

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

In the Matter of the Accusation Against:

SLK INTERNATIONAL ENTERPRISES, LLC, dba 4 LESS SMOG CHECK

2857 Broadway

Oakland, CA 94611

Mailing Address:

4101 Dublin Blvd. Ste F, PMB 232

Dublin, CA 94568

Automotive Repair Dealer Registration No. ARD 281662

Smog Check Test Only Station License No. TC 281662

CHANCHOY SAECHAO

1951 Mason St.

San Pablo, CA 94806

Mailing Address:

2857 Broadway

Oakland, CA 94612

Smog Check Inspector License No. EO 640718

SUJIAN SAECHAO

1790 University Ave.

Berkeley, CA 94703

Smog Check Inspector License No. EO 142973

Smog Check Repair Technician License No. EI 142973

Respondents.

Case No. 79/22-1336

OAH No. 2023100675

DECISION

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

This Decision shall be effective on September 19 2024.

IT IS SO ORDERED August 5 2024.



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

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

In the Matter of the Accusation Against:

**SLK INTERNATIONAL ENTERPRISES, LLC, dba 4 LESS SMOG
CHECK, Ryan Lam, Member, Patrick Lee, Member, Carol
Leung, Member,**

**Automotive Repair Dealer Registration No. ARD 281662
Smog Check, Test Only, Station License No. TC 281662 and**

CHANCHOY SAECHAO,

Smog Check Inspector License No. EO 640718 and

SUJIAN SAECHAO,

Smog Check Inspector License No. EO 142973

**Smog Check Repair Technician License No. EI 142973,
Respondents.**

Agency Case No. 79/22-1336

OAH No. 2023100675

PROPOSED DECISION

Administrative Law Judge Michelle Dylan, State of California, Office of Administrative Hearings, heard this matter on December 18, 2023, March 21, 2024, and May 8, 2024, via videoconference and telephone.

Deputy Attorney General Carter Ott represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

Attorney William D. Ferreira represented respondents SLK International Enterprises, LLC, dba 4 Less Smog Check, Chanchoy Saechao, and Sujian Saechao.

The record was held open until May 17, 2024, for respondents to submit arguments for the admission of Exhibit P as direct evidence and for complainant's response, which were timely submitted and marked for identification as Exhibit S and Exhibit 14. Exhibit P was admitted as administrative hearsay. The record was closed and the matter was submitted for decision on May 17, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 5, 2015, the Bureau of Automotive Repair (Bureau or BAR) issued Automotive Repair Dealer (ARD) Registration No. ARD 281662 to respondent SLK International Enterprises, LLC, Ryan Lam, Member, Patrick Lee, Member, and Carol Leung, Member, doing business as 4 Less Smog Check, (4 Less Smog Check). The registration was in full force and effect at all relevant times. As of April 19, 2022, the registration was set to expire on October 31, 2022, unless renewed.

2. On October 12, 2015, the Bureau issued Smog Check, Test Only, Station License Number TC 281662 to respondent 4 Less Smog Check. The Smog Check, Test Only, Station License was in full force and effect at all relevant times. As of April 19, 2022, the license was set to expire on October 31, 2022, unless renewed.

3. On November 9, 2017, the Bureau issued Smog Check Inspector License EO Number 640718 to respondent Chanchoy Saechao. The Smog Check Inspector License was in full force and effect at all relevant times. As of April 19, 2022, the license was set to expire on February 29, 2024, unless renewed.

4. In 2002, the Bureau issued Advanced Emission Specialist Technician License Number EA 142973 in 2002 to respondent Sujian Saechao. The Advanced Emission Specialist Technician License was due to expire on August 31, 2012, but was cancelled and renewed pursuant to respondent Sujian Saechao's election as Smog Check inspector License Number EO 142973 and Smog Check Repair Technician License Number EI 142973, effective August 9, 2012. The Smog Check Inspector License and the Smog Check Repair Technician License were in full force and effect at all relevant times. As of April 19, 2022, the licenses were set to expire on August 31, 2022, unless renewed.

5. In 2000, the Bureau issued Class "A" Lamp Adjuster License Number LA 142973 to respondent Sujian Saechao. The Class "A" Lamp Adjuster License was in full force and effect at all relevant times. As of April 19, 2022, the license was set to expire on August 31, 2022.

6. In 2001, the Bureau issued Class "C" Brake Adjuster License Number BA 142973 to respondent Sujian Saechao. The Class "C" Brake Adjuster License was in full

force and effect at all relevant times. As of April 19, 2022, the license was set to expire on August 31, 2022.

7. Complainant Patrick Dorais filed the accusation on February 16, 2023, solely in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs. The accusation was based on six alleged incidents of clean plugging. Complainant also seeks an order for the costs of investigation and enforcement of this matter.

8. Respondents 4 Less Smog Check, Chanchoy Saechao, and Sujian Saechao timely filed notices of defense and this hearing followed. At the conclusion of the hearing counsel for complainant conceded that the evidence did not show that respondents committed intentional fraud.

Clean Plugging

9. California's Smog Check Program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles. The smog check program requires the owners of most motor vehicles to subject their vehicles to and pass a smog check inspection and receive a certificate of compliance every two years when renewing their registration and when the vehicle's title is transferred. (Vehicles that are eight model years old or less are not required to pass a smog check inspection every two years. Vehicles that are four model years old or less are not required to pass a smog check inspection when the vehicle's title is exchanged.) Passing a smog check inspection is also required when the owner of a vehicle is registering an out of state vehicle in California.

10. Beginning in March 2015, smog check inspections of most vehicles in California are performed pursuant to the "BAR-OIS" inspection system. The system

consists of a certified data acquisition device (DAD), computer, bar code scanner, and printer. The bar code scanner is used to input inspector information, the vehicle identification number (VIN), and Department of Motor Vehicles (DMV) renewal information. When conducting a smog inspection, to enter the VIN of the vehicle being tested, the technician can physically scan the bar code on either the door or dashboard of the vehicle, scan the bar code on the customer's DMV renewal paperwork, or manually enter the VIN.

11. As part of a BAR-OIS inspection, the on-board diagnostic (OBD) system of the vehicle being tested is connected to the Bureau's database by means of a DAD, which retrieves OBD data from the vehicle. All vehicles manufactured after 2005, and many manufactured earlier, have an electronic VIN (eVIN), which is identical to the VIN physically present on the vehicle. If the vehicle has an eVIN stored in its computer, the eVIN is transmitted during the OIS inspection. Vehicles also transmit a communication protocol during the OIS inspection. The protocol is programmed during the manufacturing process and does not change. Vehicles of the same make, model, and year use the same protocol. A parameter identification (PID) count is also transmitted during an OIS inspection. The PID count is the number of data points reported by the vehicle's computer and is programmed during vehicle manufacture. Each make, model and year of vehicle has an expected PID count (or range of expected PID counts).

12. When performing a smog inspection, the technician is required to confirm that the VIN inputted into the OIS system is correct and matches the vehicle being tested. The inspector also performs visual and functional tests on the vehicles as outlined in the Smog Check Manual. The printer prints a vehicle inspection report (VIR), which is a physical record of the visual and functional test results and shows the certificate of compliance number that was issued if the vehicle passed the smog check

inspection. The smog check inspector must sign the VIR to indicate that the inspection was performed within Bureau guidelines. All data gathered during a smog check inspection is transmitted and retained in the Vehicle Inspection Database (VID).

13. Clean plugging is the illegal practice of using another vehicle's OBD system, or another device, during the OBD portion of a smog inspection. It can be detected when the eVIN, the protocol, or PID count transmitted by the vehicle does not match the data expected for the make, model, and year of the vehicle purportedly being inspected (expected data).

