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

11  
12 In the Matter of the Accusation Against:

Case No. 79118-3549

13 **VALLEJO SMOG TEST ONLY CENTER**  
14 **MICHAEL JAMES BOLDEN, PARTNER**  
**NAOMI JEAN BOLDEN, PARTNER**  
15 **3424 Sonoma Blvd. #C**  
**Vallejo, CA 94590**

**A C C U S A T I O N**

16 **Automotive Repair Dealer Reg. No. ARD 279478**  
17 **Smog Check, Test Only, Station License**  
**No. TC 279478,**

18 **MICHAEL JAMES BOLDEN**  
19 **3424 Sonoma Blvd.**  
**Vallejo, CA 94590**

20 **Smog Check Inspector License No. EO 147201**  
21 **Smog Check Repair Technician License No. EI**  
**147201,**

22 **KURT PROSPERO MORALES**  
23 **3424 Sonoma Blvd.**  
**Vallejo, CA 94590**

24 **Mailing Address:**  
**901 Towhee Way**  
**Suisun City, CA 94585**

25 **Smog Check Inspector License No. EO 635550,**

26 **and**

27 **///**  
28

1 **EDWARD V. LEGLER**  
2 **525 Swan Way**  
3 **Vallejo, CA 94589**

4 **Smog Check Inspector License No. EO 145186**

5 Respondents.

6 Complainant alleges:

7 **PARTIES**

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

10 **Vallejo Smog Test Only Center**

11 2. On or about March 3, 2015, the Director of Consumer Affairs ("Director") issued  
12 Automotive Repair Dealer Registration Number ARD 279478 ("registration") to Vallejo Smog  
13 Test Only Center ("Respondent Vallejo Smog Test Only Center"), with Michael James Bolden  
14 and Naomi Jean Bolden as partners. The registration was in full force and effect at all times  
15 relevant to the charges brought in the Accusation and will expire on March 31, 2019, unless  
16 renewed.

17 3. On or about April 9, 2015, the Director issued Smog Check, Test Only, Station  
18 License Number TC 279478 ("smog check station license") to Respondent Vallejo Smog Test  
19 Only Center. The smog check station license was in full force and effect at all times relevant to  
20 the charges brought in the Accusation and will expire on March 31, 2019, unless renewed.

21 **Michael James Bolden**

22 4. In or about 2003, the Director issued Advanced Emission Specialist Technician  
23 License Number EA 147201<sup>1</sup> to Michael James Bolden ("Respondent Bolden"). The advanced  
24 emission specialist technician license was renewed as Smog Check Inspector License Number EO  
25 147201 and Smog Check Repair Technician License Number EI 147201 to Respondent effective

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

1 July 1, 2013. The smog check inspector license was in full force and effect at all times relevant to  
2 the charges brought in the Accusation and will expire on July 31, 2019, unless renewed. The  
3 smog check repair technician license expired on July 31, 2015.

4 **Kurt Prospero Morales**

5 5. On or about May 23, 2013, the Director issued Smog Check Inspector License  
6 Number EO 635550 to Kurt Prospero Morales ("Respondent Morales"). The smog check  
7 inspector license was in full force and effect at all times relevant to the charges brought in the  
8 Accusation and will expire on June 30, 2019, unless renewed.

9 **Edward V. Legler**

10 6. In or about 2002, the Director issued Advanced Emission Specialist Technician  
11 License Number EA 145186 to Edward V. Legler ("Respondent Legler"). The advanced  
12 emission specialist technician license was renewed as Smog Check Inspector License Number EO  
13 145186 to Respondent effective May 28, 2014. The smog check inspector license was in full  
14 force and effect at all times relevant to the charges brought in the Accusation and will expire on  
15 May 31, 2020, unless renewed.

