a 2008 Lexus RX350. The communication protocol transmitted for the Intrepid was ICAN11bt500, and the PID count was 46. Comparative OIS data for 1,042 2002 Dodge Intrepid SEs shows that 90.88 percent report the correct vehicle eVIN (none report the eVIN of a 2008 Lexus RX350), have an expected communication protocol of JVPW1850, and report a PID count of 22. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Intrepid that was certified.

c. Vehicle 3 – 2003 Buick Rendezvous CX/CXL, VIN 3G5DA03E83S542487 (Rendezvous). The OIS Test Detail from the VID showed that on June 20, 2015, from 1641 hours to 1644 hours, 7 to 7 Smog and Auto Repair and Anees performed a smog check inspection on the Rendezvous. The Rendezvous was issued Certificate of Compliance #YT181712C. The OIS Test Detail showed that eVIN 1FTRX17212NA03771 was transmitted and recorded on the VID. However, eVIN 1FTRX17212NA03771 is assigned to a 2002 Ford F150 Super Cab Short pickup, which was issued a Certificate of Compliance on October 27,

2014, by 7 to 7 Smog and Auto Repair and Azad. The communication protocol transmitted for the Rendezvous was JPWM1850, and the PID count was 22. Comparative OIS data for 989 2003 Buick Rendezvous CX/CXLs shows that 98.79 percent report the correct vehicle eVIN (none report the eVIN of a 2002 Ford F150 Super Cab Short pickup), have an expected communication protocol of JVPW1850, and report a PID count of 19. This data, when compared with the OIS test data demonstrates that the DAD was not connected to the Rendezvous that was certified.

d. Vehicle 4 – 2006 Mercedes Benz CLS 500C, VIN WDDDJ75X76A021241 (Mercedes). The OIS Test Detail from the VID showed that on June 27, 2015, from 1423 hours to 1427 hours, 7 to 7 Smog and Auto Repair and Anees performed a smog check inspection on the Mercedes. The Mercedes was issued Certificate of Compliance #YT292431C. The OIS Test Detail showed that no eVIN was transmitted and recorded on the VID. The communication protocol transmitted for the Mercedes was JVPW1850, and the PID count was 22. Comparative OIS data for 1,910 2006 Mercedes Benz CVLS 500Cs shows that 98.88 percent report the vehicle eVIN, have an expected communication protocol of KWPF8FE9, and report a PID count of 24. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Mercedes that was certified.

e. Vehicle 5 – 2003 Ford Ranger, VIN 1FTYR14V63PA35190 (Ranger). The OIS Test Detail from the VID showed that on July 9, 2015, from 1219 hours to 1222 hours, 7 to 7 Smog and Auto Repair and Azad performed a smog check inspection on the Ranger. The Ranger was issued Certificate of Compliance #PS947978C. The OIS Test Detail showed that eVIN 1NXBU40E39Z106945 was transmitted and recorded on the VID. However, eVIN 1NXBU40E39Z106945 is assigned to a 2009 Toyota Corolla, which was issued a Certificate of Compliance on the same day by 7 to 7 Smog and Auto Repair and Marley. The communication protocol transmitted for the Ranger was ICAN11bt500, and the PID count was 39. Comparative OIS data for 2,006 2003 Ford Rangers shows that 99.35 percent report the correct vehicle eVIN (none report the eVIN of a 2009 Toyota Corolla), have an expected communication protocol of JPWM1850, and report a PID count of 21. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Ranger that was certified.

f. Vehicle 6 – 2003 Kia Sorrento EX/LX, VIN KNDJD733935164636 (Sorrento). The OIS Test Detail from the VID showed that on July 9, 2015, from 1833 hours to 1838 hours, 7 to 7 Smog and Auto Repair and Azad performed a smog check inspection on the Sorrento. The Sorrento was issued Certificate of Compliance #PS947985C. The OIS Test Detail showed that eVIN 1LNHM87AX4Y630292 was transmitted and recorded on the VID. However, eVIN 1LNHM87AX4Y630292 is assigned to a 2004 Lincoln LS, which was issued a Certificate of Compliance on June 17, 2014, by 7 to 7 Smog-Rialto and Richards. The communication protocol transmitted for the Sorrento was ICAN11bt500, and the PID count was 27. Comparative OIS data for 1,368 2003 Kia Sorrento EX/LXs shows that 97.88 percent do not report the vehicle eVIN, have an expected communication protocol of KWPF8FE9, and report a PID count of 20. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Sorrento that was certified.

g. Vehicle 7 – 2008 Infiniti G37/Journey/Sport, VIN JNKCV64E08M103039 (Infiniti G37). The OIS Test Detail from the VID showed that on July 13, 2015, from 1330 hours to 1333 hours, 7 to 7 Smog and Auto Repair and Azad performed a smog check inspection on the Infiniti G37. The Infiniti G37 was issued Certificate of Compliance #PU105157C. The OIS Test Detail showed that eVIN 4T1BE46K17U043741 was transmitted and recorded on the VID. However, eVIN 4T1BE46K17U043741 is assigned to a 2007 Toyota Camry, which was issued a Certificate of Compliance on July 15, 2015, by 7 to 7 Smog and Auto Repair and Marley. The communication protocol transmitted for the Infiniti G37 was ICAN11bt500, and the PID count was 39. Comparative OIS data for 3,264 2008 Infiniti G37/Journey/Sports shows that 98.81

percent report the correct vehicle eVIN (none report the eVIN of a 2007 Toyota Camry), have an expected communication protocol of ICAN11bt500, and report a PID count of 43. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Infiniti G37 that was certified.

h. Vehicle 8 – 2002 Toyota Corolla CE/LE/S, VIN 1NXBR12E82Z632197 (Corolla). The OIS Test Detail from the VID showed that on July 16, 2015, from 1017 hours to 1021 hours, 7 to 7 Smog and Auto Repair and Azad performed a smog check inspection on the Corolla. The Corolla was issued Certificate of Compliance #PU105184C. The OIS Test Detail showed that eVIN 1LNHM87A12Y678292 was transmitted and recorded on the VID. However, eVIN 1LNHM87A12Y678292 is assigned to a 2004 Lincoln LS. The communication protocol transmitted for the Corolla was JPWM1850, and the PID count was 21. Comparative OIS data for 12,215 2002 Toyota Corolla CE/LE/S's shows that 99.4 percent do not report the vehicle eVIN, have an expected communication protocol of I9140808, and report a PID count of 16. This data, compared with the OIS test data, demonstrates that the DAD was not connected to the Corolla that was certified.

i. Vehicle 9 – 2005 Audi A8 L Quattro AWD, VIN WAUML44E05N014901 (Quattro). The OIS Test Detail from the VID showed that on July 29, 2015, from 1340 hours to 1343 hours, 7 to 7 Smog and Auto Repair and Richards performed a smog check inspection on the Quattro. The Quattro was issued Certificate of Compliance #PU397956C. The OIS Test Detail showed that eVIN 5NPEB4AC1BH050251 was transmitted and recorded on the VID. However, eVIN 5NPEB4AC1BH050251 is assigned to a 2011 Hyundai Sonata, which was issued a Certificate of Compliance on the same day by 7 to 7 Smog and Auto Repair and Richards. The communication protocol transmitted for the Quattro was ICAN11bt500, and the PID count was 43. Comparative OIS data for 165 2005 Audi A8 L Quattro AWDs shows that 98.18 percent report the correct vehicle eVIN (none report the eVIN of a 2011 Hyundai Sonata), have an expected communication protocol of KWPS8FE9, and report a PID count of 22. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Quattro that was certified.

j. Vehicle 10 – 2011 Dodge Grand Caravan Mainstreet, VIN 2D4RN3DG4BR656683 (Grand Caravan). The OIS Test Detail from the VID showed that on July 29, 2015, from 1806 hours to 1810 hours, 7 to 7 Smog and Auto Repair and Richards performed a smog check on the Grand Caravan. The Grand Caravan was issued Certificate of Compliance #PU397965C. The OIS Test Detail showed that eVIN KMHCN4AC7AU450636 was transmitted and recorded on the VID. However, eVIN KMHCN4AC7AU450636 is assigned to a 2010 Hyundai Accent, which was issued a Certificate of Compliance on March 25, 2015, by 7 to 7 Smog-Rialto. The communication protocol transmitted for the Grand Caravan was ICAN11bt500, and the PID count was 33. Comparative OIS data for 213 2011 Dodge Grand Caravan Mainstreets shows that 100 percent report the correct vehicle eVIN (none report the eVIN of a 2010 Hyundai Accent), have an expected communication protocol of ICAN11bt500, and report a PID count of 41. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Grand Caravan that was certified.