14. Roy Peach, an experienced Program Representative I for the Bureau who retired two years ago, testified at hearing. Peach has conducted 40 to 50 clean plugging investigations. Peach's testimony was credible. Peach testified that it is the smog check technician's job to verify that the VIN on the DMV paperwork that a customer provides matches the VIN on the vehicle being tested. He testified that clean plugging occurs when the vehicle purportedly tested is not the vehicle actually tested, and a false certificate of compliance is issued. Clean plugging can happen intentionally or unintentionally. Peach testified that the three scenarios under which a clean plug occurs are (1) obtaining a fraudulent certificate for a vehicle that would not pass a proper inspection, which would typically entail connecting one vehicle to the DAD (donor vehicle), and entering information into the system for a different vehicle that the technician would like to pass the inspection; (2) testing a different vehicle for the inspection because the proper vehicle is not available for testing; or (3) negligently failing to perform the aspect of the test which requires confirming that the vehicle being tested is the proper vehicle. Peach opined that the VIR was obtained in a fraudulent or improper manner if a clean plug occurs under any of these scenarios.

15. Peach reviewed OIS test data from respondent 4 Less Smog Check's smog test station. He observed that six vehicles were certified even though the data transmitted during inspection included eVIN information, protocols, and/or PID counts that did not match the expected data. Peach concluded that six instances of clean plugging occurred at 4 Less Smog Check's station between February 17, 2001, and January 3, 2022. In five of these inspections, Chanchoy Saechao (Chanchoy) was the technician and issued the certificates of compliance. In one of the inspections, Sujian Saechao (Sujian) was the technician and issued a certificate of compliance. Peach did not appear to be aware until the hearing that the vehicles purported to be tested and the donor vehicles in some of the clean plugs were owned by the same person.

16. As described below, in all six of the clean plugging instances identified by the Bureau, the communication protocol, eVIN, and/or PID count transmitted did not match the expected values.

17. Clean Plug 1: On February 17, 2021, Chanchoy issued a certificate of compliance for a 2008 Toyota Prius owned by Lowell Cohn. Chanchoy entered the VIN by scanning the customer's DMV paperwork. An incorrect eVIN was reported and the PID count did not match the expected information for a vehicle of this make, model, and year. A previous smog inspection for this vehicle performed at 4 Less Smog Check on February 6, 2019, transmitted the expected information. The discrepancies in the OIS test data demonstrate that the OIS DAD was not connected to the vehicle being certified, rather it was connected to a 2011 Toyota Prius also owned by Cohn during the test, resulting in the issuance of the erroneous smog certificate of compliance. (This 2011 Toyota Prius was subsequently tested at 4 Less Smog Check on July 19, 2021.) Peach testified that if a customer brought in paperwork for a vehicle that did not match the vehicle to be tested, the technician could have avoided clean plugging

by checking the VIN of the car against the VIN on the paperwork. During his testimony at hearing, Chanchoy admitted that he did not check the VIN on the DMV registration paperwork against the VIN on the vehicle being tested in this clean plug, as well as in clean plugs 2, 4, 5 and 6.

18. Clean Plug 2: On March 16, 2021, Chanchoy issued a smog certificate for a 2009 Toyota Prius owned by Richard Rocke. Chanchoy entered the VIN by scanning the customer's DMV paperwork. The eVIN was not transmitted although it was expected to be transmitted. The communication protocol and PID count transmitted did not match the information for a vehicle of this make, model, and year. The same 2009 Toyota Prius passed a smog test and transmitted the correct eVIN, protocol, and PID count at another smog check station on May 17, 2021. The discrepancies in the OIS test data demonstrate that the OIS DAD was not connected to the vehicle being certified, resulting in the issuance of an erroneous certificate of compliance. The invoice provided to the customer for the inspection noted that the vehicle actually tested was a 2000 Toyota Sienna owned by Rocke. A copy of the invoice was stapled to the VIR for the 2009 Toyota Prius and a copy of the receipt provided to the customer. Chanchoy did not verify the VIN, the model and the year of the car being tested in this clean plug.

19. Clean Plug 3: On July 31, 2021, Sujian issued a certificate of compliance for a 2007 Honda Accord EX with no license plate number. He scanned the vehicle to enter the VIN. The reason for the inspection was noted as initial registration. An incorrect eVIN was reported, and the PID count did not match the expected information for a vehicle of this make, model, and year. This same 2007 Honda Accord EX (Florida license plate no. KYGD97) was tested at another smog check station on September 24, 2021, and transmitted the expected eVIN, protocol, and PID count. The

technician in that case entered the VIN manually. The discrepancies in the OIS test data demonstrate that the OIS DAD was not connected to the vehicle being certified, rather that it was connected to a different 2007 Honda Accord EX, which generated the smog certificate of compliance.

20. Clean Plug 4: On December 27, 2021, at 10:56 a.m., Chanchoy issued a certificate of compliance for a 2016 Ford F150 Super Cab. Chanchoy entered the VIN by scanning the customer's DMV paperwork. An incorrect eVIN was reported, and the communication protocol and PID count did not match the expected information for a vehicle of this make, model, and year. That same day, at 11:59 a.m., a 2003 Ford F150 with the same eVIN, protocol and PID count was tested and passed a smog check inspection at 4 Less Smog Check. The discrepancies in the OIS test data demonstrate that the OIS DAD was not connected to the vehicle being certified during the first test, but rather was connected to the 2003 Ford F150, which generated the erroneous certificate of compliance. Chanchoy did not verify the vehicle VIN and year of the car being tested before the first test in this clean plug. Peach testified it was certainly possible that the technician scanned the DMV paperwork for the 2016 vehicle and tested the 2003 vehicle instead, and that when he discovered his error, he subsequently tested the 2003 vehicle with the proper DMV paperwork to remedy the error. Peach testified that it was also possible that the technician simply plugged the DAD into the wrong Ford 150 during the test.

21. Clean Plug 5: On December 28, 2021, Chanchoy Saechao issued a certificate of compliance for a 2005 Toyota Avalon XL, with license plate SCouser. Chanchoy entered the VIN by scanning the customer's DMV paperwork. The eVIN was not transmitted during the inspection although it was expected to be transmitted. The communication protocol and PID count did not match the expected information for a

vehicle of this make, model, and year. The same 2005 Toyota Avalon XL passed a smog check inspection at 4 Less Smog Check on December 30, 2019, and transmitted the correct eVIN, protocol, and PID count. The discrepancies in the OIS test data demonstrate that the OIS DAD was not connected to the vehicle being certified, resulting in the issuance of an erroneous certificate of compliance. The invoice provided to the customer noted that the vehicle actually tested was a 2005 Toyota Tundra owned by Richard Vose, with license plate RW VOSE. The VIR for the 2005 Toyota Avalon XL was attached to the invoice. Chanchoy Saechao failed to check the VIN, license plate and the model of the vehicle being tested in this clean plug.

22. Clean Plug 6: On January 3, 2022, Chanchoy Saechao issued a certificate of compliance for a 2011 Infiniti FX35. The eVIN was not transmitted although it was expected to be transmitted. The communication protocol and PID count did not match the expected information for a vehicle of this make, model, and year. The same 2011 Infiniti FX35 passed a smog check inspection at 4 Less Smog Check on December 30, 2021, and transmitted the correct eVIN, protocol, and PID count. The discrepancies in the OIS test data demonstrate that the OIS DAD was not connected to the vehicle being certified, resulting in the issuance of an erroneous certificate of compliance.

23. Peach explained that the Bureau's Smog Check Manual sets forth the procedures for smog check inspectors to enter vehicle identification information into the BAR-OIS system using a computer. The Smog Check Manual instructs inspectors to follow OIS prompts to enter the VIN, license plate number, and odometer reading. The Smog Check Manual states that "[n]o person shall enter any vehicle identification information for any vehicle other than the one being tested." The Manual further states:

The bar code scanner must be used as the first method of entry. Manual entry must only be used in cases where the vehicle is not equipped with a bar code or the bar code is illegible, and the registration documents are unavailable or do not include a bar code. In these cases, you may proceed with the inspection and manually enter the vehicle identification information, as needed.