16 **JURISDICTION**

17 7. Business and Professions Code ("Bus. & Prof. Code") section 22, subdivision (a),  
18 states:

19 "Board" as used in any provision of this Code, refers to the board in  
20 which the administration of the provision is vested, and unless otherwise expressly  
21 provided, shall include "bureau," "commission," "committee," "department,"  
"division," "examining committee," "program," and "agency."

22 8. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a  
23 "license" includes "registration" and "certificate."

24 9. Bus. & Prof. Code section 9884.7 provides that the Director may revoke an  
25 automotive repair dealer registration.

26 10. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a  
27 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary  
28

1 proceeding against an automotive repair dealer or to render a decision temporarily or permanently  
2 invalidating (suspending or revoking) a registration.

3 11. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent  
4 part, that the Director has all the powers and authority granted under the Automotive Repair Act  
5 for enforcing the Motor Vehicle Inspection Program.

6 12. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or  
7 suspension of a license by operation of law, or by order or decision of the Director of Consumer  
8 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
9 of jurisdiction to proceed with disciplinary action.

10 13. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
11 suspended following a hearing under this article, any additional license issued under this chapter  
12 in the name of the licensee may be likewise revoked or suspended by the director.

### 13 STATUTORY AND REGULATORY PROVISIONS

14 14. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

24 . . . .

25 (4) Any other conduct that constitutes fraud.

26 . . . .

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

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1 15. Health & Saf. Code section 44072.2 states, in pertinent part:

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

4 (a) Violates any section of this chapter [the Motor Vehicle Inspection  
5 Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted  
pursuant to it, which related to the licensed activities.

6 . . . .

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

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

10 16. Health & Saf. Code section 44072.10 states, in pertinent part:

11 . . . .

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

15 . . . .

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

17 17. Health & Saf. Code section 44024.5, subdivision (a), states:

18 The department shall compile and maintain statistical and emissions  
19 profiles and data from motor vehicles that are subject to the motor vehicle inspection  
program. The department may use data from any source, including remote sensing  
20 data, in use data, and other motor vehicle inspection program data, to develop and  
confirm the validity of the profiles, to evaluate the program, and to assess the  
21 performance of smog check stations. The department shall undertake these  
requirements directly or seek a qualified vendor for these services.

22 18. Health & Saf. Code section 44037 states, in pertinent part:

23 (a) The department shall compile and maintain records, using the  
24 sampling methodology necessary to ensure their scientific validity and reliability, of  
tests and repairs performed by qualified smog check technicians at licensed smog  
25 check stations pursuant to this chapter on all of the following information:

26 (1) The motor vehicle identification information and the test data  
collected at the station.

27 . . . .

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(5) Data received and compiled through the use of the centralized computer database and computer network to be established pursuant to Section 44037.1, and any other information determined to be essential by the department for program enhancement to achieve greater efficiency, consumer protection, cost-effectiveness, convenience, or emission reductions . . .

19. Health & Saf. Code section 44037.1 states, in pertinent part:

(a) On or before January 1, 1995, the department shall design and establish the equipment necessary to operate a centralized computer data base and computer network that is readily accessible by all licensed smog check technicians on a real time basis.

(b) The centralized computer data base and network shall be designed with all of the following capabilities:

. . . .

(2) To provide smog check technicians and the department with information as to the date and result of prior smog check tests performed on each vehicle to discourage vehicle owners from shopping for certificates of compliance and to permit the department to identify smog check stations for further investigation as potential violators of this chapter.

(3) To provide the department with data on the failure rates and repair effectiveness for vehicles of each make and model year on a statewide basis, and by smog check station and technician, to facilitate identification of smog check stations and technicians as potential violators of this chapter.

. . . .

(8) To be compatible with the department's recordkeeping and compilation requirements established by Section 44037.

. . . .

(c) After January 1, 1995, each smog check station shall transmit vehicle data emission test results to the department's centralized data base. Each smog check station shall also transmit vehicle data and emission measurements made before and after repair . . .

