

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

In the Matter of the Accusation against:

**SIMRANDEEP S. BHULLAR, dba STAR VALLEY SMOG, and
GURPREET SINGH CHAUHAN, Respondents**

AGENCY CASE NO. 79/17-20670

OAH No. 2019020376

PROPOSED DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on May 30 and June 28, 2019, in Fresno, California.

Deputy Attorney General Jeffrey M. Phillips represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs.

James Makasian, Attorney at Law, represented respondents Simrandeep S. Bhullar, owner of, and doing business as, Star Valley Smog (respondent Bhullar), and Gurpreet Singh Chauhan (respondent Chauhan), who were both present.

Evidence was received, argument was heard, the record was closed, and the matter was submitted for decision on June 28, 2019.

FACTUAL FINDINGS

Licensure and Pleadings

1. On April 29, 2015, the Bureau issued Automotive Repair Dealer Registration number ARD 280083 to respondent Bhullar, owner, doing business as Star Valley Smog. The registration's expiration date is April 30, 2020.

2. On June 22, 2015, the Bureau issued Smog Check, Test Only, Station License number TC 280083 to respondent Bhullar. The license's expiration date is April 30, 2020.

3. In 2005, the Bureau issued Advanced Emission Specialist Technician License Number EA 147842 to respondent Chauhan. The advanced emission specialist technician license was cancelled on January 4, 2013. Pursuant to California Code of Regulations, title 16, section ("Regulation") 3340.28, subdivision (e), the license was renewed, pursuant to respondent's election, as Smog Check Inspector License Number EO 147842 and Smog Check Repair Technician License Number EI 147842 ("technician licenses"), effective January 4, 2013.¹ The technician licenses expire on January 31, 2021.

¹ 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)

4. On November 30, 2018, complainant, solely in his official capacity as the Chief of the Bureau, filed the Accusation. The allegations involve three Bureau undercover operations in which respondents allegedly failed to honor discount coupons, but instead charged higher prices for smog check inspection services, thus constituting false advertising and fraud. Respondents timely filed a Notice of Defense, requesting a hearing. All jurisdictional requirements have been met.

The Bureau's Evidence

5. On December 13, 2017, the Bureau received a complaint from consumer Alex Gorbaty alleging that respondents failed to honor the advertised Star Valley Smog coupon price offering a smog check inspection for \$26.75 for "most-cars," plus \$8.25 for the certificate, "valid Mon[day] – Sat[urday]," when he presented his Infiniti G35 automobile to respondents on December 13, 2017. Respondents² charged Mr. Gorbaty \$38 for the smog check, which his car passed.

6. Prior to Mr. Gorbaty's complaint, the Bureau conducted a "Proactive Conference" with respondents on August 24, 2017. Arnold Lee, a Program Representative II, and Derek Bryant, a Program Representative I, conducted the meeting in person with respondent Chauhan, and simultaneously by telephone with respondent Bhullar. The conference was due to a consumer complaint regarding alleged false or misleading statements related to their failure to honor a Star Valley

Technician license to Smog Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

² Mr. Gorbaty could not recall the person he dealt with when he visited Star Valley Smog.

Smog coupon offering a smog check inspection for \$26.75 for most cars, with no stated date of the week in which the coupon was invalid. Respondent Chauhan acknowledged that respondents did not accept the coupons on Sunday, and noted a handwritten sign in the customer waiting area that indicated "We don't accept coupons on Sunday." Mr. Lee advised respondents that because the coupon did not state a Sunday exclusion, it was misleading. Respondents agreed to make a correction to the coupon and, in the meantime, honor any coupons customers presented which did not state a Sunday exclusion.