When using the vehicle registration documents to scan vehicle information, you must first verify the VIN shown on the registration document matches the VIN on the vehicle. If the VIN does not match, the inspector shall use the VIN affixed to the vehicle and inform the customer of the mismatch and that it may cause the Department of Motor Vehicles (DMV) not to accept the test results.

...¶...

Accuracy is critical to ensure the appropriate test sequences and standards are applied. For all inspections, inspectors must verify that all vehicle information is complete and correct. If not, inspectors must make the necessary corrections.

Each inspector is responsible for the accuracy of the test. Once a certificate is issued it is impossible to void that certificate.

(emphasis in original.)

24. Peach explained that an inspector is first required to attempt to scan the VIN barcode on the vehicle. However, if this barcode is unavailable, the inspector must use the bar code on the registration documents, or manually enter the VIN affixed to the vehicle. However, the inspector must verify that the VIN on registration paperwork matches the VIN on the vehicle.

25. The machine/analyzer prompts the technician to verify that they are testing the correct vehicle at the beginning of the test. Ways of verifying this include checking the VIN, the license plate, and the make and model of the vehicle against the registration document. Failing to verify that the information on the registration document matches the information on the actual vehicle could result in inspecting the incorrect vehicle. Peach testified that if a customer were to bring in the incorrect vehicle for testing, the proper procedure is for the technician to reject the vehicle without even doing the smog test. He noted that once testing begins, the technician does not see the eVIN, protocol and PID being transmitted by the vehicle, so they are not able to verify that the information being transmitted matches the expected data, which is why it is imperative to verify the vehicle at the start of the test. Peach testified that ensuring that the correct vehicle is tested is the most important part of the test, and that overlooking this aspect of the test is "egregious."

26. Peach testified that if the technician discovers that they performed an improper smog inspection, the proper way to address it would be to retest the proper vehicle. There is no way to eliminate the erroneous test from the system.

27. Peach visited Chanchoy on February 10, 2022, and requested inspection records, which Chanchoy provided. Peach does not recall whether he asked for the invoices related to the alleged clean plugs. Peach did not follow up with the owners of the vehicles and does not recall researching ownership information for the vehicles

and donor vehicles related to the clean plugs. However, he agreed that if both the vehicle purported to be tested and the donor vehicle had the same owner, a clean plug could unintentionally occur if the owner provided the facility with DMV paperwork related to one vehicle but brought in the other vehicle they owned to be tested.

28. Peach opined that if a clean plugged vehicle has previously failed a smog inspection, that would support the allegation that the clean plug was intentional and fraudulent. Peach had no evidence that any of the alleged clean plugged vehicles failed prior smog check inspections. On the contrary, respondents provided evidence at hearing that a number of the clean plugged vehicles had passed prior smog inspections. Peach agreed that if there is no evidence of a prior failed test, one cannot determine why a vehicle was clean plugged. Rather, the evidence simply shows that at a minimum the technician did not perform the inspection as required by failing to verify that they are testing the proper vehicle. He agreed that such mistakes are possible. He opined that nevertheless, the machine prompts the technician to verify the vehicle, and if they do not, a false certificate is issued.

29. Peach presented records relating to the clean plugs to Chanchoy and Sujian on February 23, 2022. After reviewing the records, Chanchoy confirmed that he performed the inspections for Clean Plug Nos. 1, 2, 4, 5, and 6, and Sujian confirmed that he performed the inspection for Clean Plug No. 3.

30. Peach testified that the bar code for the VIN of a vehicle is affixed to the door, the door post or under the windshield. Regarding Clean Plug No. 3, Peach agreed that it is possible for a customer to change out the door on a vehicle assuming the make and model would fit; however, the VIN from the door would not necessarily be transferred. Peach did not find any prior or subsequent smog check inspections on

the vehicle purportedly tested in Clean Plug No. 3. He did find one subsequent proper inspection at a different facility on September 24, 2021, on the donor vehicle. He explained that the VIN information would be different on the vehicle purportedly tested and the vehicle actually tested if, at the time of the testing, the technician scanned the bar code on one vehicle and connected the DAD to another vehicle of the same make and model in the next bay at 4 Less Smog Check. Peach does not believe that it is more plausible that the door from the vehicle purported to be tested was put on the donor vehicle and scanned; rather he believes it is more likely there were two separate vehicles next to each other in the facility at the time of the test. Peach testified that it was likely that the donor vehicle was tested again approximately two months after the prior inspection because the owner was selling it.

31. The certificates of compliance for each vehicle erroneously issued by respondents as described in Factual Findings 15 through 22 were purchased through and delivered to the OIS platform at 4 Less Smog Check using an Automated Clearing House (ACH) and check payment method. Those certificates were delivered between June 15, 2020, and June 15, 2022, and were under the exclusive control of 4 Less Smog Check for issuance.

ADDITIONAL EVIDENCE REGARDING DISCIPLINE CONSIDERATIONS

32. On March 7, 2018, a Bureau program representative visited 4 Less Smog Check and conducted a proactive conference with member Patrick Lee. Lee was informed that all smog inspections must be conducted in accordance with the 2013 Smog Check Manual.

33. On May 9, 2018, the Bureau issued Citation No. C2018-1200 to 4 Less Smog Check, with regard to its Automotive Repair Dealer Registration and its Smog

Check, Test Only, Station License, for issuing a certificate of compliance to an undercover vehicle with an unapproved aftermarket performance device on April 17, 2018. That citation is now final.

34. On March 4, 2019, the Bureau issued Citation No. C2019-847 to 4 Less Smog Check, with regard to its Automotive Repair Dealer Registration and Smog Check, Test Only, Station License, for issuing a certificate of compliance to an undercover vehicle with missing or modified exhaust gas recirculation system components on February 7, 2019. That citation is now final.

35. On March 4, 2019, the Bureau issued Citation No. M2019-848 to Respondent Chanchoy Saechao, with regard to Smog Check Inspector License No. EO 640718, for issuing a certificate of compliance to an undercover vehicle with missing or modified exhaust gas recirculation system components on February 7, 2019. That citation is now final.

Respondents' Additional Evidence

LOWELL COHN

36. Cohn testified credibly at hearing and provided a letter addressed to respondents' counsel dated March 20, 2024. Cohn owned both the 2008 Toyota Prius and the 2011 Toyota Prius involved in Clean Plug No. 1 at the time. Cohn donated the 2008 Prius to charity in 2022 after his wife passed away. Cohn regularly took both Priuses to 4 Less Smog Check for smog inspections.

37. Cohn did not pay extra money to 4 Less Smog Check or to the technician to clean plug his vehicle on February 17, 2021. Cohn does not recall which Toyota Prius he brought in for the inspection on that date, nor can he specifically recall which

vehicle's DMV paperwork he brought in. Cohn would never intentionally bring in the wrong DMV paperwork for the vehicle to be inspected.

38. Cohn reported that the people at 4 Less Smog Check were "very professional" and "very nice," and it is possible they confused the two vehicles and made an honest mistake during the inspection. In his March 20, 2024, letter, he wrote that he does not believe that 4 Less Smog Check did anything illegal.

RYAN LAM AND PATRICK LEE

39. Ryan Lam, a member of 4 Less Smog Check, testified credibly at hearing. In addition to his role with 4 Less Smog Check, Lam has been employed as a United States Customs Officer at San Francisco International Airport (SFO) for the past 15 years. As a customs officer, he safeguards the United States borders and prevents contraband and illegal weapons from entering the United States. He reported that he has received training on how to detect illegal activities in the course of his employment as a customs agent.