k. Vehicle 11 – 2003 Cadillac Escalade Luxury, VIN 1GYEK63N83R122464 (Escalade). The OIS Test Detail from the VID showed that on July 29, 2015, from 1827 hours to 1847 hours, 7 to 7 Smog and Auto Repair and Richards performed a smog check inspection on the Escalade. The Escalade was issued Certificate of Compliance #PU397966C. The OIS Test Detail showed that eVIN number JTHBA30G755089949 was transmitted and recorded on the VID. However, eVIN JTHBA30G755089949 is assigned to a 2005 Lexus ES330, which was issued a Certificate of Compliance on the same day by 7 to 7 Smog and Auto Repair and Anees. The communication protocol transmitted for the Escalade was I9140808, and the PID count was 21. Comparative OIS data for 2,262 2003 Cadillac Escalade Luxuries shows that

99.6 percent report the correct vehicle eVIN (none report the eVIN of a 2005 Lexus ES330), have an expected communication protocol of JVPW1850, and report a PID count of 22. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Escalade that was certified.

l. Vehicle 12 – 2006 BMW 530i, VIN WBANE73526CM36893 (BMW). The OIS Test Detail from the VID showed that on August 13, 2015, from 1237 hours to 1241 hours, 7 to 7 Smog and Auto Repair and Marley performed a smog check inspection on the BMW. The BMW was issued Certificate of Compliance #PU859114C. The OIS Test Detail showed that eVIN 1FAHP3FNXAW223508 was transmitted and recorded on the VID. However, eVIN 1FAHP3FNXAW223508 is assigned to a 2010 Ford Focus, which was issued a Certificate of Compliance on October 20, 2014, by 7 to 7 Smog-Rialto and is registered to Joy Alina Richards (Mrs. Richards), the owner of 7 to 7 Smog-Rialto and the wife of Respondent James Gilbert Richards.<sup>5</sup> The communication protocol transmitted for the BMW was ICAN11bt500, and the PID count was 39. Comparative OIS data for 2,057 2006 BMW 530is shows that 97.76 percent report the correct vehicle eVIN (none report the eVIN of a 2010 Ford Focus), have an expected communication protocol of KWPF8FE9, and report a PID count of 21. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the BMW that was certified.

m. Vehicle 13 – 2006 Pontiac Grand Prix, VIN 2G2WP552861140912 (Grand Prix). The OIS Test Detail from the VID showed that on August 14, 2015, from 1113 hours to 1115 hours, 7 to 7 Smog and Auto Repair and Marley performed a smog check inspection on the Grand Prix. The Grand Prix was issued Certificate of Compliance #PU859122C. The OIS Test Detail showed that eVIN number 1FAHP3FNXAW223508 was transmitted and recorded on the VID. However, eVIN 1FAHP3FNXAW223508 is assigned to the 2010 Ford Focus registered to Mrs. Richards. The communication protocol transmitted for the Grand Prix was ICAN11bt500, and the PID count was 39. Comparative OIS data for 1,467 2006 Pontiac Grand Prixes shows that 98.98 percent report the correct vehicle eVIN (none report the eVIN of a 2010 Ford Focus), have an expected communication protocol of JVPW1850, and report a PID count of 40 or 41. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Grand Prix that was certified.

n. Vehicle 14 – 2001 Infiniti I30, VIN JNKCA31A11T027502 (Infinity I30). The OIS Test Detail from the VID showed that on August 22, 2015, from 1425 hours to 1432 hours, 7 to 7 Smog and Auto Repair and Magana performed a smog check inspection on the Infiniti I30. The Infiniti I30 was issued Certificate of Compliance #YT966027C. The OIS Test Detail showed that eVIN 1FAHP3FNXAW223508 was transmitted and recorded on the VID. However, eVIN 1FAHP3FNXAW223508 is assigned to the 2010 Ford Focus registered to Mrs. Richards. The communication protocol transmitted for the Infinity I30 was ICAN11b t500, and the PID count was 39. Comparative OIS data for 3,366 2001 Infiniti I30s shows that 97.71 percent report the correct vehicle eVIN (none report the eVIN of a 2010 Ford Focus), have an expected communication protocol of I9140808, and report a PID count of 22. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Infiniti I30 that was certified.

o. Vehicle 15 – 2001 Nissan Sentra XE/GXE, VIN 3N1CB51D31L474778 (Sentra). The OIS Test Detail from the VID showed that on August 22, 2015, from 1436 hours to 1444 hours, 7 to 7 Smog and Auto Repair and Magana performed a smog check inspection on the Sentra. The Sentra was issued Certificate of Compliance #YT966028C. The OIS Test

---

<sup>5</sup> The Bureau introduced a spreadsheet showing that as of October 20, 2015, the eVIN for Mrs. Richards's 2010 Ford Focus was transmitted to the VID 89 times for smog inspections of vehicles with different eVINs.

Detail showed that eVIN 1FAHP3FNXAW223508 was transmitted and recorded on the VID. However, eVIN 1FAHP3FNXAW223508 is assigned to the 2010 Ford Focus registered to Mrs. Richards. The communication protocol transmitted for the Sentra was ICAN11bt500, and the PID count was 39. Comparative OIS data for 4,466 2001 Nissan Sentra XE/GXEs shows that 95.57 percent do not report the eVIN (none report the eVIN of a 2010 Ford Focus), have an expected communication protocol of I9140808, and report a PID count of 22. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Sentra that was certified.

p. Vehicle 16 – 2005 Nissan Frontier SE/LE/OFF, VIN 1N6AD07U45C441537 (2005 Frontier). The OIS Test Detail from the VID showed that on August 31, 2015, from 1058 hours to 1102 hours, 7 to 7 Smog and Auto Repair and Marley performed a smog check inspection on the 2005 Frontier. The 2005 Frontier was issued Certificate of Compliance #PW003973C. The OIS Test Detail showed that eVIN 1FAHP3FNXAW223508 was transmitted and recorded on the VID. However, eVIN 1FAHP3FNXAW223508 is assigned to the 2010 Ford Focus registered to Mrs. Richards. The communication protocol transmitted for the 2005 Frontier was ICAN11bt500, and the PID count was 39. Comparative OIS data for 3,197 2005 Nissan Frontier SE/LE/OFFs shows that 95.81 percent report the correct vehicle eVIN (none report the eVIN of a 2010 Ford Focus), have an expected communication protocol of I9140808, and report a PID count of 22. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the 2005 Frontier that was certified.

q. Vehicle 17 – 2006 Dodge Durango SLT, VIN 1D4HD48206F149280 (Durango). The OIS Test Detail from the VID showed that on August 31, 2015, from 1302 hours to 1306 hours, 7 to 7 Smog and Auto Repair and Marley performed a smog check inspection on the Durango. The Durango was issued Certificate of Compliance #PW003979C. The OIS Test Detail showed that eVIN 1FAHP3FNXAW223508 was transmitted and recorded on the VID. However, eVIN 1FAHP3FNXAW223508 is assigned to the 2010 Ford Focus registered to Mrs. Richards. The communication protocol transmitted for the Durango was ICAN11bt500, and the PID count was 39. Comparative OIS data for 401 2006 Dodge Durango SLTs shows that 99 percent report the correct vehicle eVIN (none report the eVIN of a 2010 Ford Focus), have an expected communication protocol of ICAN11bt500, and report a PID count of 43. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Durango that was certified.

r. Vehicle 18 – 2007 Nissan Quest S/SE/SL, VIN 5N1BV28U27N141352 (Quest). The OIS Test Detail from the VID showed that on August 31, 2015, from 1306 hours to 1309 hours, 7 to 7 Smog and Auto Repair and Marley performed a smog check inspection on the Quest. The Quest was issued Certificate of Compliance #PW003980C. The OIS Test Detail showed that eVIN 1FAHP3FNXAW223508 was transmitted and recorded on the VID. However, eVIN 1FAHP3FNXAW223508 is assigned to the 2010 Ford Focus registered to Mrs. Richards. The communication protocol transmitted for the Quest was ICAN11bt500, and the PID count was 39. Comparative OIS data for 2,674 2007 Nissan Quest S/SE/SLs shows that 98.17 percent report the correct vehicle eVIN (none report the eVIN of a 2010 Ford Focus), have an expected communication protocol of I9140808, and report a PID count of 22. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Quest that was certified.

s. Vehicle 19 – 2005 GMC Sierra C1500, VIN 1GTEC19X25Z357735 (Sierra). The OIS Test Detail from the VID showed that on September 14, 2015, from 1352 hours to 1355 hours, 7 to 7 Smog and Auto Repair and Richards performed a smog check inspection on the Sierra. The Sierra was issued Certificate of Compliance #PW419570C. The OIS Test Detail showed that eVIN 1FAHP3FNXAW223508 was transmitted and recorded on the

VID. However, eVIN 1FAHP3FNXAW223508 is assigned to the 2010 Ford Focus registered to Mrs. Richards. The communication protocol transmitted for the Sierra was ICAN11bt500, and the PID count was 39. Comparative OIS data for 292 2005 GMC Sierra C1500s shows that 98.97 percent report the correct vehicle eVIN (none report the eVIN of a 2010 Ford Focus), have an expected communication protocol of JVPW1850, and report a PID count of 22. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Sierra that was certified.