20. Title 16, California Code of Regulations, section 3340.17 states, in pertinent part:

. . . .

(c) Vehicle data and test results from the OBD Inspection System (OIS) shall be transmitted to the bureau's centralized database . . .

#### **COST RECOVERY**

21. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
2 and enforcement of the case.

### 3 BACKGROUND

4 22. On March 9, 2015, California's Smog Check Program was updated to keep pace with  
5 ever-advancing technology. The program update requires the use of an On-Board Diagnostic  
6 Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of  
7 the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and  
8 most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition Device  
9 (DAD), computer, bar code scanner, and printer.

10 23. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the  
11 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between  
12 the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used  
13 to input technician information, the vehicle identification number, and DMV renewal  
14 information. The vehicle identification number (VIN) that is physically present on all vehicles is  
15 required to be programmed into the vehicle's On-Board Diagnostics – Generation II (OBD II) on  
16 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in  
17 earlier model-years. The electronically programmed VIN is referred to as the "eVIN", is captured  
18 by the Bureau during a smog check inspection, and should match the physical VIN on the vehicle.  
19 The printer is used to provide a vehicle inspection report, which shows the inspection results and  
20 the Smog Check Certificate of Compliance Number for passing vehicles. Data retrieved and  
21 recorded during an OIS smog check includes the eVIN, the communication protocol<sup>2</sup>, and the  
22 number of Parameter Identifications (PID's)<sup>3</sup>.

23 <sup>2</sup> The OBD II communication protocol describes the specified communication "language"  
24 used by the OBD II computer to communicate to scan tools and other devices such as the BAR-  
25 OIS. The communication protocol is programmed into the vehicle's on-board computer during  
manufacture and does not change.

26 <sup>3</sup> PID's are data points reported by the vehicle's on-board computer to a scan tool or  
27 BAR-OIS (for example, engine speed, vehicle speed, engine temperature, etc.) The PID count is  
28 the number of data points reported by the vehicle's on-board computer and is programmed during  
manufacture.

1                    **REVIEW OF OIS TEST DATA FOR VALLEJO SMOG TEST ONLY CENTER**

2            24. Bureau Representative N. M. reviewed OIS test data pertaining to smog inspections  
3 conducted at Respondent Vallejo Smog Test Only Center's smog check station. N. M. found that  
4 the facility's smog check technicians, Respondents Bolden, Morales, and Legler, performed smog  
5 inspections on the six vehicles identified below using a method known as "clean plugging",<sup>4</sup>  
6 resulting in the issuance of fraudulent certificates of compliance for the vehicles.

7            **Vehicle 1:**

8            25. The OIS test data showed that on June 10, 2017, Respondent Morales ("Morales")  
9 performed a smog inspection on a 2003 Honda Accord EX ("Vehicle 1"), resulting in the  
10 issuance of electronic Smog Certificate of Compliance No. ZX327353C. The OIS test details for  
11 Vehicle 1 showed that the eVIN recorded during the inspection did not match the physical VIN  
12 on the vehicle. N. M. reviewed the Comparative OIS Test Data for 2003 Honda Accord EX  
13 vehicles and found that the eVIN is not transmitted to the Bureau's Vehicle Information Database  
14 ("VID"). N. M. also found that the PID count recorded during the inspection on Vehicle 1 was  
15 not consistent with the PID count for that make and model vehicle. N. M. concluded that the  
16 DAD was not connected to Vehicle 1 during the smog inspection.

17           26. The OIS test data also showed that on June 16, 2015, Morales performed an  
18 inspection on Vehicle 1 at Valley Smog Test Only Center and the vehicle passed the inspection.  
19 N. M. found that the eVIN was not transmitted to the VID, and that the communication protocol  
20 and PID count recorded during the inspection matched the communication protocol and PID  
21 count for 2003 Honda Accord EX vehicles.