40. Lam has been a partner in 4 Less Smog Check since July 2015. Lam does not have a smog technician license. Since 2015, Lam has been notified of a few incidents wherein the technicians have made serious mistakes. One incident that resulted in a citation to 4 Less Smog involved a technician failing to notice that a part was missing in an undercover vehicle during an inspection. Lam credibly reported that 4 Less Smog Check takes Bureau discipline seriously. He reported that at times the technicians can get busy and distracted, and he has instructed the technicians to slow down and inspect the vehicles thoroughly.

41. Lam reported that Sujian and Chanchoy have been working for 4 Less Smog Check for at least six years. He reported that they are always on time, work hard,

and provide good service. Lam believes they are good people, and he trusts them "100 percent."

42. When 4 Less Smog Check received the accusation in this matter, Lam was shocked by the allegations of fraud. He decided to investigate the incidents to find out what had occurred. He reviewed 4 Less Smog Check's records related to the incidents, including the VIRs, invoices, and receipts. He also attempted to contact the customers involved in the transactions to see if they had brought the wrong vehicles into the shop to be tested. Lam was able to reach Cohn by telephone. Cohn stated that he could have brought the wrong vehicle in to be inspected with the DMV paperwork. Lam was also able to reach Richard Vose, the owner of both vehicles referenced in Clean Plug No. 5. Vose stated that he could have made a mistake and brought the wrong vehicle in to be inspected with the DMV paperwork.

43. Lam spoke to Chanchoy and Sujian about the alleged clean plugs. Based on his discussions with the technicians and his review of the VIRs, invoices and receipts, he believes that they did not engage in intentional fraud, but rather made mistakes by inspecting the wrong vehicles. He concluded specifically that Chanchoy failed to follow procedures in the smog check manual by failing to match the information on the DMV documents to the tested vehicles. He believes that both technicians have learned from their mistake(s) and deserve a second chance.

44. Regarding Clean Plug Nos. 1, 2, 4, 5, and 6, Lam concluded that the owners of the vehicles likely brought in the wrong DMV paperwork for the vehicles to be tested, and that Chanchoy mistakenly inspected the wrong vehicles. Lam concedes that the wrong vehicles were inspected in these clean plugs. He feels confidently that the camera systems and audit policy that 4 Less Smog Check has instituted discussed

in Factual Findings 50 and 51 will prevent similar mistakes from happening in the future.

45. Regarding Clean Plug No. 3, Lam suspects that the owner of the vehicle swapped out the car door or computer with a different door or computer from the junkyard, and that the technician had no way of verifying the vehicle that he was testing. He reported that he has no evidence to support this suspicion. He did not explain why the technician could not have confirmed that the VIN scanned matched the VIN on the vehicle's dashboard.

46. Regarding Clean Plug No. 4, Chanchoy told Lam that he redid the smog inspection on the correct vehicle with the correct paperwork about an hour after he discovered that he had inspected the wrong vehicle. Lam told Chanchoy that if a similar mistake occurs in the future, Chanchoy must also notify the Bureau of the error by phone or email.

47. Regarding Clean Plug No. 6, Lam was not able to contact the customer listed on the invoice because no phone number was provided.

48. Lam did not authorize the technicians to perform improper smog checks; and he would not employ the technicians if he felt that they engaged in intentional improper smog checks.

49. Lam has been spending more time at 4 Less Smog Check since receiving the accusation. He is currently spending eight to ten hours a week at the facility.

50. Lam testified that 4 Less Smog has created a new audit policy in response to the accusation. The new policy requires that "the vehicle scan is the primary source to enter information into the OIS system. If DMV document is provided BOTH the

document and the vehicle must be scanned. If the Vehicle Barcode is unscannable, the technician MUST verify the DMV document matches the vehicle VIN." The policy also requires that service providers record the make, model, and license plate of each vehicle as well as the name of the owner and telephone number on each invoice, and that "every vehicle that enters the facility for a smog inspection is to be recorded via surveillance so that each invoice matches each vehicle make and model."

51. 4 Less Smog Check has incorporated a new camera system that ensures that the license plate information for vehicles undergoing smog check inspections is visible on camera. 4 Less Smog Check conducts random audits to ensure compliance. They have not found any instances where the vehicle tested did not match the DMV paperwork during their audits.

52. Lam understands that the technicians were required to verify vehicle information pursuant to the Bureau's policy prior to the accusation in this matter, but believes that they have learned from their mistakes, and will abide by the Bureau's and 4 Less Smog Check's policies. After the incidents resulting in the clean plugs, Lam has emphasized that the technicians need to slow down even when they are busy to ensure that the inspections are done correctly.

53. 4 Less Smog Check donated the funds collected for the smog check inspections at issue to the Coalition for Clean Air.

54. Lam submitted a screenshot of the shop's Yelp page indicating that the shop has 746 reviews with an average of 4.7 (out of 5) stars.

55. To Lam's knowledge, no customer has ever complained that 4 Less Smog Check has performed a smog inspection on the wrong vehicle.

56. 4 Less Smog Check submitted six reference letters.

57. One reference letter was submitted on behalf of Ryan Lam. Man Wong, a customs officer who has worked with Lam for 15 years, wrote a letter dated December 4, 2023. Wong wrote that Lam represents the agency's core values, adheres to the law and regulations, and is one the most highly respected senior officers.

58. Five reference letters were submitted on behalf of Lee, from members of his local church, including the pastor, former pastor, and several deacons. All of them expressed high regard for Lee, finding him to have integrity and a high standard of principles.

59. Patrick Lai, the pastor at the church, wrote an undated letter stating that whenever Lee has been involved in an accounting or planning matter, Lee has been responsible, accurate and honest.

60. Ulysses Lim, a deacon at the church, wrote a letter dated December 4, 2023. Lim wrote that Lee has been attending the church since 2005, and that he is a shining example of honesty and selflessness, a highly respected and outstanding member of the church, an invaluable leader in the fellowship, and someone whom anyone can look to for help.

61. Danny Ho who has known Lee for 15 years, wrote an undated letter. Ho wrote that Lee is a respected member of the church who has been serving as a fellowship committee member. Ho wrote that Lee upholds a high moral character, displays honesty and integrity, is a loving husband and father, and is "known to be a law-abiding citizen in [the] church."

62. Joseph Pang, the former pastor of the church, wrote a letter dated December 4, 2023. Pang wrote that he has brought his vehicle to Lee's shop for repairs and maintenance, and that he has always demonstrated fairness, integrity, and honesty.

CHANCHOY SAECHAO

63. Chanchoy testified credibly at hearing, consistent with one who is telling the truth. Chanchoy's father is a mechanic and when Chanchoy was young he performed oil changes and basic work as a lube tech with his father. In 2016, he became employed as a lube tech for Fellows Auto Repair (Fellows). While working for Fellows, he attended school, and in 2017, he passed the test to become a smog check technician and began performing smog inspections.

64. In 2018 or 2019, Chanchoy began working for 4 Less Smog Check as a smog check inspector. He enjoys working for 4 Less Smog Check and considers it a good job with good management and a good environment. He reported that management is always trying to improve the facility's services and meets regularly with staff regarding policies and procedures.

65. Chanchoy received the citation referenced in Factual Finding 35 in 2019 for improperly passing an undercover vehicle during an inspection that had a modified or missing exhaust gas recirculation (EGR) valve. He could not recall if he did not have the proper tool to test the valve or if he did not know how to test it. As a result of the citation, he went to an eight-hour update course which he found helpful. He has not had any trouble with the Bureau since then other than the allegations in this proceeding. Chanchoy reported that since receiving the citation, he has advised

potential customers to go to a different shop if he has not had the tools, skills, or knowledge to test their vehicle or vehicle component.