UNDERCOVER NO. 1:

7. On March 14, 2018, BAR undercover operator [REDACTED] (operator 1) drove a 1996 Toyota Camry to Star Valley Smog and presented it for a smog inspection along with a Star Valley Smog coupon offering a smog check inspection for \$26.75 for "most cars" plus \$8.25 for a smog check certificate. The coupon included small print approximately one-fifth the size of the advertised price, which stated "95 and older add \$10 for Evap test," "Vans, Trucks, and SUVs add \$10," and "Valid Mon[day] – Sat[urday]." Mr. Chauhan quoted a price of \$39 to operator 1, who said it was "up to 2000," without further explanation. After the test, respondent Chauhan informed operator 1 the vehicle failed "because of the readiness monitors" and recommended that the operator drive the vehicle and Mr. Chauhan would re-test it for \$36.75. Operator 1 paid Mr. Chauhan \$39.75 and in return, received copies of: an invoice with a price estimate of \$68; a second invoice with itemized charges of \$39.75 for labor, and \$8.25 for "smog certificate," for a total amount of \$39.75; and a copy of the Vehicle Inspection Report (VIR) for the failed smog test.

8. Operator 1 recalled that Mr. Chauhan provided him with all three documents at once following the smog test. There was no discussion of the \$8.25

smog certificate charge mentioned in the coupon, but operator 1 testified he was not charged the \$8.25 fee.

UNDERCOVER NO. 2:

9. On May 25, 2018, BAR undercover operator [REDACTED] (operator 2) drove a 1996 Toyota Camry to Star Valley Smog and presented it for a smog inspection along with a Star Valley Smog coupon offering a smog check inspection for \$26.75 for "most cars" plus \$8.25 for a smog check certificate. The coupon included small print approximately one-fifth the size of the advertised price, which stated "95 and older add \$10 for Evap test," "Vans, Trucks, and SUVs add \$10," and "Valid Mon[day] – Sat[urday]." Respondent Chauhan told operator 2 the coupon was "only good for 2000 and newer," without further explanation. He provided the operator with an invoice form that was absent an estimated price and instructed him to fill in the form, which the operator did. Respondent Chauhan then smog-tested the vehicle. After the inspection, respondent Chauhan stated the vehicle passed and the cost for the inspection was \$58.

10. Operator 2 paid Mr. Chauhan \$58 and in return, received copies of: an invoice with a price estimate of \$68; a second invoice with itemized charges of \$49.75 for labor, \$8.25 for "smog certificate, a \$10 "ET" (electronic transmission) fee," and a "Discount" of \$10, for a total amount of \$58;³ and a copy of the VIR for the passing smog test.

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³ Respondent Chauhan also wrote "PASS SMOG" on the itemized invoice.

UNDERCOVER NO. 3:

11. On June 19, 2018, BAR undercover operator [REDACTED] (operator 3) drove a 1999 Chrysler Sebring to Star Valley Smog and presented it for a smog inspection along with a Star Valley Smog coupon offering a smog check inspection for \$26.75 for "most cars" plus \$8.25 for a smog check certificate. The coupon included small print approximately one-fifth the size of the advertised price, which stated "95 and older add \$10 for Evap test," "Vans, Trucks, and SUVs add \$10," and "Valid Mon[day] – Sat[urday]." Respondent Chauhan made no comment regarding the coupon operator 3 presented. Respondent Chauhan provided the operator with an invoice form that was absent an estimated price and instructed him to fill in the form, which the operator did. Respondent Chauhan then smog-tested the vehicle. After the inspection, respondent Chauhan stated the vehicle passed and the cost for the inspection was \$48.

12. Operator 3 paid Mr. Chauhan \$48 and in return, received copies of: an invoice with a price estimate of \$68; a second invoice with itemized charges of \$49.75 for labor, \$8.25 for "smog certificate, a \$10 "ET" (electronic transmission) fee," and a "Discount" of \$20, for a total amount of \$48;⁴ a copy of the VIR for the passing smog test; and a Star Valley Smog business card.