t. Vehicle 20 – 2006 Lexus ES330, VIN JTHBA30G765169852 (2006 Lexus). The OIS Test Detail from the VID showed that on September 30, 2015, from 0943 hours to 0945 hours, 7 to 7 Smog and Auto Repair and Marley performed a smog check inspection on the 2006 Lexus. The 2006 Lexus was issued Certificate of Compliance #PW869992C. The OIS Test Detail showed that eVIN OZEN ELECTRO 2.01, an OBD electronic control unit simulation device, was transmitted and recorded on the VID. The communication protocol transmitted for the 2006 Lexus was ICAN29bt500, and the PID count was 22. Comparative OIS data for 2,560 2006 Lexus ES330s shows that 99.69 percent report the correct vehicle eVIN (none report the eVIN of OZEN ELECTRO 2.01), have an expected communication protocol of I9140808, and report a PID count of 21. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the 2006 Lexus that was certified.

u. Vehicle 21 – 2005 Chrysler 300 Touring, VIN 2C3JA53G85H181055 (Chrysler 300). The OIS Test Detail from the VIS showed that on October 5, 2015, from 1205 hours to 1209 hours, 7 to 7 Smog and Auto Repair and Richards performed a smog check inspection on the Chrysler 300. The Chrysler 300 was issued Certificate of Compliance #PY008440C. The OIS Test Detail showed that eVIN OZEN ELEKTRO 2.01, an OBD electronic control unit simulation device, was transmitted and recorded on the VID. The communication protocol transmitted for the Chrysler 300 was ICAN29bt500, and the PID count was 22. Comparative OIS data for 3,486 2005 Chrysler 300 Tourings shows that 99.31 percent report the correct vehicle eVIN (none report the eVIN of OZEN ELEKTRO 2.01), have an expected communication protocol of ICAN11bt500, and report a PID count of 43. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Chrysler 300 that was certified.

v. Vehicle 22 – 2000 Chevrolet S10, VIN 1GCCS1951Y8308948 (2000 Chevrolet). The OIS Test Detail from the VID showed that on October 6, 2015, from 1104 hours to 1108 hours, 7 to 7 Smog and Auto Repair and Azad performed a smog check inspection on the 2000 Chevrolet. The 2000 Chevrolet was issued Certificate of Compliance #PY158653C. The OIS Test Detail showed that eVIN OZEN ELEKTRO 2.01, an OBD electronic control unit simulation device, was transmitted and recorded on the VID. The communication protocol transmitted for the 2000 Chevrolet was ICAN29bt500, and the PID count was 22. Comparative OIS data for 1,550 2000 Chevrolet S10s shows that 96.65 percent report the correct vehicle eVIN (none report the eVIN of OZEN ELEKTRO 2.01), have an expected communication protocol of JVPW1850, and report a PID count of 17. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the 2000 Chevrolet that was certified.

w. Vehicle 23 – 2004 Hummer H2, VIN 5GRGN23U04H121210 (Hummer). The OIS Test Detail from the VID showed that on October 12, 2015, from 1104 hours to 1107 hours, 7 to 7 Smog and Auto Repair and Leal performed a smog check inspection on the Hummer. The Hummer was issued Certificate of Compliance #PY327957C. The OIS Test Detail showed that eVIN 1D4HB38N25F607233 was transmitted and recorded on the VID. However, eVIN 1D4HB38N25F607233 is assigned to a 2005 Dodge Durango ST, which was issued a Certificate of Compliance on October 12, 2015, by 7 to 7 Smog and Auto Repair and

Leal. The communication protocol transmitted for the Hummer was ICAN11bt500, and the PID count was 39. Comparative OIS data for 1,131 2004 Hummer H2s shows that 97.7 percent report the correct vehicle eVIN (none report the eVIN of a 2005 Dodge Durango ST), have an expected communication protocol of JVPW1850, and report a PID count of 22. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Hummer that was certified.

x. Vehicle 24 – 2005 Honda Accord Hybrid, VIN JHMCN36425C002007 (Accord). The OIS Test Detail from the VID showed that on October 14, 2015, from 1305 hours to 1313 hours, 7 to 7 Smog and Auto Repair and Leal performed a smog check inspection on the Accord. The Accord was issued Certificate of Compliance #PY327986C. The OIS Test Detail showed that eVIN 1FAHP3FNXAW223508 was transmitted and recorded on the VID. However, eVIN 1FAHP3FNXAW223508 is assigned to the 2010 Ford Focus registered to Mrs. Richards. The communication protocol transmitted for the Accord was ICAN11bt500, and the PID count was 39. Comparative OIS data for 804 2005 Honda Accord Hybrids shows that 98.26 percent report the correct vehicle eVIN (none report the eVIN of a 2010 Ford Focus), have an expected communication protocol of I9140808, and report PID count of 25. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Accord that was certified.

y. Vehicle 25 – 2001 Chevrolet C1500 Suburban, VIN 3GNEC16T71G250733 (Suburban). The OIS Test Detail from the VID showed that on October 16, 2015, from 1742 hours to 1745 hours, 7 to 7 Smog and Auto Repair and Leal performed a smog check inspection on the Suburban. The Suburban was issued Certificate of Compliance PY435611C. The OIS Test Detail showed that eVIN OZEN ELEKTRO 2.01, an OBD electronic control unit simulation device, was transmitted and recorded on the VID. The communication protocol transmitted for the Suburban was ICAN29bt500, and the PID count was 22. Comparative OIS data for 4,978 2001 Chevrolet C1500 Suburbans shows that 98.11 percent report the correct vehicle eVIN (none report the eVIN of OZEN ELEKTRO 2.01), have an expected communication protocol of JVPW1850, and report a PID count of 22. This data, when compared with the OIS test data, demonstrates that the DAD was not connected to the Suburban that was certified.

### ***Respondents' Defense***

36. Respondents presented no evidence in defense, mitigation, or rehabilitation.

### **LEGAL CONCLUSIONS**

1. Control and elimination of air pollutants is necessary to protect the public health and wellbeing, and to protect property and vegetation. (Health & Saf. Code § 43000, subd. (b).) Reduction of vehicle emissions is important to the public health and welfare. The Automotive Repair Act and the Motor Vehicle Inspection Program are designed to protect the public. Administrative proceedings to revoke, suspend, or impose discipline on a licensee are noncriminal and nonpenal; they are not intended to punish the licensee but to protect the public. (*Sulla v. Bd. Of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

### ***Burden and Standard of Proof***

2. Although a smog check inspector or technician must complete training and coursework and pass an examination (Cal. Code Regs., tit. 16, §§ 3340.28, 3340.29), these requirements are not similar to the extensive training and testing requirements that are necessary to obtain a professional license. A smog check inspector or technician license is therefore considered a nonprofessional or occupational license and proceedings to revoke such



a license are governed by the preponderance of evidence standard. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

3. Obtaining a smog check station license (Health & Saf. Code §§ 44014, 44072.1) and an automotive repair dealer registration (Bus. & Prof. Code §§ 9884, 9884.7) requires fees and forms to be submitted and the absence of specified misconduct; registration and licensure do not require extensive education, training, or testing. Smog check station licenses and automotive repair dealer registrations are therefore nonprofessional or occupational licenses and proceedings to revoke them are governed by the preponderance of the evidence standard.<sup>6</sup> (Evid. Code § 115; *Imports Performance, supra*, at pp. 916-917.)

#### **Relevant Disciplinary Statutes and Regulations**

4. Business and Professions Code section 9884.7 provides in part:

(a) The director, where the automotive repair dealer cannot show there was bona fide error, may . . . revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

[¶] . . . [¶]

(4) Any other conduct that constitutes fraud.

[¶] . . . [¶]

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

[¶] . . . [¶]

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

5. Business and Professions Code section 9884.11 provides:

Each automotive repair dealer shall maintain any records that are required by regulations adopted to carry out this chapter. Those records shall be open for reasonable inspection by the chief or other law enforcement officials. All of those records shall be maintained for at least three years.

---

<sup>6</sup> Although the preponderance of evidence standard applies, the same result in this case would be reached under a clear and convincing standard of proof.

6. Business and Professions Code section 9889.3 provides in part:

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

(a) Violates any section of the Business and Professions Code that relates to his or her licensed activities.

[¶] . . . [¶]

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

7. Business and Professions Code section 9889.9 provides:

When any license has been revoked or suspended following a hearing under the provisions of this article, any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.

8. Health and Safety Code section 44012 requires a smog check inspection be performed in accordance with procedures prescribed by the Department.

9. Health and Safety Code section 44015 requires that a proper smog check inspection be performed before issuing a certificate of compliance.

10. Health and Safety Code section 44035 provides a smog check station's license may be suspended or revoked for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct.

11. Health and Safety Code section 44072.2 provides in part:

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

(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.