66. Chanchoy reviewed the paperwork for the five instances of clean plugging that he performed and concluded that the customers had given him the wrong DMV paperwork. He understands that he is required to verify the DMV paperwork against the vehicles to be tested but failed to do so in these instances because he was busy. He credibly denied intentionally clean plugging the vehicles but admitted that he performed five improper inspections (Clean Plug Nos. 1, 2, 4, 5 and 6) in which the vehicle connected to the OIS system was not the one he was purportedly testing. Chanchoy did not receive extra compensation from the customers for performing the smog check inspections, nor was he asked to perform the tests on vehicles different from those described in the paperwork.

67. As it relates to Clean Plug No. 4, Chanchoy reported that he realized he had made an error by reviewing the DMV paperwork and VIR shortly after completing the erroneous test. He noticed that the license plate number and year of the vehicle was different in the documents. He informed the customer and performed a smog check inspection on the correct vehicle with the correct paperwork about an hour later. He did not notify the Bureau. He thought it would be "ok" because he redid the test correctly.

68. Chanchoy signed 4 Less Smog Check's new audit policy requiring that the first method of entering the VIN for the technicians is to scan the barcode on the vehicle; and that if the technicians use the DMV paperwork, they must verify that it matches the VIN on the vehicle. 4 Less Smog Check's management has instructed him to slow down while doing inspections to verify that the correct vehicle is tested. After reviewing the accusation and the new policy, Chanchoy is committed to slowing down

and double-checking things to avoid making mistakes during inspections. Since abiding by the policy, he has noticed that customers have brought in DMV paperwork that did not match the vehicle brought in for testing two or three times. In these instances, he advised the customers to bring in the right vehicle for the test.

69. Chanchoy understands that he is responsible for ensuring that inspections are performed properly. He also appears to understand that his errors were serious and is confident that the new testing procedures in the policy will prevent future errors.

70. Chanchoy is willing to comply with any terms of probation that the Bureau finds appropriate. He likes his job and hopes to become a smog repair technician in the future.

71. Chanchoy has no other sources of income. He is the father of a 12-year-old child who relies on him for financial support and would have difficulty paying the costs in this matter.

72. Chanchoy submitted two reference letters on his behalf.

73. Steven, a co-worker at 4 Less Smog Check, wrote a letter dated December 9, 2023. Steven wrote that Chanchoy is a "great and helpful guy," who shares his knowledge with the customers and always ensures that they leave happy, even when their vehicles fail testing or are not ready. He wrote that he is "truly a great person to have in the smog industry."

74. Annette S., a long-time customer of 4 Less Smog Check who has known "Mr. Saechao" for years, wrote a letter dated December 8, 2023. She wrote that he is a

"great and respectful person" that she enjoys seeing, and that she highly recommends 4 Less Smog Check even though she is aware that he may have made mistakes.

SUJIAN SAECHAO

75. Sujian has been a smog check inspector and smog check repair technician since approximately 2000. He attended Sequioa Institute (now Wyotech) for approximately 18 months. He has taken classes and passed automotive service excellence (ASE) testing in engine performance, advanced engine performance, electrical system, and brakes, and is currently certified in these areas.

76. Sujian initially worked as a smog check technician and smog check repair technician for Inca in Berkely for two or three years. For the next three or four years, he worked for Berkeley Test Only Center. After that he began working for Fellows Auto Repair. He is currently a smog technician and manager at Fellows Auto Repair. He has also worked on the weekends for 4 Less Smog Check since 2015 or 2016. Sujian has performed thousands of smog inspections during his career. Other than the one clean plug alleged in this matter, he reported that he has only been issued one citation that occurred in 2004 or 2005 involving passing a vehicle without properly testing an EGR valve.

77. Sujian enjoys working for 4 Less Smog Check. He does not feel rushed to perform inspections by management. He often has the proper tools and equipment to properly perform inspections, and on the rare occasion that he has not, he has referred the customer to another facility.

78. After learning about alleged Clean Plug No. 3, Sujian tried to determine why the vehicle he tested transmitted the incorrect data. Management at 4 Less Smog

Check tried to get ahold of the customer to get more information about the incident but was unable to reach her.

79. Sujian testified that during the inspection he entered the VIN by scanning the vehicle's door. He did not enter a license plate number during the test. He does not believe that the customer provided DMV paperwork because the license plate number would have been displayed on the DMV paperwork.

80. Sujian could not recall specifically what happened during the inspection. He testified that typically when he scans the VIN into the system from a vehicle, the VID will alert him to mismatched information pertaining to the VIN or license plate number for the vehicle in the VID. However, if the vehicle is from out of state, the VID would not have information pertaining to the vehicle. Sujian could not recall whether he was alerted that there was no match in the VID for the vehicle.

81. Sujian concluded based on his prior experience that the vehicle transmitted the incorrect data because either the door of the vehicle or the vehicle's computer was replaced. Some vehicles have the barcode for the VIN on the door. If the door was replaced but the VIN on the door was not replaced, a vehicle scan would pick up the VIN from the vehicle the door came from. Sujian researched but was unable to determine whether a door from a Honda Accord EX would fit another Honda Accord EX. If the vehicle's computer was replaced with a computer from a different vehicle, it would have been programmed with a different VIN number that may not have been reprogrammed to reflect the current vehicle's VIN. He explained that these two scenarios could explain why a vehicle scan could result in incorrect data being transmitted during the testing.

82. Sujian testified that he has discovered that a door has been replaced on a vehicle 10 to 20 times while conducting smog inspections. He made these discoveries after the VID informed him that the license plate number and/or the VIN did not match for each vehicle. He investigated further by comparing the VIN on the door to the DMV paperwork or to the VIN numbers on the dashboard below the windshield if they were not obstructed. He testified that most vehicles have the VIN on both the door or door jamb and the dashboard; and that VIN numbers on the dashboard are more accurate than the VIN on the door. He testified that 99 percent of the time the VIN numbers on the dashboard have not been replaced. Therefore, if there is a discrepancy between the VIN on the door and the VIN on the dashboard, the technician would use and manually enter the VIN on the dashboard. He testified that if there is no match in the VID for the vehicle because it is from out of state, he would not be informed of a mismatch in the information and would not have thought to check the VIN on the dashboard.

83. Sujian does not feel that he performed a fraudulent smog inspection involving clean plugging.

84. Sujian submitted one character letter on his behalf.

85. Don Saechang, served in the Marine Corps with Sujian in 1995, and has been close friends with him for over 28 years. Saechang wrote a letter dated December 7, 2023, stating that Sujian is a model technician that respects the process, a family man, a Veteran, a respectable and productive member of society and "someone [he trusts] will do the right thing all the time when no one is looking."

86. Sujian's testimony was credible.

Respondents' Contentions

87. At hearing, counsel for Sujian Saechao requested dismissal of the causes of discipline against him based on a bona fide error. He contends that it is more likely that the door on the vehicle tested on July 31, 2021, was replaced than that there were two vehicles of the same make, model, and year in the bay at 4 Less Smog Check at the time of testing. He argues that because the vehicle Sujian tested was an out of state vehicle (with no DMV paperwork related to it provided to him) there was no record of it in the VID at the time of the initial inspection. Therefore, when he scanned the door of the vehicle, the VID did not inform him that there was a mismatch in the system; and he did not feel prompted to check the VIN on the door against the VIN on the dashboard. He further argues that there is no testing requirement that the technician check the bar code VIN on the door against the VIN number on the dashboard. This argument is rejected for two reasons. First, it is speculative and lacks appropriate evidentiary support. Second, even if the door were replaced on the vehicle, the Smog Check Manual requires that for all inspections inspectors must verify that all vehicle information is complete and correct, and Sujian failed to ensure that he was testing the proper vehicle.