ADDITIONAL BUREAU EVIDENCE

13. Mr. Lee has been employed with the BAR for approximately 20 years and previously worked as a smog check referee for the BAR. He also was a certified smog check instructor for over 10 years. Mr. Lee is licensed by the BAR as a smog check

⁴ Respondent Chauhan also wrote "PASS" on the itemized invoice.

inspector and repair technician. He testified that during the Proactive Conference he conducted with respondents in August 2017, he advised them that the law required them to disclose on Star Valley Smog coupons any disclaimers or limitations or specific terms that would affect the customers' ability to redeem the coupon at the stated price. Both respondents agreed to follow this requirement in their coupon advertisements. Mr. Lee also pointed out that because their coupons bore no expiration date, a customer could present such a coupon at any time in the future, so it was advisable to exhibit an expiration date on coupons. Respondents agreed to honor any of their coupons that had no expiration dates.

14. Mr. Lee noted that the ET fee was for electronic transmission of data from the smog shop to the Department of Motor Vehicles (DMV), and that such fees are commonly charged, despite the fact that such transmission is an automatic step in the smog test protocol and costs the smog shop nothing. For this reason, BAR regulations do not allow for such fees.⁵ Regarding respondents' use of invoices prior to a smog check, the law requires a smog testing facility to provide a written cost estimate prior to performing the work. Providing a customer an estimate form in which the dollar estimate is left blank is insufficient.

Respondents' Evidence

15. Respondent Chauhan worked as a smog technician at another shop from 2005 until 2016. He has worked at Star Valley Smog since 2016 and acts as its

⁵ The Accusation did not allege respondents charged such fees improperly. The fees were only noted as part of the higher total costs respondents charged during the undercover operations.

manager. He initiated Star Valley Smog's use of coupons by accessing coupon-design-and-creation services offered by the technology company Google. Respondent Chauhan supplied the information to Google, after which it came up with a coupon format for respondent Chauhan's approval. The process took approximately two months to complete for each coupon. Respondent Chauhan claimed Google "made a mistake" by referencing "95 and older add \$10 for Evap test," when the information he provided to Google stated "99 and older add \$10 for Evap test." Respondent Chauhan estimated that less than five percent of Star Valley Smog's business involves coupons.

16. Respondent Chauhan recalled discussing the issue of coupons not being honored on Sundays when he met with BAR representatives at the Proactive Conference in August 2017. He put a temporary sign in the customer waiting room stating that coupons were not honored on Sundays to alert customers of this fact, and called Google to correct the coupon regarding Sundays the day after the Proactive Conference. He did not recall going over various regulations and code sections with Mr. Lee during the meeting.

17. Respondent Chauhan recalled performing the smog test for Mr. Gorbaty, but claimed Mr. Gorbaty gave him a coupon for a \$29.75 smog test, plus \$8.25 for a certificate. His practice is to always give customers a work order before the smog inspection. Regarding Undercover No. 1, he charged \$39.75 for the smog test because the (1996) car was older than a 2000 vehicle, and 1999 and older cars must be administered a different test. Regarding Undercover No. 2, respondent Chauhan disagreed with undercover operator 2's testimony that respondent Chauhan did not provide the operator with a written estimate prior to performing the test, and claimed it was his practice to give such written estimates. He did not honor the \$26.75 coupon price, but instead charged \$58 because a 1999-and-older vehicle costs more to test.

Regarding Undercover No. 3, respondent Chauhan gave the undercover operator a 20 percent discount for reasons he could not articulate. He claimed he gave the operator a written estimate for \$68 prior to doing the test, because \$68 "is my regular price." He added that a \$20 discount is the "regular customer discount" Star Valley Smog provides customers without coupons.