22           27. Further, the OIS test data showed that on January 22, 2018, another smog check  
23 facility performed a smog inspection on a 2006 Honda Odyssey EX and that the eVIN transmitted  
24 to the VID was the same eVIN that was recorded during the smog inspection on Vehicle 1.  
25 Further, the communication protocol and PID count recorded during the inspection on the 2006

26           <sup>4</sup> Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another  
27 source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog  
28 certificate of compliance to another vehicle that is not in compliance with the Smog Check  
Program and/or is not present for testing.



1 Honda Odyssey EX were consistent with the communication protocol and PID count recorded  
2 during the inspection on Vehicle 1. N. M. concluded that Morales used the 2006 Honda Odyssey  
3 EX's properly functioning OBD II system during the smog inspection on Vehicle 1, resulting in  
4 the issuance of a fraudulent smog certificate of compliance for the vehicle.

5 **Vehicle 2:**

6 28. The OIS test data showed that on June 16, 2017, Respondent Legler ("Legler")  
7 performed a smog inspection on a 2007 Toyota Camry New Generation LE ("Vehicle 2"),  
8 resulting in the issuance of electronic Smog Certificate of Compliance No. ZX091437C. The OIS  
9 test details for Vehicle 2 showed that the eVIN recorded during the inspection did not match the  
10 physical VIN on the vehicle. N. M. reviewed the Comparative OIS Test Data for 2007 Toyota  
11 Camry New Generation LE vehicles and found that the communication protocol and PID count  
12 recorded during the inspection on Vehicle 2 were not consistent with the communication protocol  
13 and PID count for that make and model vehicle. N. M. concluded that the DAD was not  
14 connected to Vehicle 2 during the smog inspection.

15 29. The OIS test data also showed that on June 3, 2015, Morales performed an inspection  
16 on Vehicle 2 at Valley Smog Test Only Center and the vehicle passed the inspection. N. M.  
17 found that the communication protocol and PID count recorded during the inspection matched the  
18 communication protocol and PID count for 2007 Toyota Camry New Generation LE vehicles,  
19 and the eVIN recorded during the inspection matched the physical VIN on the vehicle.

20 30. Further, the Bureau's VID data showed that the eVIN recorded during the smog  
21 inspection on Vehicle 2 was for a 2013 Honda CR-V EXL.

22 **Vehicle 3:**

23 31. The OIS test data showed that on June 24, 2017, Respondent Bolden ("Bolden")  
24 performed a smog inspection on a 2011 Toyota Camry Base ("Vehicle 3"), resulting in the  
25 issuance of electronic Smog Certificate of Compliance No. ZX722575C. The OIS test details for  
26 Vehicle 3 showed that the eVIN recorded during the inspection did not match the physical VIN  
27 on the vehicle. N. M. reviewed the Comparative OIS Test Data for 2011 Toyota Camry Base  
28 vehicles and found that the PID count recorded during the inspection on Vehicle 3 was not

1 consistent with the PID count for that make and model vehicle. N. M. concluded that the DAD  
2 was not connected to Vehicle 3 during the smog inspection.

3 32. The OIS test data also showed that on June 27, 2017, Vehicle 3 was tested at another  
4 smog check facility and passed the inspection. N. M. found that the communication protocol and  
5 PID count recorded during the inspection matched the communication protocol and PID count for  
6 2011 Toyota Camry Base vehicles, and the eVIN recorded during the inspection matched the  
7 physical VIN on the vehicle.

8 33. Further, the OIS test data showed that on July 25, 2017, another smog check facility  
9 performed a smog inspection on a 2007 Toyota Avalon XL and that the eVIN transmitted to the  
10 VID was the same eVIN that was recorded during the smog inspection on Vehicle 3. Further, the  
11 communication protocol and PID count recorded during the inspection on the 2007 Toyota  
12 Avalon XL were consistent with the communication protocol and PID count recorded during the  
13 inspection on Vehicle 3. N. M. concluded that Bolden used the 2007 Toyota Avalon XL's  
14 properly functioning OBD II system during the smog inspection on Vehicle 3, resulting in the  
15 issuance of a fraudulent smog certificate of compliance for the vehicle.