88. Respondents' counsel argues that the costs set forth from the Department of Justice are excessive. This argument is rejected. Respondents uploaded new evidence supporting their defenses in this matter to Case Center immediately before and during the hearing in this matter which negated the allegations of intentional fraud and required additional work on the part of the prosecution in the presentation of its case.

89. Any other arguments put forth by respondents that are not specifically addressed, have been considered and are rejected as they lacked appropriate evidentiary and/or legal support.

Ultimate Findings

90. In six inspections identified by complainant, the vehicle purportedly tested was not the vehicle actually connected to the Bureau's database by means of a DAD. The vehicles were clean plugged. However, counsel for complainant conceded that the conduct was not intentionally fraudulent.

91. Chanchoy's and Sujian's denials of intentional fraudulent clean plugging were credible. In at least several of the instances of clean plugging, the vehicle actually tested was registered to the same owner as the vehicle purportedly tested. In Clean Plug Nos. 1, 2, 4, 5, and 6, Chanchoy scanned the registration paperwork provided by the customer, but failed to confirm that the information matched the actual vehicle he was inspecting. In performing these five inspections, he did not act with reasonable care. Sujian also failed to exercise reasonable care by ensuring that he was testing the correct vehicle. However, he has been performing smog inspections for more than 22 years and is only responsible for one clean plug.

92. Respondents Chanchoy, Sujian, and 4 Less Smog Check, through these two employees, issued six false certificates of compliance that contained untrue or misleading statements. With the exercise of reasonable care, respondents would have known the vehicles purportedly being tested were not the vehicles actually connected to the Bureau's database. The issuance of six false certificates of compliance was not a bona fide error and caused reduced protection to the citizens of California by the smog test program.

Costs

93. Complainant seeks a total of \$30,339.80 in investigation and prosecution costs. The Department of Justice submitted a declaration dated December 11, 2023, establishing that it had billed the Bureau \$12,498.75 for legal services provided through that date. Attached to the declaration is a spreadsheet detailing the tasks performed by the Department of Justice. On the third day of hearing in this matter, the Department of Justice submitted an updated declaration dated May 7, 2024, establishing that it had billed the Bureau a total of \$22,508.75 for legal services provided through that date. Attached to the updated declaration is a spreadsheet detailing the tasks performed by the Department of Justice. Complainant also submitted a declaration signed by Peach certifying investigation costs listed in an attached spreadsheet in the total amount of \$7,831.05. The declarations comply with the requirements of California Code of Regulations, title 1, section 1042. These costs are found to be reasonable. The total amount of reasonable investigation and enforcement costs is \$30,339.80.

LEGAL CONCLUSIONS

Standard of Proof

1. Complainant bears the burden of proof in this proceeding, and the standard of proof is a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.) If a respondent contends mitigation or rehabilitation, it is his burden to prove those contentions by a preponderance of the evidence. (*Whetstone v. Board of Dental Examiners of Cal.* (1927) 87 Cal. App. 156, 164; Evid. Code, § 115.)

Employer Liability

2. Business and Professions Code section 9884.7, subdivisions (a)(1) and (6), expressly authorizes the Bureau to discipline an automotive repair dealer registration if the holder's technician or employee makes an untrue or misleading statement or fails in any material respect to comply with the Automotive Repair chapter of the Business and Professions Code (Chapter 20.3, § 9880, et seq. [All further statutory references are to the Business and Professions Code unless otherwise stated.]).

First Cause for Discipline against 4 Less Smog Check, Chanchoy, and Sujian (Improper Emission Control Systems Inspection)

3. The Bureau is authorized to discipline the automotive repair dealer registration, smog check, test only, station license, smog check inspector license, or smog check repair technician license, of a licensee who violates statutes and regulations or sections of the Motor Vehicle Inspection Program and applicable regulations. (§ 9884.7, subd. (a)(6); Health & Saf. Code, § 44072.2 subd. (a).) The five clean plugging smog inspections performed by Chanchoy, the one clean plugging smog inspection performed by Sujian, and the issuance of six false inspection reports of compliance failed to comply with the smog test procedures prescribed by the Department and set forth in the Smog Check Manual. Both technicians, and 4 Less Smog Check, through these employees, failed to verify that they were testing the proper vehicle which involved violations of numerous statutes and regulations, including: a) Health and Safety Code section 44012 (failure to perform smog tests in accordance with Department procedures); b) Health and Safety Code section 44032 (failure to perform emission control tests in accordance with specified procedures); c) California Code of Regulations, title 16, section 3340.30, subdivision (a) (failure to test vehicles in accordance with sections 44012 and 44032 of the Health and Safety Code

and California Code of Regulations, title 16, section 3340.42, subd. (b)(2)) (failure to perform proper visual and functional inspection of emission control components and systems); and d) California Code of Regulations, title 16, section 3340.45 (failure to perform smog tests in accordance with Department procedures and Smog Check Manual). Cause for discipline of Chanchoy's smog check inspector license, Sujian's smog check inspector and smog check repair technician licenses, and 4 Less Smog Check's automotive repair dealer registration and smog check, test only, station license exists under section 9884.7, subdivision (a)(6), and Health and Safety Code section 44072.2, subdivision (a), in light of the matters set forth in Factual Findings 90 through 92.

Second Cause for Discipline against 4 Less Smog Check, Chanchoy, and Sujian (Failure to Perform a Visual and/or Functional Check of Emission Control Devices)

4. The Bureau is authorized to discipline the registration and licenses of a licensee who fails to conduct a visual or functional check of emission control devices in accordance with procedures prescribed by the Department. (Bus. & Prof. Code section 9884.7, subd. (a)(6); Health & Saf. Code, § 44072.2 subd. (a).) Chanchoy, Sujian, and 4 Less Smog Check, through these employees, failed to comply with the smog test procedures prescribed by the Bureau and set forth in the Smog Check Manual by performing smog tests and issuing false certificates of compliance when they failed to verify that they were testing the proper vehicles which involved violations of numerous statutes and regulations, including: a) Health and Safety Code section 44012, subdivision (f) (failure to perform visual and functional check of emission control devices in accordance with Department procedures); b) 44032 (failure to perform emission control tests in accordance with specified procedures); c) California Code of

Regulations, title 16, section 3340.30, subdivision (a) (failure to test vehicles in accordance with sections 44012 and 44032 of the Health and Safety Code) and (d) California Code of Regulations, title 16, section 3340.42, subd. (b)(2) (failure to perform visual and/or functional inspection of emission control components and systems). Cause for discipline of Chanchoy's smog check inspector license, Sujian's smog check inspector and smog check repair technician licenses, and 4 Less Smog Check's automotive repair dealer registration and smog check, test only, station license exists under Health and Safety Code section 44072.2, subdivision (a) and section 9884.7, subdivision (a)(6), in light of the matters set forth in Factual Findings 90 through 92.

Third Cause for Discipline against Respondent 4 Less Smog Check (Issuance of a Certificate of Compliance for Vehicle Not Properly Tested)

5. The Bureau is authorized to discipline the automotive repair dealer registration and the smog check, test only, station license of a licensee who violates statutes and regulations or sections of the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000 et seq.) and applicable regulations. (§ 9884.7, subd. (a)(6); Health & Saf. Code, § 44072.2, subd. (a).) Respondent 4 Less Smog Check, through Chanchoy and Sujian, conducted smog tests and issued six certificates of compliance to owners or operators of vehicles without verifying that they were testing the proper vehicles, thus failing to comply with the procedures specified in California Code of Regulations, title 16, section 3340.42. Cause for discipline of respondent's automotive repair dealer registration and smog check station license exists under section 9884.7, subdivision (a)(6), Health and Safety Code section 44072.2, subdivision (a), and California Code Regulations., title 16, section 3340.42, subd. (c) (issuance of false smog certificates of compliance), in light of the matters set forth in Factual Findings 90 through 92.

