

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

In the Matter of the Accusation Against:

VALLEJO SMOG TEST ONLY CENTER; MICHAEL JAMES BOLDEN, PARTNER; NAOMI JEAN

BOLDEN, PARTNER

3424 Sonoma Blvd. #C

Vallejo, CA 94590

Automotive Repair Dealer Registration No. ARD 279478

Smog Check Test Only Station License No. TC 279478

MICHAEL JAMES BOLDEN

3424 Sonoma Blvd.

Vallejo, CA 94590

Smog Check Inspector License No. EO 147201

Smog Check Repair Technician License No. EI 147201,

KURT PROSPERO MORALES

3424 Sonoma Blvd.

Vallejo, CA 94590

Mailing Address:

901 Towhee Way

Suisun City, CA 94585

Smog Check Inspector License No. EO 635550

and

EDWARD V. LEGLER

525 Swan way

Vallejo, CA 94589

Smog Check Inspector License No. EO 145186

Respondents.

Case No. 79/18-3549

OAH No. 2019080310

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 May 19, 2020.

IT IS SO ORDERED this 27 day of March, 2020.



GRACE ARUPO RODRIGUEZ

Assistant Deputy Director

Legal Affairs Division

Department of Consumer Affairs

**BEFORE THE
BUREAU OF AUTOMOTIVE REPAIR
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STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**VALLEJO SMOG TEST ONLY CENTER, MICHAEL JAMES
BOLDEN, Partner, NAOMI JEAN BOLDEN, Partner**

**Automotive Repair Dealer Registration No. ARD 279478
Smog Check, Test Only, Station License No. TC 279478;**

MICHAEL JAMES BOLDEN

**Smog Check Inspector License No. EO 147201 Smog Check
Repair Technician License No. EI 147201;**

KURT PROSPERO MORALES;

Smog Check Inspector License No. EO 635550;

and

EDWARD V. LEGLER

Smog Check Inspector License No. EO 145186

Respondents.

Case No. 79/18-3549

OAH No. 2019080310

PROPOSED DECISION

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on November 6, 2019, and January 23, 2020, in Oakland, California.

Timothy Froehle, Deputy Attorney General, represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair.

William Ferreira, Attorney at Law, represented respondents Vallejo Smog Test Only Center, Michael James Bolden (who was present at the hearing), and Naomi Jean Bolden on November 6, 2019. Mr. Ferreira did not represent them on January 23, 2020; instead Michael James Bolden represented himself and Vallejo Smog Test Only Center. Respondent Kurt Prospero Morales represented himself throughout the hearing. Respondent Edward V. Legler represented himself throughout the hearing.

The matter was submitted for decision on January 23, 2020.

FACTUAL FINDINGS

1. Complainant Patrick Dorais filed the Accusation in his official capacity as Chief of the Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs.

2. Respondent Vallejo Smog Test Only Center, Michael James Bolden and Naomi Jean Bolden, Partners (respondent Vallejo Smog Test), holds Automotive Repair Dealer Registration No. ARD 279478 (registration), and Smog Check, Test Only, Station License No. TC 279478 (station license). The facility is located at 3424 Sonoma Boulevard, #C, Vallejo, and has been licensed since March 3, 2015. The registration and station license will expire on March 31, 2020, unless they are renewed.

3. In 2003, the Bureau issued a technician license to respondent Michael James Bolden (respondent Bolden). In 2013, the license was renewed as Smog Check Inspector License No. EO 147201 and Smog Check Repair Technician License No. EI 147201. The smog check inspector license will expire on July 31, 2021, unless renewed. The smog check repair technician license expired on July 31, 2015.¹

4. On May 23, 2013, the Bureau issued Smog Check Inspector License No. EO 635550 to respondent Kurt Prospero Morales (respondent Morales). This license will expire on June 30, 2021, unless renewed. Respondent Morales was employed at the facility.