16 **Vehicle 4:**

17 34. The OIS test data showed that on July 3, 2017, Morales performed a smog inspection  
18 on a 2005 Toyota Sequoia Limited ("Vehicle 4"), resulting in the issuance of electronic Smog  
19 Certificate of Compliance No. ZZ000366C. The OIS test details for Vehicle 4 showed that the  
20 eVIN recorded during the inspection did not match the physical VIN on the vehicle. N. M.  
21 reviewed the Comparative OIS Test Data for 2005 Toyota Sequoia Limited vehicles and found  
22 that the PID count recorded during the inspection on Vehicle 4 was not consistent with the PID  
23 count for that make and model vehicle. N. M. concluded that the DAD was not connected to  
24 Vehicle 4 during the smog inspection.

25 35. The OIS test data also showed that on July 3, 2015, Morales performed an inspection  
26 on Vehicle 4 at Valley Smog Test Only Center and the vehicle passed the inspection. N. M.  
27 found that the communication protocol and PID count recorded during the inspection matched the  
28

1 communication protocol and PID count for 2005 Toyota Sequoia Limited vehicles, and the eVIN  
2 recorded during the inspection matched the physical VIN on the vehicle.

3 36. Further, the OIS test data showed that on August 23, 2017, Bolden performed a smog  
4 inspection on a 2010 Toyota Corolla Base at Valley Smog Test Only Center and that the eVIN  
5 transmitted to the VID was the same eVIN that was recorded during the smog inspection on  
6 Vehicle 4. Further, the communication protocol and PID count recorded during the inspection on  
7 the 2010 Toyota Corolla Base were consistent with the communication protocol and PID count  
8 recorded during the inspection on Vehicle 4. N. M. concluded that Morales used the 2010 Toyota  
9 Corolla Base's properly functioning OBD II system during the smog inspection on Vehicle 4,  
10 resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

11 **Vehicle 5:**

12 37. The OIS test data showed that on October 18, 2017, between 10:27 and 10:32 a.m.,  
13 Legler performed a smog inspection on a 2006 Toyota Camry LE ("Vehicle 5"), resulting in the  
14 issuance of electronic Smog Certificate of Compliance No. HH323917C. The OIS test details for  
15 Vehicle 5 showed that the eVIN recorded during the inspection did not match the physical VIN  
16 on the vehicle. N. M. reviewed the Comparative OIS Test Data for 2006 Toyota Camry LE  
17 vehicles and found that the PID count recorded during the inspection on Vehicle 5 was not  
18 consistent with the PID count for that make and model vehicle. N. M. concluded that the DAD  
19 was not connected to Vehicle 5 during the smog inspection.

20 38. The OIS test data also showed that on October 2, 2015, Vehicle 5 was tested at  
21 another smog check facility and passed the inspection. N. M. found that the communication  
22 protocol and PID count recorded during the inspection matched the communication protocol and  
23 PID count for 2006 Toyota Camry LE vehicles, and the eVIN recorded during the inspection  
24 matched the physical VIN on the vehicle.

25 39. Further, the OIS test data showed that on October 18, 2017, between 10:42 and 10:45  
26 a.m., Legler performed a smog inspection on a 2006 Honda Accord SE at Valley Smog Test Only  
27 Center and that the eVIN transmitted to the VID was the same eVIN that was recorded during the  
28 smog inspection on Vehicle 5. Further, the communication protocol and PID count recorded

1 during the inspection on the 2006 Honda Accord SE were consistent with the communication  
2 protocol and PID count recorded during the inspection on Vehicle 5. N. M. concluded that Legler  
3 used the 2006 Honda Accord SE's properly functioning OBD II system during the smog  
4 inspection on Vehicle 5, resulting in the issuance of a fraudulent smog certificate of compliance  
5 for the vehicle.