[¶] . . . [¶]

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

[¶] . . . [¶]

(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have those records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the records available for inspection.

12. Health and Safety Code section 44072.8 provides:

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

13. Health and Safety Code section 44072.10, subdivision (c), provides in part:

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, as defined by the department.

[¶] . . . [¶]

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter . . . .

14. California Code of Regulations, title 16, section 3340.35, subdivision (c), prohibits the issuance of a certificate of compliance when a vehicle has not been inspected as required.

15. California Code of Regulations, title 16, section 3340.41, subdivision (c), prohibits the entry of false information into an EIS.

16. California Code of Regulations, title 16, section 3340.42, requires that a smog check inspection be conducted in accordance with the Bureau's specifications.

17. California Code of Regulations, title 16, section 3356, requires all invoices for service and repair work performed, and parts supplied, to include specified information, including the automotive repair dealer's registration number and corresponding business name and address, a list of service and repair work performed, parts supplied, subtotal prices for services and parts supplied, and requires an automotive repair dealer to provide to the customer a legible copy of the invoice and retain a legible copy of the invoice as part of the automotive repair dealer's records.

18. California Code of Regulations, title 16, section 3358, requires each automotive repair dealer to maintain for at least three years legible copies of invoices, written estimates, and work orders and/or contracts for repairs, parts and labor, and provides that these records must be open for reasonable inspection and/or reproduction by the Bureau or other law enforcement officials during normal business hours.

### ***Employee Misconduct***

19. The owner of a license is obligated to see that the license is not used in violation of the law. If a licensee elects to operate his business through employees, he or she must be responsible to the licensing authority for the employees' conduct, and the licensee is responsible for the acts of his or her agents or employees done in the course of the licensee's business. (*Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797.) A licensee may not insulate himself or herself from regulation by electing to function through employees or independent contractors. (*Id.*)

## ***Cause Exists to Impose Discipline***

### ***First Cause for Discipline – Untrue or Misleading Statement***

20. The First Cause for Discipline alleges that 7 to 7 Smog and Auto Repair's Automotive Repair Dealer Registration is subject to disciplinary action under Business and Professions Code section 9884.7, subdivision (a)(1), and 7 to 7 Smog and Auto Repair's Lamp Station License and Brake Station License are subject to discipline under section 9889.3, subdivision (a), in that 7 to 7 Smog and Auto Repair made or authorized statements which 7 to 7 Smog and Auto Repair knew or in the exercise of reasonable care should have known to be untrue or misleading.

21. The Bureau's First and Third Investigations showed that 11 and 25 vehicles, respectively, were certified by 7 to 7 Smog and Auto Repair as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact 7 to 7 Smog and Auto Repair employees inspected these 36 vehicles using the clean-plugging method, a dishonest and fraudulent act, and made untrue and misleading statements by issuing fraudulent certificates of compliance.

22. By a preponderance of the evidence, cause exists to revoke the Automotive Repair Dealer Registration, Lamp Station License, and Brake Station License issued to Richards and Azad, partners, doing business as 7 to 7 Smog and Auto Repair, for violations of Business and Professions Code sections 9884.7, subdivision (a)(1), and 9889.3, subdivision (a), by reason of Factual Findings 7, 21 through 24, and 32 through 36, along with Legal Conclusions 3, 4, 6, and 19.

### ***Second Cause for Discipline – Violations of Motor Vehicle Inspection Program***

23. The Second Cause for Discipline alleges that 7 to 7 Smog and Auto Repair's Smog Check Station License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that 7 to 7 Smog and Auto Repair failed to comply with the following sections of that Code:

(a) Section 44012, failed to perform the tests of the emission control system and devices on the vehicle(s) in the Bureau's First, Second, and Third Investigations in accordance with procedures prescribed by the Department.

(b) Section 44015, issued a certificate of compliance for the vehicle(s) without properly testing and inspecting them to determine if they were in compliance with Health and Safety Code section 44012.

(c) Section 44035, failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog inspection on the vehicle(s) or certifying that such test(s) had been performed, when in fact they were never performed.

24. The Bureau's First and Third Investigations<sup>7</sup> showed that 11 and 25 vehicles, respectively, were certified by 7 to 7 Smog and Auto Repair as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact 7 to 7 Smog and Auto Repair employees inspected these 36 vehicles using the clean-plugging method and thereby failed to comply with the Motor Vehicle Inspection Program by failing to properly

---

<sup>7</sup> The Bureau's Second Investigation reviewed smog check certifications performed at 7 to 7 Smog – Rialto, who is not a Respondent in this matter.

perform tests of emission control systems, issuing certificates of compliance without properly testing and inspecting vehicles, and failing to meet prescribed standards for performing smog inspections.

25. By a preponderance of the evidence, cause exists to revoke the Smog Check Station License issued to Richards and Azad, partners, doing business as 7 to 7 Smog and Auto Repair, for violations of Health and Safety Code sections 44012, 44015, 44035, 44072.2, subdivision (a), and 44072.10, subdivision (c)<sup>8</sup>, by reason of Factual Findings 7, 21 through 24, and 32 through 36, along with Legal Conclusions 3, 8 through 11, 13, and 19.

***Third Cause for Discipline – Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program***

26. The Third Cause for Discipline alleges that 7 to 7 Smog and Auto Repair's Smog Check Station License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that 7 to 7 Smog and Auto Repair failed to comply with the following sections of title 16 of the California Code of Regulations:

(a) Section 3340.35, subdivision (c), failed to inspect and test the vehicle(s) in the First, Second, and Third Investigations in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that the vehicle(s) had all the required emission control equipment and devices installed and functioning correction.

(b) Section 3340.41, subdivision (c), knowingly entered into the Emissions Inspection System false information about the vehicles in the First, Second, and Third Investigations, providing results for smog inspections which were not actually performed.

(c) Section 3340.42, failed to conduct the required smog tests on the vehicle(s) in the First, Second, and Third Investigations in accordance with the Bureau's specifications.

27. The Bureau's First and Third Investigations showed that 11 and 25 vehicles, respectively, were certified by 7 to 7 Smog and Auto Repair as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact 7 to 7 Smog and Auto Repair employees inspected these 36 vehicles using the clean-plugging method and thereby failed to comply with the regulations of the Motor Vehicle Inspection Program by failing to properly inspect and test vehicles, knowingly entering false information into the missions inspection system, and failing to conduct the required smog tests in accordance with the Bureau's specifications.

28. By a preponderance of the evidence, cause exists to revoke the Smog Check Station License issued to Richards and Azad, partners, doing business as 7 to 7 Smog and Auto Repair, for violations of Health and Safety Code sections 44072.2, subdivision (a), and 44072.10, subdivision (c), and sections 3340.35, subdivision (c), 3340.41, subdivision (c), and 3340.42, of title 16, of the California Code of Regulations by reason of Factual Findings 7, 21 through 24, and 32 through 36, along with Legal Conclusions 3, 11, 13 through 16, and 19.

---

<sup>8</sup> Although Complainant listed Health and Safety Code section 44072.10, subdivision (a) as a basis for license discipline, that subdivision involves temporary license suspensions, an issue not present in this matter.

#### ***Fourth Cause for Discipline – Dishonesty, Fraud, or Deceit***

29. The Fourth Cause for Discipline alleges that 7 to 7 Smog and Auto Repair's Automotive Repair Dealer Registration is subject to disciplinary action under Business and Professions Code section 9884.7, subdivision (a)(4), 7 to 7 Smog and Auto Repair's Smog Check Station License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (d), and 7 to 7 Smog and Auto Repair's Lamp Station License and Brake Station License are subject to disciplinary action under Business and Professions Code section 9889.3, subdivisions (a) and (d), in that 7 to 7 Smog and Auto Repair committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicles in the First, Second, and Third Investigations without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

30. The Bureau's First and Third Investigations showed that 11 and 25 vehicles, respectively, were certified by 7 to 7 Smog and Auto Repair as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact 7 to 7 Smog and Auto Repair employees inspected these 36 vehicles using the clean-plugging method, and thereby committed dishonest, fraudulent and deceitful acts by issuing fraudulent smog certificates of compliance for these vehicles without performing bona fide inspections of the emission control devices and systems, which deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

31. By a preponderance of the evidence, cause exists to revoke the Automotive Repair Dealer Registration, Smog Check Station License, Lamp Station License, and Brake Station License issued to Richards and Azad, partners, doing business as 7 to 7 Smog and Auto Repair, for violations of Business and Professions Code sections 9889.3, subdivisions (a) and (d), and 9884.7, subdivision (a)(4), and Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), by reason of Factual Findings 7, 21 through 23, and 32 through 36, along with Legal Conclusions 3, 4, 6, 11, 13, and 19.