Fourth Cause for Discipline against Respondent 4 Less Smog Check (Untrue or Misleading Statements)

6. The Bureau is authorized to discipline the automotive repair dealer registration and smog check, test only, station license of a licensee that makes an untrue or misleading statement "which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading," where the automotive repair dealer cannot show there was a bona fide error. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) A bona fide error cannot be claimed unless one acted with reasonable care. (See Civ. Code, §§ 1812.637, subd. (a), 2987, subd. (d)(3)(D).) Through its employees, Chanchoy and Sujian, 4 Less Smog Check falsely certified that six vehicles had passed proper smog inspections, when different vehicles were actually inspected. (Factual Findings 90 through 92.) Chanchoy and Sujian did not act with reasonable care and therefore there was no bona fide error. Cause exists to discipline 4 Less Smog Check's automotive repair dealer registration and smog check, test only, station license under section 9884.7, subdivision (a)(1), Health and Safety Code sections 44012, subdivision (f), 44032, and 44072.2, subdivision (a), in light of the matters set forth in Factual Findings 90 through 92.

Fifth Cause for Discipline against 4 Less Smog Check (False or Misleading Records)

7. The Bureau is authorized to discipline the automotive repair dealer registration and the smog check, test only, station license of a licensee who violates statutes and regulations or sections of the Motor Vehicle Inspection Program and applicable regulations. (§ 9884.7, subd. (a)(6); Health & Saf. Code, § 44072.2, subd. (a).) Through its employees, Chanchoy and Sujian, 4 Less Smog Check issued smog

certificates of compliance for six vehicles not properly tested, which caused the documents to be false or misleading. (Factual Findings 90 through 92). Cause for discipline of 4 Less Smog Check's automotive repair dealer registration and smog check, test only, station license exists under section 9884.7, subdivision (a)(6), Health and Safety Code section 44072.2, subdivision (a), and California Code of Regulations, title 16, section 3373 (issuing false or misleading statements on records when it issued certificates of compliance to six vehicles not properly tested) in light of the matters set forth in Factual Findings 90 through 92.

Sixth Alleged Cause for Discipline against 4 Less Smog Check, Chanchoy, and Sujian (Conduct Constituting Fraud)

8. The Bureau is authorized to discipline the registration and licenses of a licensee that commits an act that constitutes dishonesty, fraud or deceit, whereby another was injured. ((§ 9884.7, subd. (a)(4); Health & Saf. Code, § 44072.2, subd. (d)¹.) Complainant's counsel conceded that there was insufficient evidence of fraud in this matter. Respondents' issuance of the false certificates of compliance was not fraudulent. (Factual Findings 90 through 92.) Cause does not exist to discipline Chanchoy's smog check inspector license, Sujian's smog check inspector license and smog check repair technician license, and 4 Less Smog Check's license and registration under Business and Professions Code section 9884.7, subd. (a)(4) and Health and Safety Code section 44072.2, subdivision (d).

¹ The accusation incorrectly cites subdivision (f).

Seventh Cause for Discipline against 4 Less Smog Check, Chanchoy, and Sujian (False Statement or Entry on Certificate of Compliance)

9. The Bureau is authorized to discipline the registration and licenses of a licensee who violates statutes and regulations or sections of the Motor Vehicle Inspection Program and applicable regulations. (§ 9884.7, subd. (a)(6); Health & Saf. Code, § 44072.2, subd. (a).) Chanchoy, Sujian, and 4 Less Smog Check, through these employees, made false statements or entries on certificates of compliance for six vehicles not properly tested. Cause exists to discipline Chanchoy's smog check inspector license, Sujian's smog check inspector and smog check repair technician licenses, and 4 Less Smog Check's automotive repair dealer registration and smog check, test only, station license under section 9884.7, subdivision (a)(6), Health and Safety Code sections 44015, subdivision (b) (issuing certificates of compliance without performing visual and functional check of emission control devices in accordance with Department procedures), and 44072.2 subdivision (a)² in light of the matters set forth in Factual Findings 90 through 92. Cause for discipline does not exist under section 9889.22 (perjury), 44059 (willfully making a false statement with regard to a material matter in certificate of compliance, perjury), Vehicle Code sections 20 (knowingly making false statement in document filed with DMV), 4463, subdivision (a)(1) (falsifying a certificate with the intent to prejudice, damage, or defraud), and 4463, subdivision (a)(2) (passing or attempting to pass as true a false certificate knowing it to be false).

² The accusation also incorrectly cites subdivision (f).

Eighth Cause for Discipline against 4 Less Smog Check, Chanchoy, and Sujian (Entering False Information into Emissions Inspection System)

10. The Bureau is authorized to discipline the registration and licenses of a licensee who violates statutes and regulations or sections of the Motor Vehicle Inspection Program and applicable regulations. (§ 9884.7, subd. (a)(6); Health & Saf. Code, § 44072.2, subd. (a).) Chanchoy, Sujian, and 4 Less Smog Check, through these employees, entered information and data into the emissions inspection system for a vehicle other than the one being tested (Cal. Code Regs., tit. 16, § 3340.41, subd. (c)). Cause exists to discipline Chanchoy's smog check inspector license, Sujian's smog check inspector and smog check repair technician licenses, and 4 Less Smog Check's automotive repair dealer registration and smog check, test only, station license under these sections and regulations in light of the matters set forth in Factual Findings 90 through 92. Cause for discipline does not exist under Health and Safety Code section 44059 (perjury).

Other Matters

11. Section 9884.7, subdivision (c), provides that the Bureau may suspend, revoke, or place on probation the registration for all places of business operated in this state by respondent SLK International Enterprises, LLC, doing business as 4 Less Smog Check, upon a finding that respondent has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer. Such a course of repeated and willful violations has been established, in light of the matters set forth in Factual Findings 90 through 92, and Legal Conclusions 1 through 7, and 9 and 10.

12. Health and Safety Code section 44072.8 provides that if the Bureau revokes a license, any additional license issued under chapter 5 of part 5 of division 26 of the Health and Safety Code in the name of that licensee may also be revoked.

Determination of Discipline

13. In exercising its licensing and disciplinary functions, the Bureau's highest priority is the protection of the public. (§ 9880.3.) The purpose of license discipline is protection of the public through the prevention of future harm, and the improvement and rehabilitation of the licensee. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.) The Bureau's guidelines for disciplinary penalties (Cal. Code Regs., tit. 16, § 3395.4) have been considered in reaching the determination of the appropriate discipline. For the violations involved here, the guidelines recommend a minimum of license revocation, stayed during a two-to-five-year period of probation. Pursuant to the Guidelines, an aggravating factor to be considered is whether the unlawful act is part of a pattern of practice, as well as whether the respondents have had prior citations and/or office conferences with the Bureau. Mitigating factors to be considered include the absence of prior disciplinary action, evidence of retraining and initiation of steps to minimize recurrence, evidence of substantial measures to correct its business practices and/or business operations so as to minimize the likelihood of recurrence of the violation, and any other factor that would constitute a factor in mitigation.

14. Chanchoy has one prior citation and committed five clean plugs which constitute a pattern of practice. At the same time, Chanchoy's issuance of five certificates of compliance for vehicles not actually tested did not involve fraud and must be viewed in the context of the numerous smog inspections performed by him each year. Also in mitigation, Chanchoy demonstrated insight and remorse, credibly

testified that he has slowed down so that mistakes are less likely to occur, and appears unlikely to repeat his errors. As to Chanchoy's smog check inspector license, the public will be adequately protected by revocation, stayed, with a three-year period of probation, including all standard terms and completion of a training course. Pursuant to Health and Safety Code section 44072.8, this discipline will also apply to any additional license issued under chapter 5 of part 5 of division 26 of the Health and Safety Code to Chanchoy.