6 **Vehicle 6:**

7 40. The OIS test data showed that on November 28, 2017, Bolden performed a smog  
8 inspection on a 2007 Toyota Camry New Generation CE ("Vehicle 6"), resulting in the issuance  
9 of electronic Smog Certificate of Compliance No. HJ587842C. The OIS test details for Vehicle 6  
10 showed that the eVIN recorded during the inspection did not match the physical VIN on the  
11 vehicle. N. M. reviewed the Comparative OIS Test Data for 2007 Toyota Camry New  
12 Generation CE vehicles and found that the communication protocol and PID count recorded  
13 during the inspection on Vehicle 6 were not consistent with the communication protocol and PID  
14 count for that make and model vehicle. N. M. concluded that the DAD was not connected to  
15 Vehicle 6 during the smog inspection.

16 41. The OIS test data also showed that on December 2, 2015, Vehicle 6 was tested at  
17 another smog check facility and passed the inspection. N. M. found that the communication  
18 protocol and PID count recorded during the inspection matched the communication protocol and  
19 PID count for 2007 Toyota Camry New Generation CE vehicles, and the eVIN recorded during  
20 the inspection matched the physical VIN on the vehicle.

21 42. Further, the OIS test data showed that on November 16, 2016, Legler performed a  
22 smog inspection on a 2006 Toyota Sienna CE at Valley Smog Test Only Center and that the eVIN  
23 transmitted to the VID was the same eVIN that was recorded during the smog inspection on  
24 Vehicle 6. Further, the communication protocol and PID count recorded during the inspection on  
25 the 2006 Toyota Sienna CE were consistent with the communication protocol and PID count  
26 recorded during the inspection on Vehicle 6. N. M. concluded that Bolden used the 2006 Toyota  
27 Sienna CE's properly functioning OBD II system during the smog inspection on Vehicle 6,  
28 resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 43. Respondent Vallejo Smog Test Only Center's registration is subject to disciplinary  
4 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made  
5 or authorized statements which it knew or in the exercise of reasonable care should have known  
6 to be untrue or misleading, as follows:

7 a. Respondent Vallejo Smog Test Only Center's smog check technician, Respondent  
8 Morales, certified that Vehicles 1 and 4, identified in paragraphs 25 to 27 and 34 to 36 above, had  
9 passed inspection and were in compliance with applicable laws and regulations. In fact,  
10 Respondent Morales conducted the smog inspections on the vehicles using clean-plugging  
11 methods in that he substituted or used a different vehicle during the inspections in order to issue  
12 smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as  
13 required by Health & Saf. Code section 44012.

14 b. Respondent Vallejo Smog Test Only Center's smog check technician, Respondent  
15 Bolden, certified that Vehicles 3 and 6, identified in paragraphs 31 to 33 and 40 to 42 above, had  
16 passed inspection and were in compliance with applicable laws and regulations. In fact,  
17 Respondent Bolden conducted the smog inspections on the vehicles using clean-plugging  
18 methods in that he substituted or used a different vehicle during the inspections in order to issue  
19 smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as  
20 required by Health & Saf. Code section 44012.

21 c. Respondent Vallejo Smog Test Only Center's smog check technician, Respondent  
22 Legler, certified that Vehicles 2 and 5, identified in paragraphs 28 to 30 and 37 to 39 above, had  
23 passed inspection and were in compliance with applicable laws and regulations. In fact,  
24 Respondent Legler conducted the smog inspections on the vehicles using clean-plugging methods  
25 in that he substituted or used a different vehicle during the inspections in order to issue smog  
26 certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by  
27 Health & Saf. Code section 44012.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 44. Respondent Vallejo Smog Test Only Center's registration is subject to disciplinary  
4 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent  
5 committed acts which constitute fraud by issuing electronic smog certificates of compliance for  
6 Vehicles 1 through 6, identified in paragraphs 25 to 42 above, without ensuring that bona fide  
7 inspections were performed of the emission control devices and systems on the vehicles, thereby  
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
9 Inspection Program.