#### ***Fifth Cause for Discipline – Failure to Produce Records***

32. The Fifth Cause for Discipline alleges that 7 to 7 Smog and Auto Repair's Automotive Repair Dealer Registration is subject to disciplinary action under Business and Professions Code section 9884.7, subdivision (a)(6), and 9884.11, and sections 3356 and 3358 of title 16 of the California Code of Regulations, and 7 to 7 Smog and Auto Repair's Smog Check Station License is subject to disciplinary action under Health and Safety Code sections 44072.2, subdivision (g), for failure to produce records upon the Bureau's request.

33. The Bureau's representative requested that 7 to 7 Smog and Auto Repair produce all original vehicle inspection reports and invoices for all smog inspections performed by 7 to 7 Smog and Auto Repair from June 1 to August 31, 2014. 7 to 7 Smog and Auto Repair submitted a box of test records to the Bureau's representative. The Bureau's representative compared the Bureau's records from the First Investigation against the records provided by 7 to 7 Smog and Auto Repair and found that half of the requested records were missing and never provided to the Bureau.

34. By a preponderance of the evidence, cause exists to revoke the Automotive Repair Dealer Registration and Smog Check Station License issued to Richards and Azad, partners, doing business as 7 to 7 Smog and Auto Repair, for violations of Business and Professions Code sections 9884.7, subdivision (a)(6), and 9884.11, and sections 3356 and

3358 of title 16 of the California Code of Regulations, by reason of Factual Findings 7, 21 through 23, and 36, along with Legal Conclusions 3, 4, 5, 11, and 17 through 19.

***Sixth Cause for Discipline – Violation of Motor Vehicle Inspection Program***

35. The Sixth Cause for Discipline alleges that Richards's Smog Check Repair Technician License and Smog Check Inspector License are subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that Richards failed to comply with the following sections of that Code:

(a) Section 44012, failed to perform the tests of the emission control system and devices on the vehicle(s) in the Bureau's First, Second, and Third Investigations in accordance with procedures prescribed by the Department.

(b) Section 44015, issued a certificate of compliance for the vehicle(s) without properly testing and inspecting them to determine if they were in compliance with Health and Safety Code section 44012.

(c) Section 44035, failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog inspection on the vehicle(s) or certifying that such test(s) had been performed, when in fact they were never performed.

36. The Bureau's First, Second, and Third Investigations showed that one, three, and five vehicles, respectively, were certified by Richards as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Richards inspected these nine vehicles using the clean-plugging method and thereby failed to comply with the Motor Vehicle Inspection Program by failing to properly perform tests of emission control systems, issuing certificates of compliance without properly testing and inspecting vehicles, and failing to meet prescribed standards for performing smog inspections.

37. By a preponderance of the evidence, cause exists to revoke Richards's Smog Check Repair Technician License and Smog Check Inspector License for violations of Health and Safety Code sections 44012, 44015, 44035, 44072.2, subdivision (a), and 44072.10, subdivision (c), by reason of Factual Findings 8, 24a, 26, 35i, 35j, 35k, 35s, 35u, and 36, along with Legal Conclusions 2, 8 through 11, and 13.

***Seventh Cause for Discipline – Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program***

38. The Seventh Cause for Discipline alleges that Richards's Smog Check Repair Technician License and Smog Check Inspector License are subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that Richards failed to comply with the following sections of title 16 of the California Code of Regulations:

(a) Section 3340.35, subdivision (c), failed to inspect and test the vehicles in the First, Second, and Third Investigations in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that the vehicles had all the required emission control equipment and devices installed and functioning correction.

(b) Section 3340.41, subdivision (c), knowingly entered into the Emissions Inspection System false information about the vehicles in the First, Second, and Third Investigations, providing results for smog inspections which were not actually performed.

(c) Section 3340.42, failed to conduct the required smog tests on the vehicles in the First, Second, and Third Investigations in accordance with the Bureau's specifications.

39. The Bureau's First, Second, and Third Investigations showed that one, three, and five vehicles, respectively, were certified by Richards as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Richards inspected these nine vehicles using the clean-plugging method and thereby failed to comply with the regulations of the Motor Vehicle Inspection Program by failing to properly inspect and test vehicles, knowingly entering false information into the missions inspection system, and failing to conduct the required smog tests in accordance with the Bureau's specifications.

40. By a preponderance of the evidence, cause exists to revoke Richards's Smog Check Repair Technician License and Smog Check Inspector License for violations of Health and Safety Code sections 44072.2, subdivision (a), and 44072.10, subdivision (c), and sections 3340.35, subdivision (c), 3340.41, subdivision (c), and 3340.42, of title 16, of the California Code of Regulations by reason of Factual Findings 8, 24a, 26, 35i, 35j, 35k, 35s, 35u, and 36, along with Legal Conclusions 2, 11, and 13 through 16.

#### ***Eighth Cause for Discipline – Dishonesty, Fraud, or Deceit***

41. The Eighth Cause for Discipline alleges that Richards's Smog Check Repair Technician License and Smog Check Inspector License are subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (d), and his Lamp Adjuster License and Brake Adjuster License are subject to disciplinary action under Business and Professions Code section 9889.3, subdivision (d), in that Richards committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicles in the First, Second, and Third Investigations without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

42. The Bureau's First, Second, and Third Investigations showed that one, three, and five vehicles, respectively, were certified by Richards as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Richards inspected these nine vehicles using the clean-plugging method, and thereby committed dishonest, fraudulent and deceitful acts by issuing fraudulent smog certificates of compliance for these vehicles without performing bona fide inspections of the emission control devices and systems, which deprived the People of the State of California of the protection afford by the Motor Vehicle Inspection Program.

43. By a preponderance of the evidence, cause exists to revoke the Smog Check Repair Technician License, Smog Check Inspector License, Lamp Adjuster License, and Brake Adjuster License of Richards for violations of Business and Professions Code section 9889.3, subdivision (d), and Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), by reason of Factual Findings 8, 24a, 26, 35i, 35j, 35k, 35s, 35u, and 36, along with Legal Conclusions 2, 6, 11, and 13.

#### ***Ninth Cause for Discipline – Violation of Motor Vehicle Inspection Program***

44. The Ninth Cause for Discipline alleges that Azad's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10,



subdivisions (a) and (c), and 44072.2, subdivision (a), in that Azad failed to comply with the following sections of that Code:

(a) Section 44012, failed to perform the tests of the emission control system and devices on the vehicle(s) in the Bureau's First, Second, and Third Investigations in accordance with procedures prescribed by the Department.

(b) Section 44015, issued a certificate of compliance for the vehicle(s) without properly testing and inspecting them to determine if they were in compliance with Health and Safety Code section 44012.

(c) Section 44035, failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog inspection on the vehicle(s) or certifying that such test(s) had been performed, when in fact they were never performed.

45. The Bureau's First and Third Investigations showed that one and five vehicles, respectively, were certified by Azad as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Azad inspected these six vehicles using the clean-plugging method and thereby failed to comply with the Motor Vehicle Inspection Program by failing to properly perform tests of emission control systems, issuing certificates of compliance without properly testing and inspecting vehicles, and failing to meet prescribed standards for performing smog inspections.

46. By a preponderance of the evidence, cause exists to revoke Azad's Smog Check Inspector License for violations of Health and Safety Code sections 44012, 44015, 44035, 44072.2, subdivision (a), and 44072.10, subdivision (c), by reason of Factual Findings 9, 24b, 35e through 35h, 35v, and 36, along with Legal Conclusions 2, 8 through 11, and 13.

***Tenth Cause for Discipline – Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program***

47. The Tenth Cause for Discipline alleges that Azad's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that Azad failed to comply with the following sections of title 16 of the California Code of Regulations:

(a) Section 3340.35, subdivision (c), failed to inspect and test the vehicles in the First, Second, and Third Investigations in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that the vehicles had all the required emission control equipment and devices installed and functioning correction.

(b) Section 3340.41, subdivision (c), knowingly entered into the Emissions Inspection System false information about the vehicles in the First, Second, and Third Investigations, providing results for smog inspections which were not actually performed.

(c) Section 3340.42, failed to conduct the required smog tests on the vehicles in the First, Second, and Third Investigations in accordance with the Bureau's specifications.

48. The Bureau's First and Third Investigations showed that one and five vehicles, respectively, were certified by Azad as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Azad inspected these six vehicles using the clean-plugging method and thereby failed to comply with the regulations of the Motor

Vehicle Inspection Program by failing to properly inspect and test vehicles, knowingly entering false information into the missions inspection system, and failing to conduct the required smog tests in accordance with the Bureau's specifications.

49. By a preponderance of the evidence, cause exists to revoke Azad's Smog Check Inspector License for violations of Health and Safety Code sections 44072.2, subdivision (a), and 44072.10, subdivision (c), and sections 3340.35, subdivision (c), 3340.41, subdivision (c), and 3340.42, of title 16, of the California Code of Regulations by reason of Factual Findings 9, 24b, 35e through 35h, 35v, and 36, along with Legal Conclusions 2, 11, and 13 through 16.