5. In 2002, the Bureau issued a technician license to respondent Edward V. Legler (respondent Legler). In 2014, the license was renewed as Smog Check Inspector License No. EO 145186. This license will expire on May 31, 2020, unless renewed. Respondent Legler was employed at the facility.

¹ The expiration of a license does not deprive the Bureau of jurisdiction to seek disciplinary action against a licensee. (Bus. & Prof. Code, § 118.)

6. The purpose of the smog check program is to ensure cleaner air for the public in California. Smog check stations and technicians must follow the rules and regulations, and failure to do so can compromise the integrity of the program.

7. In February 2018, Bureau Program Representative II Nicholas H. Magana conducted an investigation into respondent Vallejo Smog Test's smog check inspection practices and reviewed the vehicle information database (VID) data of On Board Diagnostics (OBD) Inspection System (OIS) testing performed at the facility. The review revealed abnormalities within the VID data associated with the issuance of electronic smog certificates of compliance certifying that six vehicles had been inspected by respondent and were in compliance with the applicable laws and regulations. Magana determined that the certificates of compliance were issued after "clean plugging" the vehicles. Clean plugging is the use of the OBD II monitor status and stored fault code status of another vehicle for the purpose of illegally issuing a smog certificate of compliance to a vehicle that might not be in compliance or be present at the facility for testing.

8. The following six cars were clean-plugged by the facility and were fraudulently issued certificates of compliance:

a. Clean Plug No. 1: On June 10, 2017, respondent Morales purportedly performed a smog inspection on a 2003 Honda Accord EX that transmitted a PID² count that did not match the expected PID count for similar

² PID is the parameter identifiers data points.

vehicles. This vehicle also transmitted an eVIN³ that did not match the VIN for this vehicle. The eVIN reported actually belonged to a 2006 Honda Odyssey EX that passed a smog inspection at another facility, with a PID count identical to the data transmitted for the 2003 Honda Accord EX.

b. Clean Plug No. 2: On June 16, 2017, respondent Legler purportedly performed a smog inspection on a 2007 Toyota Camry New Generation LE that transmitted an eVIN that did not match the VIN for this vehicle. This vehicle also transmitted a communication protocol⁴ and PID count that did not match the expected communication protocol and PID count for similar vehicles. The eVIN reported actually belonged to a 2013 Honda CR-V EXL.

c. Clean Plug No. 3: On June 24, 2017, respondent Bolden purportedly performed a smog inspection on a 2011 Toyota Camry Base that transmitted a PID count that did not match the expected PID count for similar vehicles and transmitted an eVIN that did not match the VIN for this vehicle. The eVIN reported actually belonged to a 2007 Toyota Avalon XL that passed a smog inspection at another facility on July 25, 2017, with a PID count identical to the data transmitted for the 2011 Toyota Camry Base.

d. Clean Plug No. 4: On July 3, 2017, respondent Morales purportedly performed a smog inspection on a 2005 Toyota Sequoia Limited that transmitted an

³ eVIN is the vehicle identification number programmed into the OBD II computer, starting in 2005, which should match the VIN number installed on a particular vehicle.

⁴ This is the specified communication language used by the OBD II computer.

eVIN that did not match the VIN for this vehicle. This vehicle also transmitted a PID count that did not match the expected PID count for similar vehicles. The eVIN transmitted actually belonged to a 2010 Toyota Corolla Base that passed a smog inspection at the facility on August 23, 2017, and the PID count was identical to the data transmitted for the 2005 Toyota Sequoia Limited.

e. Clean Plug No. 5: On October 18, 2017, between 10:27 a.m. and 10:32 a.m., respondent Legler purportedly performed a smog inspection on a 2006 Toyota Camry LE that transmitted an eVIN that did not match the VIN for this vehicle. This vehicle also transmitted a PID count that did not match the expected PID count for similar vehicles. On October 18, 2017, between 10:42 a.m. and 10:45 a.m., respondent Legler performed a smog inspection on a 2006 Honda Accord SE at the facility and the eVIN transmitted was the same eVIN that was transmitted for the 2006 Toyota Camry LE; as well as the same communication protocol and PID count.