18. Another smog technician employed by Star Valley Smog, James,⁶ provided some of the information respondent Chauhan gave Google for its coupon creation. Respondent Chauhan believed he provided the required paperwork during the three undercover operations, but said two other Star Valley Smog technicians, including James, may have done so. Respondent Chauhan also could not recall which actual coupons the shop received during the undercover operations, or when Mr. Gorbaty came in for a smog test. Regular discounting, absent a coupon, could vary depending on the customer, and whether a customer was a "friend." Some regular customers received special discounts, which can be \$5, \$10, \$15, or \$20 off the regular price, depending on the customer. Undercover operator 2 received a \$10 discount as a new customer to "make the customer happy." Mr. Gorbaty did not receive a new-customer discount because his 1999-or-older car required a higher-priced test. The regular price for the vehicles presented in Undercovers 1 and 2 was \$49.75, because they were older cars. Respondent Chauhan said Star Valley Smog did not actually charge a \$10 ET (electronic transmission) fee to customers, but because he "used to charge it, I put it in."

19. Respondent Bhullar acts as Star Valley Smog's owner. He is not a smog technician, and was not present when Mr. Gorbaty or any of the undercover operators

⁶ James's last name was not introduced into the record.

visited Star Valley Smog. He participated by phone in the BAR's Proactive Conference, and apologized to Mr. Lee for not taking coupons on Sundays, agreeing to honor such coupons. He disputed other parts of Mr. Lee's account of the conference, and claimed Mr. Lee did not discuss further particulars regarding advertising laws and regulations, font size of disclaimers on coupons, and so on. Respondent Bhullar did not recall being asked about Star Valley Smog's alleged "bait and switch" tactics involving not honoring coupons, but did invite the BAR to call him if any future problems arose.

Discussion

20. The sum of the evidence established that Star Valley Smog issued coupons which were misleading to customers, and either provided no explanation to customers for deviating from the prices offered on the coupons, or failed to honor the prices offered for reasons not stated in the coupons' disclaimers. The resulting overcharges were relatively small, but they were consistently present in each of the four instances in which coupons were presented. Respondent Chauhan's explanations of various charges, caveats, signs in the customer waiting area, discretionary discount practices, and Google coupon-creation errors were jumbled and indicated a scattershot approach to pricing; ultimately, his descriptions were not persuasive. The one thing his befuddling rationales did plainly indicate was that a coupon-bearing customer seeking a smog test at Star Valley Smog would face a confusing, convoluted pricing process that was costlier than advertised in the simple language presented on each coupon. The cost-estimating process was similarly vague, as two of the undercover operators received invoices absent any cost-estimates prior to their smog tests. Respondent Chauhan's claim that he always provides a prior cost estimate was not supported by the evidence, and thus, was not persuasive. This failure to clarify the cost of each test up front only served to enhance customer confusion.

21. Respondent Bhullar presented as an absentee owner, having entrusted the operation of Star Valley Smog, including the development of coupons, to respondent Chauhan. Respondent Bhullar's appearance by telephone during the Proactive Conference illustrates his arms-length involvement in the business. Although his testimony was sincere, it was not surprising that respondent Bhullar was unaware of several of the topics and issues Mr. Lee covered during the meeting.

22. The BAR has promulgated Guidelines for Disciplinary Orders and Terms of Probation (Guidelines) for the purpose of determining appropriate discipline. Factors in Aggravation to consider include:

1. Prior warnings from BAR.
2. Prior Office Conference(s) with BAR.
3. Prior history of citations.
4. Prior history of formal disciplinary action.
5. Failure to permit BAR inspection of records.
6. Evidence of abuse of mechanic's lien.
7. Evidence of attempts to intimidate consumer.
8. Evidence of negligent or willful improper repair work that endangers consumers.
9. Evidence that the unlawful act was part of a pattern of practice.

10. Failure to comply with BAR request for corrective action/retraining.

11. Currently on probation for improper acts.

12. Failure to successfully complete prior probation.

13. Failure to pay court judgment to victim.

14. Violation of previous court order.

15. Evidence of any other conduct which constitutes fraud or gross negligence.

Here, only aggravating factors 2 (prior office conference with BAR), 9 (pattern of unlawful practice), and 15 (conduct constituting fraud) apply to respondents.