***Eleventh Cause for Discipline – Dishonesty, Fraud, or Deceit***

50. The Eleventh Cause for Discipline alleges that Azad's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (d), and his Lamp Adjuster License and Brake Adjuster License are subject to disciplinary action under Business and Professions Code section 9889.3, subdivision (d), in that Azad committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicles in the First, Second, and Third Investigations without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

51. The Bureau's First and Third Investigations showed that one and five vehicles, respectively, were certified by Azad as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Azad inspected these six vehicles using the clean-plugging method, and thereby committed dishonest, fraudulent and deceitful acts by issuing fraudulent smog certificates of compliance for these vehicles without performing bona fide inspections of the emission control devices and systems, which deprived the People of the State of California of the protection afford by the Motor Vehicle Inspection Program.

52. By a preponderance of the evidence, cause exists to revoke the Smog Check Inspector License, Lamp Adjuster License, and Brake Adjuster License of Azad for violations of Business and Professions Code section 9889.3, subdivision (d), and Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), by reason of Factual Findings 9, 24b, 35e through 35h, 35v, and 36, along with Legal Conclusions 2, 6, 11, and 13.

***Twelfth Cause for Discipline – Violation of Motor Vehicle Inspection Program***

53. The Twelfth Cause for Discipline alleges that Leal's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that Leal failed to comply with the following sections of that Code:

(a) Section 44012, failed to perform the tests of the emission control system and devices on the vehicle(s) in the Bureau's First, Second, and Third Investigations in accordance with procedures prescribed by the Department.

(b) Section 44015, issued a certificate of compliance for the vehicle(s) without properly testing and inspecting them to determine if they were in compliance with Health and Safety Code section 44012.

(c) Section 44035, failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog

inspection on the vehicle(s) or certifying that such test(s) had been performed, when in fact they were never performed.

54. The Bureau's First and Third Investigations showed that seven and three vehicles, respectively, were certified by Leal as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Leal inspected these ten vehicles using the clean-plugging method and thereby failed to comply with the Motor Vehicle Inspection Program by failing to properly perform tests of emission control systems, issuing certificates of compliance without properly testing and inspecting vehicles, and failing to meet prescribed standards for performing smog inspections.

55. By a preponderance of the evidence, cause exists to revoke Leal's Smog Check Inspector License for violations of Health and Safety Code sections 44012, 44015, 44035, 44072.2, subdivision (a), and 44072.10, subdivision (c), by reason of Factual Findings 10, 24e through 24k, 35w through 35y, and 36, along with Legal Conclusions 2, 8 through 11, and 13.

***Thirteenth Cause for Discipline – Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program***

56. The Thirteenth Cause for Discipline alleges that Leal's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that Leal failed to comply with the following sections of title 16 of the California Code of Regulations:

(a) Section 3340.35, subdivision (c), failed to inspect and test the vehicles in the First, Second, and Third Investigations in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that the vehicles had all the required emission control equipment and devices installed and functioning correction.

(b) Section 3340.41, subdivision (c), knowingly entered into the Emissions Inspection System false information about the vehicles in the First, Second, and Third Investigations, providing results for smog inspections which were not actually performed.

(c) Section 3340.42, failed to conduct the required smog tests on the vehicles in the First, Second, and Third Investigations in accordance with the Bureau's specifications.

57. The Bureau's First and Third Investigations showed that seven and three vehicles, respectively, were certified by Leal as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Leal inspected these ten vehicles using the clean-plugging method and thereby failed to comply with the regulations of the Motor Vehicle Inspection Program by failing to properly inspect and test vehicles, knowingly entering false information into the missions inspection system, and failing to conduct the required smog tests in accordance with the Bureau's specifications.

58. By a preponderance of the evidence, cause exists to revoke Leal's Smog Check Inspector License for violations of Health and Safety Code sections 44072.2, subdivision (a), and 44072.10, subdivision (c), and sections 3340.35, subdivision (c), 3340.41, subdivision (c), and 3340.42, of title 16, of the California Code of Regulations by reason of Factual Findings 10, 24e through 24k, 35w through 35y, and 36, along with Legal Conclusions 2, 11, and 13 through 16.

***Fourteenth Cause for Discipline – Dishonesty, Fraud, or Deceit***

59. The Fourteenth Cause for Discipline alleges that Leal's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (d), in that Leal committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicles in the First, Second, and Third Investigations without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

60. The Bureau's First and Third Investigations showed that seven and three vehicles, respectively, were certified by Leal as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Leal inspected these ten vehicles using the clean-plugging method, and thereby committed dishonest, fraudulent and deceitful acts by issuing fraudulent smog certificates of compliance for these vehicles without performing bona fide inspections of the emission control devices and systems, which deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

61. By a preponderance of the evidence, cause exists to revoke the Smog Check Inspector License of Leal for violations of Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), by reason of Factual Findings 10, 24e through 24k, 35w through 35y, and 36, along with Legal Conclusions 2, 11, and 13.

***Fifteenth Cause for Discipline – Violation of Motor Vehicle Inspection Program***

62. The Fifteenth Cause for Discipline alleges that Blackshear's Advanced Emission Specialist Technician License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that Blackshear failed to comply with the following sections of that Code:

(a) Section 44012, failed to perform the tests of the emission control system and devices on the vehicle(s) in the Bureau's First, Second, and Third Investigations in accordance with procedures prescribed by the Department.

(b) Section 44015, issued a certificate of compliance for the vehicle(s) without properly testing and inspecting them to determine if they were in compliance with Health and Safety Code section 44012.

(c) Section 44035, failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog inspection on the vehicle(s) or certifying that such test(s) had been performed, when in fact they were never performed.

63. The Bureau's First Investigation showed that two vehicles were certified by Blackshear as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Blackshear inspected these vehicles using the clean-plugging method and thereby failed to comply with the Motor Vehicle Inspection Program by failing to properly perform tests of emission control systems, issuing certificates of compliance without properly testing and inspecting vehicles, and failing to meet prescribed standards for performing smog inspections.

64. By a preponderance of the evidence, cause exists to revoke Blackshear's Advanced Emission Specialist Technician License for violations of Health and Safety Code sections 44012, 44015, 44035, 44072.2, subdivision (a), and 44072.10, subdivision (c), by reason of Factual Findings 11, 24c through 24d, and 36, along with Legal Conclusions 2, 8 through 11, and 13.

***Sixteenth Cause for Discipline – Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program***

65. The Sixteenth Cause for Discipline alleges that Blackshear's Advanced Emission Specialist Technician License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that Blackshear failed to comply with the following sections of title 16 of the California Code of Regulations:

(a) Section 3340.35, subdivision (c), failed to inspect and test the vehicles in the First, Second, and Third Investigations in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that the vehicles had all the required emission control equipment and devices installed and functioning correction.

(b) Section 3340.41, subdivision (c), knowingly entered into the Emissions Inspection System false information about the vehicles in the First, Second, and Third Investigations, providing results for smog inspections which were not actually performed.

(c) Section 3340.42, failed to conduct the required smog tests on the vehicles in the First, Second, and Third Investigations in accordance with the Bureau's specifications.

66. The Bureau's First Investigation showed that two vehicles were certified by Blackshear as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Blackshear inspected these vehicles using the clean-plugging method and thereby failed to comply with the regulations of the Motor Vehicle Inspection Program by failing to properly inspect and test vehicles, knowingly entering false information into the missions inspection system, and failing to conduct the required smog tests in accordance with the Bureau's specifications.

67. By a preponderance of the evidence, cause exists to revoke Blackshear's Advanced Emission Specialist Technician License for violations of Health and Safety Code sections 44072.2, subdivision (a), and 44072.10, subdivision (c), and sections 3340.35, subdivision (c), 3340.41, subdivision (c), and 3340.42, of title 16, of the California Code of Regulations by reason of Factual Findings 11, 24c through 24d, and 36, along with Legal Conclusions 2, 11, and 13 through 16.

***Seventeenth Cause for Discipline – Dishonesty, Fraud, or Deceit***

68. The Seventeenth Cause for Discipline alleges that Blackshear's Advanced Emission Specialist Technician License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (d), in that Blackshear committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicles in the First, Second, and Third Investigations without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

69. The Bureau's First Investigation showed that two vehicles were certified by Blackshear as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Blackshear inspected these vehicles using the clean-plugging method, and thereby committed dishonest, fraudulent and deceitful acts by issuing fraudulent smog certificates of compliance for these vehicles without performing bona fide inspections of the emission control devices and systems, which deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

70. By a preponderance of the evidence, cause exists to revoke the Advanced Emission Specialist Technician License of Blackshear for violations of Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), by reason of Factual Findings 11, 24c through 24d, and 36, along with Legal Conclusions 2, 11, and 13.

***Twenty-First Cause for Discipline<sup>9</sup> – Violation of Motor Vehicle Inspection Program***

71. The Twenty-First Cause for Discipline alleges that Magana's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that Magana failed to comply with the following sections of that Code:

(a) Section 44012, failed to perform the tests of the emission control system and devices on the vehicle(s) in the Bureau's First, Second, and Third Investigations in accordance with procedures prescribed by the Department.