f. Clean Plug No. 6: On November 28, 2017, respondent Bolden purportedly performed a smog inspection on a 2007 Toyota Camry New Generation CE that transmitted an eVIN that did not match the VIN for this vehicle. This vehicle also transmitted a communication protocol and PID count that did not match the expected communication protocol and PID count for similar vehicles. The eVIN reported actually belonged to a 2006 Toyota Sienna CE that passed a previous smog inspection at the facility on November 16, 2016, where the communication protocol and PID count were identical to the data transmitted for the 2007 Toyota Camry New Generation CE.

9. An Accusation was issued and respondents filed timely appeals.

10. At hearing, Magana explained that a technician must verify the vehicle being tested by either scanning identifying information from the Department of Motor Vehicles (DMV) documents or from the vehicle's windshield or door frame or entering the information manually into the VID. A technician is expected to compare the obtained vehicle information with the information in the database. A technician signs and dates the vehicle inspection report (VIR) for each inspection under penalty of perjury. Magana acknowledged that if a technician determines that he made a mistake during an inspection, the technician cannot delete the test or retrieve the certificate. Instead, a technician must redo the test and make a notation on the facility's copy of the VIR.

Magana described the practice of "testing the paperwork," as when a consumer has DMV documentation that does not match the vehicle and the technician fails to properly identify the vehicle and proceeds with the inspection. BAR has developed a new system to flag when the data transmitted during an inspection does not match a vehicle and a message will display indicating "data check fail."

11. Magana confirmed the details of his investigation. Magana stated that the motivation of a licensee to clean plug can be for monetary gain or convenience. Magana believes that technicians in this case engaged in intentional clean plugging because: one vehicle was tested on the same date with a different data acquisition device (DAD), multiple technicians failed to identify vehicles properly; and the size difference between the vehicle tested and the vehicle on the documentation should have been obvious to the technicians. Magana believes that it was a "business practice" at the facility based on the number of vehicles clean plugged which indicates a pattern and practice.

Magana concluded that the discrepancies in eVINs, communication protocols, and PID counts demonstrate that the DAD was not connected to the six vehicles certified at the facility causing the issuance of fraudulent certificates of compliance.

Prior Citation Against Respondent Morales

12. On June 5, 2015, the Bureau issued a citation and order of abatement to respondent Morales directing him to complete an eight-hour training course for a violation of Health and Safety Code section 44032, because he certified a 1999 Dodge Ram 2500 Diesel using the BAR97 when the OIS was required.

Respondents' Evidence

13. Respondents admit that they failed to follow the required smog inspection procedures. For each of the six inspections at issue, the vehicle inspection reports indicate that the VIN was manually entered or scanned from DMV paperwork, rather than scanned directly from the vehicle. Respondents acknowledge that they were required to verify the VIN that is physically located on the vehicles, and to verify that they connected the DAD to the correct vehicles, and admit that they failed to do so.

14. Respondents admitted that they signed the vehicle inspection reports for the six inspections, certifying under penalty of perjury that they performed the inspections in accordance with all Bureau requirements, and that the information listed on the inspection reports are true and accurate, despite the fact that they had not followed the required procedures and the listed information was not accurate.

15. Respondent Vallejo Smog Test was voted five times as the best smog testing facility in Solano County. Respondent Bolden insists that he operates the

business with integrity and humility. They perform smog tests on approximately 1,000 vehicles per month and of the 60,000 inspections, they have had only six documented mistakes, for which Bolden takes full responsibility as the owner. Respondent Bolden admits that he and his employees were not properly verifying VIN numbers because they were rushing to smog the vehicles, sometimes up to 40 or 50 cars were waiting and they would skip the steps and scan the vehicles without checking.