Respondents' misconduct followed a BAR conference, and because it occurred over the course of three BAR undercover operations, a pattern of practice was established.

Some of the conduct also constituted fraud.

23. The Guidelines list the following Factors in Mitigation to consider:

1. Evidence that respondent implemented BAR's suggested resolution to a consumer complaint.

2. Evidence of restitution to the consumer and/or correct repair of the consumer's vehicle.

3. Evidence of voluntary participation in retraining for self or employees.

4. Evidence of voluntary purchase of proper diagnostic equipment and manuals.
5. Evidence of a medical condition that temporarily prevented respondent from exercising supervision and control over employees or others at the time of the violation.
6. Absence of prior disciplinary action.
7. Evidence that the violation was not part of a pattern or practice.
8. Evidence of no loss to consumer and no damage to consumer's property. (Undercover vehicles are viewed the same as consumer property.)
9. Evidence of retraining and has initiated steps to minimize recurrence.
10. Evidence of resolution of all consumer complaints with a subsequent change in business practice.
11. Evidence of substantial measures to correct its business practices and/or business operations so as to minimize the likelihood of recurrence of the violation.
12. Evidence of any other conduct which would constitute a factor in mitigation.

The only mitigating factor that directly applies to respondents is factor 6, as neither respondent has any prior disciplinary history. Factor 7 may also apply because neither of respondents presented as disrespectful of, or indifferent to, the BAR's authority. As such, both appeared capable of rehabilitation.

24. Respondent Bhullar's misconduct indicated a lack of fundamental oversight, as he was utterly unaware of and uninvolved in, the coupon pricing and practices of his own business. Most of the causes for discipline in the Accusation are attributed to respondent Chauhan's actions, but allege respondent Bhullar's license is subject to discipline. This is correct. The doctrine of *respondet superior* has long held employers responsible for the acts of their employees. If a licensee elects to operate his business through employees, the licensee must be responsible to the licensing authority for the employees' conduct in the exercise of the license. (*Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 144.) By virtue of ownership of a license, the owner has a responsibility to see to it that the license is not used in violation of the law. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360.) A licensee can be held responsible for his or her employees' actions even though the licensee has not participated in the wrongful actions and has no knowledge of them. A non-negligent, licensed employer may be subject to discipline by the licensing agency when his or her employees perform a licensed activity negligently or in violation of statutes. The employer licensee's liability for the conduct of an employee acting under the employer's license is based on the theory that the employer licensee has a non-delegable duty of compliance. (*Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 799.) The rule of imputed knowledge arose to prevent licensees from staying away from the premises to avoid responsibility for wrongful acts occurring on the premises. The rule also exists to encourage licensees to monitor their

employees. (*Santa Ana Food Market v. Alcoholic Beverage Control Bd.* (1999) 76 Cal.App.4th 570, 575-76.)

25. Undercover operatives posing as customers were twice not provided written estimates of inspections to be completed. Respondent Chauhan's failure to honor coupon pricing on four occasions based on vague, convoluted pricing and discounting practices he could not explain with any clarity established a pattern of misconduct which, under all the circumstances, indicated a lack of fair dealing and even fraud. Such misconduct was serious, despite the relatively small sums of money involved. Respondent Bhullar's lack of awareness does nothing to mitigate the potential harm to the public of the violations committed. His unwitting manner of doing business suggests he cannot be readily rehabilitated without substantial prophylactic measures in place.

26. Of the allegations complainant proved at hearing, several were serious, involving an element of fraud, while two were less serious, involving failures to provide a written cost estimate. Four advertising violations were technical: the disclaimers on the coupons appeared in font sizes that were too small. The sum-total of violations suggest that public protection can be achieved if respondents' licenses are placed on a two-year term of probation. A 10-day suspension of respondent's licenses, as set forth below, will further protect the public by giving respondents time to comply with certain important terms and conditions of probation, and the Bureau time to verify and ensure respondents' compliance.