10 **THIRD CAUSE FOR DISCIPLINE**

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

12 45. Respondent Vallejo Smog Test Only Center's smog check station license is subject to  
13 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that  
14 Respondent failed to comply with the following sections of that Code:

15 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
16 performed on Vehicles 1 through 6, identified in paragraphs 25 to 42 above, in accordance with  
17 procedures prescribed by the department.

18 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for  
19 Vehicles 1 through 6, identified in paragraphs 25 to 42 above, without ensuring that the vehicles  
20 were properly tested and inspected to determine if they were in compliance with Health & Saf.  
21 Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

4 46. Respondent Vallejo Smog Test Only Center's smog check station license is subject to  
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that  
6 Respondent failed to comply with provisions of Title 16, California Code of Regulations, as  
7 follows:

8 a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of  
9 compliance for Vehicles 1 through 6, identified in paragraphs 25 to 42 above, even though the  
10 vehicles had not been inspected in accordance with section 3340.42.

11 b. **Section 3340.42:** Respondent failed to ensure that the required smog tests were  
12 conducted on Vehicles 1 through 6, identified in paragraphs 25 to 42 above, in accordance with  
13 the Bureau's specifications.

14 **FIFTH CAUSE FOR DISCIPLINE**

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

16 47. Respondent Vallejo Smog Test Only Center's smog check station license is subject to  
17 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
18 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by  
19 issuing electronic smog certificates of compliance for Vehicles 1 through 6, identified in  
20 paragraphs 25 to 42 above, without ensuring that bona fide inspections were performed of the  
21 emission control devices and systems on the vehicles, thereby depriving the People of the State of  
22 California of the protection afforded by the Motor Vehicle Inspection Program.

23 **SIXTH CAUSE FOR DISCIPLINE**

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

25 48. Respondent Morales' smog check inspector license is subject to disciplinary action  
26 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to  
27 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to

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1 perform the emission control tests on Vehicles 1 and 4, identified in paragraphs 25 to 27 and 34 to  
2 36 above, in accordance with procedures prescribed by the department.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations Pursuant**  
5 **to the Motor Vehicle Inspection Program)**

6 49. Respondent Morales' smog check inspector license is subject to disciplinary action  
7 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to  
8 comply with provisions of Title 16, California Code of Regulations, as follows:

9 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test Vehicles 1  
10 and 4, identified in paragraphs 25 to 27 and 34 to 36 above, in accordance with Health & Saf.  
11 Code sections 44012 and 44035, and Title 16, California Code of Regulations, section 3340.42.

12 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on Vehicles 1  
13 and 4, identified in paragraphs 25 to 27 and 34 to 36 above, in accordance with the Bureau's  
14 specifications.

15 **EIGHTH CAUSE FOR DISCIPLINE**

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

17 50. Respondent Morales' smog check inspector license is subject to disciplinary action  
18 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed  
19 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog  
20 certificate of compliance for Vehicles 1 and 4, identified in paragraphs 25 to 27 and 34 to 36  
21 above, without performing bona fide inspections of the emission control devices and systems on  
22 the vehicles, thereby depriving the People of the State of California of the protection afforded by  
23 the Motor Vehicle Inspection Program.

24 **NINTH CAUSE FOR DISCIPLINE**

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

26 51. Respondent Bolden's smog check inspector and smog check repair technician  
27 licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
28 subdivision (a), in that Respondent failed to comply with section 44012 of that Code in a material



1 respect, as follows: Respondent failed to perform the emission control tests on Vehicles 3 and 6,  
2 identified in paragraphs 31 to 33 and 40 to 42 above, in accordance with procedures prescribed by  
3 the department.