(b) Section 44015, issued a certificate of compliance for the vehicle(s) without properly testing and inspecting them to determine if they were in compliance with Health and Safety Code section 44012.

(c) Section 44035, failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog inspection on the vehicle(s) or certifying that such test(s) had been performed, when in fact they were never performed.

72. The Bureau's Third Investigation showed that two vehicles were certified by Magana as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Magana inspected these vehicles using the clean-plugging method and thereby failed to comply with the Motor Vehicle Inspection Program by failing to properly perform tests of emission control systems, issuing certificates of compliance without properly testing and inspecting vehicles, and failing to meet prescribed standards for performing smog inspections.

73. By a preponderance of the evidence, cause exists to revoke Magana's Smog Check Inspector License for violations of Health and Safety Code sections 44012, 44015, 44035, 44072.2, subdivision (a), and 44072.10, subdivision (c), by reason of Factual Findings 13, 35n through 35o, and 36, along with Legal Conclusions 2, 8 through 11, and 13.

---

<sup>9</sup> Causes for Discipline Eighteen through Twenty are alleged against Mark Charles Marley and have been resolved through the Default Decision and Order issued on July 1, 2016, and effective as of July 26, 2016.

***Twenty-Second Cause for Discipline – Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program***

74. The Twenty-Second Cause for Discipline alleges that Magana's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that Magana failed to comply with the following sections of title 16 of the California Code of Regulations:

(a) Section 3340.35, subdivision (c), failed to inspect and test the vehicles in the First, Second, and Third Investigations in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that the vehicles had all the required emission control equipment and devices installed and functioning correction.

(b) Section 3340.41, subdivision (c), knowingly entered into the Emissions Inspection System false information about the vehicles in the First, Second, and Third Investigations, providing results for smog inspections which were not actually performed.

(c) Section 3340.42, failed to conduct the required smog tests on the vehicles in the First, Second, and Third Investigations in accordance with the Bureau's specifications.

75. The Bureau's Third Investigation showed that two vehicles were certified by Magana as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Magana inspected these vehicles using the clean-plugging method and thereby failed to comply with the regulations of the Motor Vehicle Inspection Program by failing to properly inspect and test vehicles, knowingly entering false information into the missions inspection system, and failing to conduct the required smog tests in accordance with the Bureau's specifications.

76. By a preponderance of the evidence, cause exists to revoke Magana's Smog Check Inspector License for violations of Health and Safety Code sections 44072.2, subdivision (a), and 44072.10, subdivision (c), and sections 3340.35, subdivision (c), 3340.41, subdivision (c), and 3340.42, of title 16, of the California Code of Regulations by reason of Factual Findings 13, 35n through 35o, and 36, along with Legal Conclusions 2, 11, and 13 through 16.

***Twenty-Third Cause for Discipline – Dishonesty, Fraud, or Deceit***

77. The Twenty-Third Cause for Discipline alleges that Magana's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (d), in that Magana committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicles in the First, Second, and Third Investigations without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

78. The Bureau's Third Investigation showed that two vehicles were certified by Magana as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Magana inspected these vehicles using the clean-plugging method, and thereby committed dishonest, fraudulent and deceitful acts by issuing fraudulent smog certificates of compliance for these vehicles without performing bona fide inspections of the emission control devices and systems, which deprived the People of the State of California of the protection afford by the Motor Vehicle Inspection Program.

79. By a preponderance of the evidence, cause exists to revoke the Smog Check Inspector License of Magana for violations of Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), by reason of Factual Findings 13, 35n through 35o, and 36, along with Legal Conclusions 2, 11, and 13.

***Twenty-Fourth Cause for Discipline – Violation of Motor Vehicle Inspection Program***

80. The Twenty-Fourth Cause for Discipline alleges that Anees's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that Anees failed to comply with the following sections of that Code:

(a) Section 44012, failed to perform the tests of the emission control system and devices on the vehicle(s) in the Bureau's First, Second, and Third Investigations in accordance with procedures prescribed by the Department.

(b) Section 44015, issued a certificate of compliance for the vehicle(s) without properly testing and inspecting them to determine if they were in compliance with Health and Safety Code section 44012.

(c) Section 44035, failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog inspection on the vehicle(s) or certifying that such test(s) had been performed, when in fact they were never performed.

81. The Bureau's Third Investigation showed that four vehicles were certified by Anees as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Anees inspected these vehicles using the clean-plugging method and thereby failed to comply with the Motor Vehicle Inspection Program by failing to properly perform tests of emission control systems, issuing certificates of compliance without properly testing and inspecting vehicles, and failing to meet prescribed standards for performing smog inspections.

82. By a preponderance of the evidence, cause exists to revoke Anees's Smog Check Inspector License for violations of Health and Safety Code sections 44012, 44015, 44035, 44072.2, subdivision (a), and 44072.10, subdivision (c), by reason of Factual Findings 12, 35a through 35d, and 36, along with Legal Conclusions 2, 8 through 11, and 13.

***Twenty-Fifth Cause for Discipline – Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program***

83. The Twenty-Fifth Cause for Discipline alleges that Anees's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (a), in that Anees failed to comply with the following sections of title 16 of the California Code of Regulations:

(a) Section 3340.35, subdivision (c), failed to inspect and test the vehicles in the First, Second, and Third Investigations in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that the vehicles had all the required emission control equipment and devices installed and functioning correction.



(b) Section 3340.41, subdivision (c), knowingly entered into the Emissions Inspection System false information about the vehicles in the First, Second, and Third Investigations, providing results for smog inspections which were not actually performed.

(c) Section 3340.42, failed to conduct the required smog tests on the vehicles in the First, Second, and Third Investigations in accordance with the Bureau's specifications.

84. The Bureau's Third Investigation showed that four vehicles were certified by Anees as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Anees inspected these vehicles using the clean-plugging method and thereby failed to comply with the regulations of the Motor Vehicle Inspection Program by failing to properly inspect and test vehicles, knowingly entering false information into the missions inspection system, and failing to conduct the required smog tests in accordance with the Bureau's specifications.

85. By a preponderance of the evidence, cause exists to revoke Anees's Smog Check Inspector License for violations of Health and Safety Code sections 44072.2, subdivision (a), and 44072.10, subdivision (c), and sections 3340.35, subdivision (c), 3340.41, subdivision (c), and 3340.42, of title 16, of the California Code of Regulations by reason of Factual Findings 12, 35a through 35d, and 36, along with Legal Conclusions 2, 11, and 13 through 16.

#### ***Twenty-Sixth Cause for Discipline – Dishonesty, Fraud, or Deceit***

86. The Twenty-Sixth Cause for Discipline alleges that Anees's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivisions (a) and (c), and 44072.2, subdivision (d), and his Brake Adjuster License is subject to disciplinary action under Business and Professions Code section 9889.3, subdivision (d), in that Anees committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicles in the First, Second, and Third Investigations without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

87. The Bureau's Third Investigation showed that four vehicles were certified by Anees as passing the smog check inspection and in compliance with all applicable laws and regulations, when in fact Anees inspected these vehicles using the clean-plugging method, and thereby committed dishonest, fraudulent and deceitful acts by issuing fraudulent smog certificates of compliance for these vehicles without performing bona fide inspections of the emission control devices and systems, which deprived the People of the State of California of the protection afford by the Motor Vehicle Inspection Program.

88. By a preponderance of the evidence, cause exists to revoke the Smog Check Inspector License and Brake Adjuster License of Anees for violations of Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), and Business and Professions Code section 9889.3, subdivision (d), by reason of Factual Findings 12, 35a through 35d, and 36, along with Legal Conclusions 2, 6, 11, and 13.

#### ***Disciplinary Guidelines***

89. The primary purpose of the Bureau in exercising its licensing, regulatory, and disciplinary functions is protection of the public. In addition to protecting the public, the Bureau established the Guidelines for Disciplinary Penalties and Terms of Probation (Guidelines) to foster uniformity of penalties and to make sure the Bureau's licensees and registrants under the

consequences of violations of the Automotive Repair Act or the Motor Vehicle Inspection Program. The Bureau finds imposing the discipline set forth in the guidelines will further provide public protection by promoting uniformity, certainty, fairness, and deterrence.

### ***Disciplinary Considerations***

90. Protection of the public shall be the highest priority for the Bureau 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. The Bureau fulfills its public mandate by, among other things, imposing discipline. It is very important that licensees abide by applicable laws.

91. The determination as to the appropriate level of discipline of Respondents includes an evaluation of applicable guidelines, statutes, and regulations, as well as the facts.

92. A preponderance of the evidence shows that Respondents issued false smog inspection certificates and transmitted related information to the VID. The California Department of Motor Vehicles (DMV) accesses that database to establish whether a vehicle has passed a smog check inspection so a vehicle's registration may be renewed. It is reasonably inferred that the owners of the automobiles for which false certificates were issued were able to renew the registration of their vehicles, and that the DMV relied on the false information in the database in renewing the vehicle registrations.