Costs

27. The Bureau incurred enforcement costs, in the form of Attorney General fees, in the amount of \$8,422. The Attorney General's Matter Time Activity report,

which details these costs in increments of one-quarter hour and describes each corresponding task performed, reflects in adequate detail the billable time spent and tasks performed in enforcement of this matter. Considering the scope of the BAR's case and the allegations set forth, these costs are reasonable.

28. The Bureau further incurred its own costs for investigation in the amount of \$14,047. These costs were supported by a one-page declaration from Mr. Lee, with an attached Case Hours and Costs spreadsheet in which he described the time spent on specific activities and associated costs incurred. Among those costs, Mr. Lee attributed 81 hours to report-writing, at a rate of \$82.15 per hour for a total cost of \$6,654. Considering that Mr. Lee produced a 12-page investigation report and a 3-page Proactive Conference report for this case, these costs are high. A more reasonable cost attributable to report-writing of this extent is three hours per page, or 45 hours, for a total of \$3,696. Taking into account the size and scope of the investigation, which involved respondents' violations in relation to three undercover operations, all other costs Mr. Lee noted were reasonably incurred.

LEGAL CONCLUSIONS

Statutory Authority

1. Health and Safety Code section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

2. Health and Safety Code section 44072.8 provides that 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.

3. Business and Professions Code section 9889.1 provides, in pertinent part, that the Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the Automotive Repair Act. Concerning automotive repair dealers, Business and Professions Code section 9884.7 states, in relevant part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, 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.

[¶] . . . [¶]

(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.

[¶] . . . [¶]

4. Business and Professions Code section 9884.9, subdivision (a), states, in relevant part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job, except as provided in subdivision (e). No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price, or the posted price specified in subdivision (e), without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated or posted price is insufficient and before the work not estimated or posted is done or the parts not estimated or posted are supplied

5. Title 16, California Code of Regulations, section 3372.1 states, in relevant part:

An automotive repair dealer shall not advertise automotive service at a price which is misleading. Price advertising is misleading in circumstances which include but are not limited to the following:

[¶] . . . [¶]

(d) The automotive repair dealer knows or should know that the advertised service cannot usually be performed in a good and workmanlike manner without additional parts,

services or labor; provided, however, that an advertisement which clearly and conspicuously discloses that additional labor, parts or services are often needed will, to that extent, not be regarded as misleading. Any such disclosure statement shall indicate that many instances of performance of the service involve extra cost and, if the automotive dealer reasonably expects that the extra cost will be more than 25% of the advertised costs, that the extra cost may be substantial. The type size of the disclosure statement shall be at least 1/2 the type size used in the advertised price and the statement shall either be shown near the price or shall be prominently footnoted through use of an asterisk or similar reference.

Undercover No. 1

6. Cause exists to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Business and Professions Code (Code) section 9884.7, subdivision (a)(6), due to his failure to comply with Title 16, California Code of Regulations (Regulation), section 3372.1, for advertising a smog check inspection at a price which was misleading, because respondent Chauhan failed to honor the coupon at the advertised price, as set forth in Findings 7 and 8.

7. Cause does not exist to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Code section 9884.7, subdivision (a)(4), due to his alleged act of obtaining payment for a smog check certificate when the vehicle failed the smog check inspection. As set forth in Findings 7 and 8, the evidence did not establish that respondents collected such a fee.

8. Cause exists to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Code 9884.7, subdivision (a)(6), due to his failure to comply with Code section 9884.9, subdivision (a), by respondent Chauhan's failure to provide undercover operator 1 with a written estimate before the smog inspection, as set forth in Findings 7 and 8.

9. Cause exists to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Code section 9884.7, subdivision (a)(6), due to his failure to comply with Regulation section 3372.1, subdivision (d), by failing to ensure the coupon's disclosure statements were at least one-half the type size used in the advertised price.