15. As for Sujian, he has handled thousands of smog inspections over the last twenty plus years and has been involved in only one unintentional clean plug. The absence of prior license discipline (other than one possible citation that occurred approximately 20 years ago that Sujian self-reported at hearing) is also a factor in mitigation in favor of Sujian. As to Sujian's smog check inspector license and smog check repair license, the public will be adequately protected by a public reproof.

16. 4 Less Smog Check has been licensed as a smog check station and has held an ARD registration since 2015. The station has had one prior office conference in 2018, and received two prior citations, one in 2018 and one in 2019. The six instances of clean plugging at 4 Less Smog Check constitute a pattern of practice. However, 4 Less Smog Check was unaware of the misconduct at the station. In addition, 4 Less Smog Check has spoken to the technicians involved and instituted a new audit policy and installed video surveillance of the station to prevent misconduct. 4 Less Smog Check appears to be a highly rated smog station by customers. Lam has accepted responsibility for the conduct at the station, and he is now more personally involved in the operation of the station. Furthermore, Lam's colleague finds him to be law abiding and highly respected, and church associates of Lee consider him to be honest and law abiding. Almost two and a half years have elapsed since the clean plugging instances.

Upon consideration of the record as a whole, it is determined that revoking 4 Less Smog Check's license and registration, but staying the revocations, and allowing it to keep its license and registration on a probationary basis for three years with appropriate conditions, will adequately protect the public and impress upon 4 Less Smog Check the importance of exercising supervision over its employees and the shop.

Costs

17. Pursuant to section 125.3, a complainant may request an administrative law judge to order a licensee found to have violated the licensing act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. Complainant proved reasonable costs of investigation and enforcement in the amount of \$30,339.80. (Factual Finding 93.)

18. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether costs should be assessed in the particular circumstances of each case. The Bureau must consider whether to do so will unfairly penalize the licensee who has committed misconduct, but who has used the hearing process to obtain a dismissal or a reduction in the severity of the discipline imposed, as well as whether the licensee will be financially able to pay the full costs of investigation and prosecution when the Bureau has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.* at pp. 44–45.) Here, respondents used the hearing process to prove no intent to deceive and obtain a reduction in the potential discipline imposed. Accordingly, the cost order will be reduced to \$20,000.

ORDER

SLK International Enterprises, LLC, dba 4 Less Smog Check; Ryan Lam, Member; Patrick Lee, Member; and Carol Leung, Member

Automotive Repair Dealer Registration Number ARD 281662, and Smog Check, Test Only, Station License Number TC 281662, issued to SLK International Enterprises, LLC, doing business as 4 Less Smog Check, are revoked. However, the revocations are stayed, and 4 Less Smog Check is placed on probation for three years on the following terms and conditions.

1. Obey All Laws

During the period of probation, SLK International Enterprises, LLC, shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by SLK International Enterprises, LLC.

2. Quarterly Reporting

During the period of probation, SLK International Enterprises, LLC, shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. Report Financial Interests

SLK International Enterprises, LLC, shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by BAR during the period

of probation, report any financial interest which it may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

4. Access to Examine Vehicles and Records

SLK International Enterprises, LLC, shall provide BAR representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. SLK International Enterprises, LLC, shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

5. Tolling of Probation

If, during probation, SLK International Enterprises, LLC, leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, it shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California. All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which SLK International Enterprises, LLC, is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of 30 days or more in which SLK International Enterprises, LLC, is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

6. Violation of Probation

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

7. Maintain Valid License

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

8. Cost Recovery

SLK International Enterprises, LLC, shall pay the BAR \$20,000 for the reasonable costs of the investigation and enforcement of this case. The obligation to pay costs is joint and several with respondents Chanchoy Saechao and Sujian Saechao. Any agreement for a payment plan shall require full payment to be completed no later than six months before probation terminates. SLK International Enterprises, LLC, shall

make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No. 79/22-1336. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. Completion of Probation

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

10. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if SLK International Enterprises, LLC, ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate SLK International Enterprises, LLC's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision. SLK International Enterprises, LLC, may not petition the Director for reinstatement of the surrendered registration and/or license, or apply for a new registration or license under the jurisdiction of BAR at any time

before the date of the originally scheduled completion of probation. If SLK International Enterprises, LLC, applies to BAR for a registration or license at any time after that date, it must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

11. Supervision Requirements

SLK International Enterprises, LLC, shall not delegate its supervisory duties, as they relate to the business activities relevant to the probationary registration and license, to another person during the period of probation. Any persons employed by SLK International Enterprises, LLC, to carry out such business activities shall be directly supervised by it.

OTHER LICENSES AND AUTOMOTIVE REPAIR REGISTRATIONS ISSUED TO SLK INTERNATIONAL ENTERPRISES, LLC

12. Any other automotive repair registration issued to SLK International Enterprises, LLC, is placed on probation for three years on the same terms and conditions as ARD 281662.

13. Any other license issued under chapter 5, part 5, division 26 of the Health and Safety Code in the name of SLK International Enterprises, LLC, is revoked, the revocation stayed, and the license placed on probation for three years on the same terms and conditions.

Chanchoy Saechao

Smog Check Inspector License No. EO 640718, issued to respondent Chanchoy Saechao (Chanchoy), is revoked. However, the revocation is stayed and Chanchoy is placed on probation for three years on the following terms and conditions:

1. Obey All Laws

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

2. Quarterly Reporting

During the period of probation, Chanchoy shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. Report Financial Interests

Chanchoy shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by BAR during the period of probation, report any financial interest which Chanchoy or any partners, officers, or owners of any Chanchoy facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

4. Access to Examine Vehicles and Records

Chanchoy shall provide BAR representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and

including the point of completion. Chanchoy shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

5. Tolling of Probation

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

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

6. Violation of Probation

If Chanchoy violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once Chanchoy is served notice of BAR's intent to set aside the stay, the

Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

7. Maintain Valid License

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

8. Cost Recovery

Chanchoy shall, jointly and severally with Sujian Saechao, and 4 Less Smog Check, pay the Bureau of Automotive Repair \$20,000 for the reasonable costs of the investigation and enforcement of case No. 79/22-1336.

Any agreement for a scheduled payment plan shall require full payment to be completed no later than six months before probation terminates. Chanchoy shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No. 79/22-1336.

Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has

been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. Completion of probation

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

10. License Surrender

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

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

11. Training Course

During the period of probation, Chanchoy shall attend and successfully complete a BAR specified and approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by the Chanchoy. Chanchoy shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the Decision and Order, and proof of successful course completion within 180 days of the effective date of the Decision and Order.

Failure to provide proof of enrollment and/or successful course completion to the Bureau within the timeframes specified shall constitute a violation of probation, and Chanchoy shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

OTHER LICENSES OF CHANCHOY

Any additional license issued under chapter 5 of part 5 of division 26 of the Health and Safety Code in the name of Chanchoy Saechao, is also revoked, the revocation stayed, and the license placed on probation for three years on the same terms and conditions.

Sujian Saechao

1. Smog Check Inspector License No. EO 142973 and Smog Check Repair Technician License No. EI 142973, issued to Sujian Saechao, are publicly reprovved, pursuant to Business and Professions Code section 495.

2. Sujian Saechao shall, jointly and severally with Chanchoy Saechao and 4 Less Smog Check, pay the Bureau of Automotive Repair \$20,000 for the reasonable costs of the investigation and enforcement of case No. 79/22-1336.

DATE: 06/10/2024

Michelle Dylan

MICHELLE DYLAN

Administrative Law Judge

Office of Administrative Hearing