4 **TENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant**  
6 **to the Motor Vehicle Inspection Program)**

7 52. Respondent Bolden's smog check inspector and smog check repair technician  
8 licenses are disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c),  
9 in that Respondent failed to comply with provisions of Title 16, California Code of Regulations,  
10 as follows:

11 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test Vehicles 3  
12 and 6, identified in paragraphs 31 to 33 and 40 to 42 above, in accordance with Health & Saf.  
13 Code sections 44012 and 44035, and Title 16, California Code of Regulations, section 3340.42.

14 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on Vehicles 3  
15 and 6, identified in paragraphs 31 to 33 and 40 to 42 above, in accordance with the Bureau's  
16 specifications.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

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

19 53. Respondent Bolden's smog check inspector and smog check repair technician  
20 licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
21 subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby  
22 another is injured by issuing electronic smog certificate of compliance for Vehicles 3 and 6,  
23 identified in paragraphs 31 to 33 and 40 to 42 above, without performing bona fide inspections of  
24 the emission control devices and systems on the vehicles, thereby depriving the People of the  
25 State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

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

3 54. Respondent Legler's smog check inspector license is subject to disciplinary action  
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to  
5 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to  
6 perform the emission control tests on Vehicles 2 and 5, identified in paragraphs 28 to 30 and 37 to  
7 39 above, in accordance with procedures prescribed by the department.

8 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

11 55. Respondent Legler's smog check inspector license is subject to disciplinary action  
12 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to  
13 comply with provisions of Title 16, California Code of Regulations, as follows:

14 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test Vehicles 2  
15 and 5, identified in paragraphs 28 to 30 and 37 to 39 above, in accordance with Health & Saf.  
16 Code sections 44012 and 44035, and Title 16, California Code of Regulations, section 3340.42.

17 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on Vehicles 2  
18 and 5, identified in paragraphs 28 to 30 and 37 to 39 above, in accordance with the Bureau's  
19 specifications.

20 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

22 56. Respondent Legler's smog check inspector license is subject to disciplinary action  
23 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed  
24 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog  
25 certificate of compliance for Vehicles 2 and 5, identified in paragraphs 28 to 30 and 37 to 39  
26 above, without performing bona fide inspections of the emission control devices and systems on  
27 the vehicles, thereby depriving the People of the State of California of the protection afforded by  
28 the Motor Vehicle Inspection Program.

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62. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License Number EO 145186, issued to Respondent Edward V. Legler, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

**PRAYER**

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 279478, issued to Vallejo Smog Test Only Center;

2. Revoking or suspending any other automotive repair dealer registration issued to Michael James Bolden or Naomi Jean Bolden;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 279478, issued to Vallejo Smog Test Only Center;

4. Revoking or suspending any additional license issued under Chapter 5, Part 5, Division 26 of the Health and Safety Code in the name of Michael James Bolden or Naomi Jean Bolden;

5. Revoking or suspending Smog Check Inspector License Number EO 147201 and Smog Check Repair Technician License Number EI 147201, issued to Michael James Bolden;

6. Revoking or suspending Smog Check Inspector License Number EO 635550, issued to Kurt Prospero Morales;

7. Revoking or suspending any additional license issued under Chapter 5, Part 5, Division 26 of the Health and Safety Code in the name of Kurt Prospero Morales;

8. Revoking or suspending Smog Check Inspector License Number EO 145186, issued to Edward V. Legler;

9. Revoking or suspending any additional license issued under Chapter 5, Part 5, Division 26 of the Health and Safety Code in the name of Edward V. Legler;

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1           10.   Ordering Vallejo Smog Test Only Center, Michael James Bolden, Kurt Prospero  
2 Morales and Edward V. Legler to pay the Director of Consumer Affairs the reasonable costs of  
3 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
4 125.3; and

5           11.   Taking such other and further action as deemed necessary and proper.

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7   DATED: August 21, 2018



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

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