10. Cause exists to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Health and Safety Code section 44072.2, subdivision (d), in that respondent Chauhan committed dishonest, fraudulent, or deceitful acts in failing to honor the coupon as set forth in Findings 7 and 8.

11. Cause exists to discipline the smog inspector and repair technician's licenses issued to respondent Chauhan pursuant to Health and Safety Code section 44072.2, subdivision (d), in that respondent Chauhan committed dishonest, fraudulent, or deceitful acts in failing to honor the coupon as set forth in Findings 7 and 8.

Undercover No. 2

12. Cause exists to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Code section 9884.7, subdivision (a)(6), due to his failure to comply with Regulation section 3372.1, for advertising a smog check inspection at a price which was misleading, because respondent Chauhan failed to honor the coupon at the advertised price, as set forth in Findings 9 and 10.

13. Cause exists to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Code 9884.7, subdivision (a)(6), due to his failure to comply with Code section 9884.9, subdivision (a), by respondent Chauhan's failure to provide undercover operator 2 with a written estimate before the smog inspection, as set forth in Findings 9 and 10.

14. Cause exists to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Code section 9884.7, subdivision (a)(6), due to his failure to comply with Regulation section 3372.1, subdivision (d), by failing to ensure the coupon's disclosure statements were at least one-half the type size used in the advertised price.

15. Cause exists to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Health and Safety Code section 44072.2, subdivision (d), in that respondent Chauhan committed dishonest, fraudulent, or deceitful acts in failing to honor the coupon as set forth in Findings 9 and 10.

16. Cause exists to discipline the smog inspector and repair technician's licenses issued to respondent Chauhan pursuant to Health and Safety Code section 44072.2, subdivision (d), in that respondent Chauhan committed dishonest, fraudulent, or deceitful acts in failing to honor the coupon as set forth in Findings 9 and 10.

Undercover No. 3

17. Cause exists to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Code section 9884.7, subdivision (a)(6), due to his failure to comply with Regulation section 3372.1, for advertising a smog check inspection at a price which was misleading, because respondent Chauhan failed to honor the coupon at the advertised price, as set forth in Findings 11 and 12.

18. Cause exists to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Code section 9884.7, subdivision (a)(6), due to his failure to comply with Regulation section 3372.1, subdivision (d), by failing to ensure the coupon's disclosure statements were at least one-half the type size used in the advertised price.

19. Cause exists to discipline the automotive repair dealer registration issued to respondent Bhullar pursuant to Health and Safety Code section 44072.2, subdivision (d), in that respondent Chauhan committed dishonest, fraudulent, or deceitful acts in failing to honor the coupon as set forth in Findings 11 and 12.

20. Cause exists to discipline the smog inspector and repair technician's licenses issued to respondent Chauhan pursuant to Health and Safety Code section 44072.2, subdivision (d), in that respondent Chauhan committed dishonest, fraudulent, or deceitful acts in failing to honor the coupon as set forth in Findings 11 and 12.

Costs of Investigation and Enforcement

21. Complainant has requested that respondents be ordered to pay the Bureau the costs of investigation and enforcement of the case. Business and Professions Code section 125.3 provides that respondents may be ordered to pay the Bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The Bureau sought to recover a total of \$14,047 in its costs, and \$8,422 in Attorney General Costs, from respondents.

23. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*) sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective

good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

24. In this case, all of the \$8,422 in Attorney General costs were reasonable, but a portion of the hours of Bureau investigation were excessive in relation to the report-writing work performed, as set forth in Findings 27 and 28. As a result, the investigation costs should be reduced by \$2,958 to \$11,089. Fourteen of the fifteen causes for discipline litigated at hearing were proven. Respondents provided no evidence regarding their ability to pay costs. Thus, complainant's reasonable costs include \$8,422 in Attorney General costs, and a reduced total of BAR costs of \$11,089, which together total \$19,511.