93. California's Motor Vehicle Inspection Program is designed to improve air quality and to protect the public health by reducing vehicle emissions. It is also designed to comply with the federal Clean Air Act. (Health & Saf. Code §§ 44000, 44000.5, and 44001.) Motor vehicle engine exhaust pollution has been shown to create health hazards for human beings, with the hazards increasing with the level of pollution.

94. The imposition of an appropriate penalty for the violations proved above is a matter of weighing the factors in aggravation against those in mitigation. In aggravation, a preponderance of evidence established that the 39 Certificates of Compliance issued by Respondents were false and fraudulent, and Respondents engaged in and utilized the illegal technique of clean plugging.

95. The knowing and fraudulent actions of Respondents contributed to the unnecessary increase in the amount of such pollutants exhausted into the atmosphere by motor vehicles. Respondent's fraud against the people of the State of California was pervasive, and a preponderance of the evidence supports a finding that Respondents' unlawful acts were part of a pattern of practice of clean plugging vehicles in order to issue fraudulent Certificates of Compliance with laws and regulations of the Motor Vehicle Inspection Program. Further, Respondent 7 to 7 Smog and Auto Repair failed to permit the Bureau's inspection of records.

96. Additionally, Koch testified that 7 to 7 Smog and Auto Repair continued to clean plug cars even after the Bureau filed the accusation in this matter. Koch stated that in the month before his testimony, 7 to 7 Smog and Auto Repair performed approximately 800 tests that month, an increase from approximately 200 tests per month. On some days, 7 to 7 Smog and Auto Repair performed 50 to 60 OIS tests and 15 to 20 BAR97 tests by one technician, which would be physically impossible if proper smog inspections were being performed. Allowing Respondents to continue to engage in their licensed activities would endanger the public health, safety, and welfare.

97. In mitigation, Respondents offered no evidence to rebut the Complainant's causes of discipline.

98. Considering the facts, the evidence of aggravation, the lack of evidence in mitigation, the law, and the violations committed by Respondents, an order of discipline must be issued to protect the public.

99. Given the overwhelming evidence of clean plugging and issuance of 39 fraudulent Certificates of Compliance, permitting Respondents to continue engaging in licensed activity would endanger the public health, safety, and welfare. Furthermore, the issuance of fraudulent documents by a licensee, which become part of a public record and are relied upon by public agencies, is pernicious to the public welfare. Public protection requires revocation of all licenses and registrations.

### ***Costs of Investigation and Enforcement***

100. Complainant submitted two declarations of costs and requested cost recovery under Business and Professions Code section 125.3. William D. Thomas, Program Manager II, Case Management & Enforcement Statistics, certified that the Bureau incurred \$18,864.03 in total costs related to the Bureau's investigation into the allegations in the accusation against Respondents. Mr. Thomas's declaration recited that unnamed Program Representatives I and II spent a total of 261.25 hours at varying rates per hour on the "investigator costs." However, there is no description of the nature of the work performed and is therefore insufficient to allow for a finding that the costs sought for the Bureau's investigation services are reasonable. (Cal. Code of Regs. tit. 1, §1042.) Therefore, no investigative costs are awarded.

101. The certification by the deputy attorney general contained information related to services provided by the Office of the Attorney General and included costs of prosecution in the amount of \$12,347.50. The evidence established those costs were reasonably incurred and appropriate for the scope of the investigation and prosecution. The certification complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b).

102. Business and Professions Code section 125.3 prescribes that a "licentiate found to have committed a violation or violations of the licensing act" may be directed "to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

103. In determining the appropriateness and suitability of costs to this particular matter regarding Respondents, an analysis under *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 requires the consideration of the following factors in determining the amount of costs to be assessed:

- The Bureau must not assess the full costs of prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed;
- The Bureau must consider the licensee's subjective good faith belief in the merits of his position;
- The Bureau must consider whether the licensee has raised a colorable challenge to the proposed discipline;
- Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal

representation, the Bureau must determine that the licensee will be financially able to make payments; and,

- Finally, the Bureau may not assess the full costs of prosecution when it has conducted a disproportionately large investigation or prosecution effort to prove that a licensee engaged in relatively straight-forward misconduct.

104. Applying the *Zuckerman* criteria, Respondents did not receive a reduction in the severity of the discipline imposed, Respondents offered no good faith belief in the merits of their position, nor did they raise a "colorable challenge" to the proposed discipline. No evidence was received about Respondents' ability to pay costs. Costs are apportioned to Respondents based on the number of vehicles fraudulently certified as follows:

- a. 7 to 7 Smog and Auto Repair – 50 percent (\$6,173.75)
- b. Richards – 15 percent (\$1,852.12)
- c. Leal – 15 percent (\$1,852.12)
- d. Azad – 10 percent (\$1,234.75)
- e. Anees – 5 percent (\$617.38)
- f. Blackshear – 2.5 percent (\$308.69)
- g. Magana – 2.5 percent (\$308.69)

### **ORDER**

1. Automotive Repair Dealer Registration No. ARD 266532, Smog Check Station License No. RC 266532, Lamp Station License No. LS 266532, and Brake Station License No. BS 266532 issued to James Gilbert Richards and Mohammad R. Azad, partners, doing business as 7 to 7 Smog and Auto Repair are revoked. Pursuant to Business and Professions Code section 9889.9 and Health and Safety Code section 44072.8, any additional licenses issued to 7 to 7 Smog and Auto Repair are revoked. 7 to 7 Smog and Auto Repair is ordered to pay costs of investigation and enforcement in the amount of \$6,173.75 within 30 days of the effective date of this decision or as otherwise ordered by the Bureau.

2. Smog Check Inspector License No. EO 630900, Smog Check Repair Technician License No. EI 630900, Brake Adjuster License No. BA 630900, and Lamp Adjuster License No. LA 630900 issued to James Gilbert Richards are revoked. Pursuant to Business and Professions Code Section 9889.9 and Health and Safety Code section 44072.8, any additional licenses issued to James Gilbert Richards are revoked. James Gilbert Richards is ordered to pay costs of investigation and enforcement in the amount of \$1,852.12 within 30 days of the effective date of this decision or as otherwise ordered by the Bureau.

3. Smog Check Inspector License No. EO 636435, Brake Adjuster License No. BA 636435, and Lamp Adjuster License No. LA 636435 issued to Mohammad Rahim Azad are revoked. Pursuant to Business and Professions Code Section 9889.9 and Health and Safety Code section 44072.8, any additional licenses issued to Mohammad Rahim Azad are revoked. Mohammad Rahim Azad is ordered to pay costs of investigation and enforcement in the amount of \$1,234.75 within 30 days of the effective date of this decision or as otherwise ordered by the Bureau.

4. Smog Check Inspector License No. EO 637039 issued to Jose Francisco Leal is revoked. Pursuant to Business and Professions Code Section 9889.9 and Health and Safety Code section 44072.8, any additional licenses issued to Jose Francisco Leal are revoked. Jose Francisco Leal is ordered to pay costs of investigation and enforcement in the amount of \$1,852.12 within 30 days of the effective date of this decision or as otherwise ordered by the Bureau.

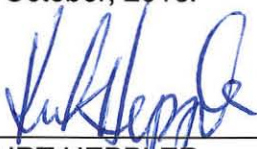
5. Advanced Emission Specialist Technician License No. 634692 issued to Stephen Blackshear is revoked. Pursuant to Business and Professions Code Section 9889.9 and Health and Safety Code section 44072.8, any additional licenses issued to Stephen Blackshear are revoked. Stephen Blackshear is ordered to pay costs of investigation and enforcement in the amount of \$308.69 within 30 days of the effective date of this decision or as otherwise ordered by the Bureau.

6. Smog Check Inspector License No. EO 638053 and Brake Adjuster License No. BA 638053 issued to Muhammad Anees are revoked. Pursuant to Business and Professions Code Section 9889.9 and Health and Safety Code section 44072.8, any additional licenses issued to Muhammad Anees are revoked. Muhammad Anees is ordered to pay costs of investigation and enforcement in the amount of \$617.38 within 30 days of the effective date of this decision or as otherwise ordered by the Bureau.

7. Smog Check Inspector License No. EO 636474 issued to Mahuziny Magana is revoked. Pursuant to Business and Professions Code Section 9889.9 and Health and Safety Code section 44072.8, any additional licenses issued to Mahuziny Magana are revoked. Mahuziny Magana is ordered to pay costs of investigation and enforcement in the amount of \$308.69 within 30 days of the effective date of this decision or as otherwise ordered by the Bureau.

This Decision shall become effective on November 30, 2016.

IT IS SO ORDERED this 24<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
KURT HEPPLER  
Supervising Attorney  
Division of Legal Affairs  
Department of Consumer Affairs