ORDER

Respondent Bhullar

Automotive Repair Dealer Registration No. ARD 280083, and Smog Check, Test Only, Station License No. TC 280083, issued to Simrandeep S. Bhullar, doing business as Star Valley Smog, are REVOKED. However, the revocations are STAYED and respondent is placed on probation for two (2) years on the following terms and conditions.

Actual Suspension

Automotive Repair Dealer Registration No. ARD 280083, and Smog Check, Test Only, Station License No. TC 280083, issued to address), issued to Simrandeep S.

Bhullar, doing business as Star Valley Smog, are SUSPENDED for ten (10) consecutive days beginning on the effective date of the Decision and Order.

Standard Terms and Conditions of Probation

1. OBEY ALL LAWS

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

2. POSTING OF SIGN

During the period of suspension, respondent shall prominently post a sign or signs, provided by BAR, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign or signs shall be conspicuously displayed in a location or locations open to and frequented by customers. The location(s) of the sign(s) shall be approved by BAR and shall remain posted during the entire period of actual suspension.

3. QUARTERLY REPORTING

During the period of probation, respondent 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.

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4. REPORT FINANCIAL INTERESTS

Respondent 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 any respondent or any partners, officers, or owners of any respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

5. ACCESS TO EXAMINE VEHICLES AND RECORDS

Respondent 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. Respondent shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

6. TOLLING OF PROBATION

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

All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the

reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

7. VIOLATION OF PROBATION

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

8. MAINTAIN VALID LICENSE

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

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9. COST RECOVERY

Respondent shall pay the Bureau of Automotive Repair \$19,511, for the reasonable costs of the investigation and enforcement of case No. 79/17-20670. (Respondents Bhullar and Chauhan shall be jointly and severally liable to pay such costs, which the Bureau has the discretion to apportion.) Respondent shall make such payment pursuant to a payment plan within the Bureau's discretion to establish. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No. 79/17-20670. 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.

10. COMPLETION OF PROBATION

Upon successful completion of probation, respondent's affected registration and/or 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.

11. LICENSE SURRENDER

Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request that the stay be

vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate the respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

Respondent 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 respondent applies to BAR for a registration or license at any time after that date, respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

12. SUPERVISION REQUIREMENTS

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

Respondent Chauhan

Smog Check Inspector License No. EO 147842, and Smog Check Repair Technician License No. EI 147842, issued to Gurpreet Singh Chauhan, are REVOKED.

However, the revocations are STAYED and respondent is placed on probation for two (2) years on the following terms and conditions.

Actual Suspension

Smog Check Inspector License No. EO 147842, and Smog Check Repair Technician License No. EI 147842, issued to Gurpreet Singh Chauhan, are SUSPENDED for ten (10) consecutive days beginning on the effective date of the Decision and Order.

Standard Terms and Conditions of Probation

1. OBEY ALL LAWS

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

2. POSTING OF SIGN

During the period of suspension, respondent shall prominently post a sign or signs, provided by BAR, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign or signs shall be conspicuously displayed in a location or locations open to and frequented by customers. The location(s) of the sign(s) shall be approved by BAR and shall remain posted during the entire period of actual suspension.

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3. QUARTERLY REPORTING

During the period of probation, respondent 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.

4. REPORT FINANCIAL INTERESTS

Respondent 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 any respondent or any partners, officers, or owners of any respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

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7. VIOLATION OF PROBATION

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

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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.

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Respondent shall not delegate his supervisory duties, as they relate to the business activities relevant to the probationary registration and/or license, to another person during the period of probation. Any persons employed by respondent to carry out such business activities shall be directly supervised by respondent. In the event that a bona fide medical condition arises during the period of probation, which temporarily prevents respondent from exercising direct supervision over employees, notice and

medical substantiation of the condition shall be submitted to BAR within ten (10) days of the medical affirmation of the condition.

DATE: July 29, 2019

DocuSigned by:
John DeCure
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JOHN E. DeCURE

Administrative Law Judge

Office of Administrative Hearings