16. When the matter was brought to his attention, respondent Bolden closed down respondent Vallejo Smog Test and another facility that he owns and conducted training for his employees. As a result of this matter, the facility has gone from performing smog inspections in seven minutes to 12 minutes, so as to never make this type of mistake again. He has paid over \$18,000 in legal fees. He insists that they have corrected their mistakes.

Respondent Bolden requests that the Bureau take into account his history as a law abiding and honest contributing member of Solano County and the State of California. He "would never purposely pursue such a feeble benefit (six inspections) when I understand the severity of cheating our state system and violating the trust of our families associated with my business." Respondent Bolden has always had a great relationship with BAR. He wants his facility to be one of the best in California.

17. Respondent Legler testified that for Clean Plug No. 5, he recalled that he scanned paperwork before placing the DAD into the vehicle. When he realized that he had the wrong vehicle to match with the paperwork, he immediately retested the correct vehicle and he asked the customer to bring back the Toyota back so that he could correct the mistake, but the customer never returned. He recognizes that he made errors and he is not trying to defraud the state. He makes it a point to always verify the correct VIN number against the vehicle. Also, instead of relying on the

service writer, he is more involved with writing up the customer invoices. He still works at the facility.

18. Respondent Morales admits he made mistakes because he was always in a rush and he overlooked things. There is a new policy in place and he prides himself in continuing to work in a "100 percent clean shop."

19. Other than respondent Morales, the other respondents have no prior history of license discipline, citations, or office conferences with the Bureau.

20. Respondents credibly testified that they were not intentionally clean plugging.

Costs

21. The Bureau certifies program representatives' investigation costs in the amount of \$1,150.10, has incurred and Department of Justice prosecution costs in the amount of \$7,570. The total costs of investigation and enforcement are reasonable and established pursuant to the appropriate certifications in the amount of \$8,720.10.

Complainant's claim for reimbursement of these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivisions (b)(2) and (b)(3).

LEGAL CONCLUSIONS

1. The standard of proof applied in deciding this matter is preponderance of the evidence. (*Imports Performance et al. v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.)

Respondent Vallejo Smog Test – Registration and Station License

FIRST CAUSE FOR DISCIPLINE (UNTRUE OR MISLEADING STATEMENTS)

2. Business and Professions Code section 9884.7, subdivision (a)(1), authorizes the suspension, revocation or placing on probation of a registration for the acts or omissions related to conducting the business of the automotive repair dealer which are done by the dealer, technician, employee, partner, or officer of the automotive repair dealer, including if an automotive repair dealer makes or authorizes any statement that the dealer knows, or in the exercise of reasonable care should have known, is untrue or misleading.

3. Cause exists, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), to discipline the registration issued to respondent Vallejo Smog Test, as set forth in Factual Finding 8. Specifically, respondent Vallejo Smog Test, as an automotive repair dealer, knew or should have known, that untrue or misleading statements were made with respect to the issuance of the certificates of compliance, in that the six vehicles were clean plugged and not tested or inspected as required under Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE (FRAUD)

4. Business and Professions Code section 9884.7, subdivision (a)(4), authorizes the suspension, revocation or placing on probation of a registration for the acts or omissions related to conducting the business of the automotive repair dealer which are done by the dealer, technician, employee, partner, or officer of the automotive repair dealer, including, if an automotive repair dealer engages in any conduct that constitutes fraud.

5. Cause exists, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), to discipline the registration issued to respondent Vallejo Smog Test, as set forth in Factual Finding 8. Specifically, respondent Vallejo Smog Test, as an automotive repair dealer, issued electronic certificates of compliance after engaging in fraudulent clean plugging and without performing proper inspections of the emission control devices and systems on the vehicles.

THIRD CAUSE FOR DISCIPLINE (VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM)

6. Health and Safety Code section 44072.2, subdivision (a), authorizes the suspension, revocation, or other disciplinary action against a licensee who violates provisions of the Motor Vehicle Inspection Program.

7. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (a), to discipline the station license issued to respondent Vallejo Smog Test, as set forth in Factual Finding 8, for violation of each of the following:

a. Failing to ensure the prescribed emission control tests were performed on the vehicles. (Health & Saf. Code, § 44012.)

b. Issuing electronic certificates of compliance without proper smog testing of the vehicles. (Health & Saf. Code, § 44015.)

FOURTH CAUSE FOR DISCIPLINE (FAILURE TO COMPLY WITH REGULATIONS FOR THE MOTOR VEHICLE INSPECTION PROGRAM)

8. Health and Safety Code section 44072.2, subdivision (c), authorizes the suspension, revocation, or other disciplinary action against a licensee who violates any of the regulations adopted by the director.

9. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (c), to discipline the station license issued to respondent Vallejo Smog Test Only, as set forth in Factual Finding 8, for violation of each of the following:

a. Issuing electronic certificates of compliance without proper smog testing of the vehicles. (Cal. Code Regs., tit. 16, § 3340.35, subd. (c).)

b. Failing to ensure required smog tests performed. (Cal. Code Regs., tit. 16, § 3340.42.)

FIFTH CAUSE FOR DISCIPLINE (DISHONESTY, FRAUD OR DECEIT)

10. Health and Safety Code section 44072.2, subdivision (d), authorizes the suspension, revocation, or other disciplinary action against a licensee who commits any act involving dishonesty, fraud, or deceit whereby another is injured. The six fraudulent smog inspections performed at respondent Vallejo Smog Test involved dishonest, fraudulent, and deceitful acts which caused injury to the People of the State of California.

11. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (d), to discipline respondent Vallejo Smog Test's station license for engaging in the fraudulent testing and certification of the six vehicles, as set forth in Factual Finding 8.

Respondent Morales – License

SIXTH CAUSE FOR DISCIPLINE (VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM)

12. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (a), to discipline respondent Morales's license, as set forth in Factual Finding 8, for failing to properly perform emission control tests on two vehicles.

SEVENTH CAUSE FOR DISCIPLINE (FAILURE TO COMPLY WITH REGULATIONS FOR THE MOTOR VEHICLE INSPECTION PROGRAM)

13. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (c), to discipline respondent Morales's license, as set forth in Factual Finding 8, for violating each of the following:

a. Failing to inspect and test two vehicles in accordance with Health and Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section 3340.42. (Cal. Code Regs., tit. 16, § 3340.30, subd. (a).)

b. Failing to conduct the functional inspection in accordance with the smog check manual. (Cal. Code Regs., tit. 16, § 3340.42.)

EIGHTH CAUSE FOR DISCIPLINE (DISHONESTY, FRAUD OR DECEIT)

14. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (d), to discipline respondent Morales's license for engaging in the fraudulent testing and certification of two vehicles, as set forth in Factual Finding 8.

Respondent Bolden - Licenses

NINTH CAUSE FOR DISCIPLINE (VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM)

15. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (a), to discipline respondent Bolden's licenses, as set forth in Factual Finding 8, for failing to properly perform emission control tests on two vehicles.

TENTH CAUSE FOR DISCIPLINE (FAILURE TO COMPLY WITH REGULATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM)

16. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (c), to discipline respondent Bolden's licenses, as set forth in Factual Finding 5, for violating each of the following:

a. Failing to inspect and test two vehicles in accordance with Health and Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section 3340.42. (Cal. Code Regs., tit. 16, § 3340.30, subd. (a).)

b. Failing to conduct the functional inspection in accordance with the smog check manual. (Cal. Code Regs., tit. 16, § 3340.42.)

ELEVENTH CAUSE FOR DISCIPLINE (DISHONESTY, FRAUD OR DECEIT)

17. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (d), to discipline respondent Bolden's licenses for engaging in the fraudulent testing and certification of two vehicles, as set forth in Factual Finding 8.

Respondent Legler - License

TWELFTH CAUSE FOR DISCIPLINE (VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM)

18. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (a), to discipline respondent Legler's license, as set forth in Factual Finding 8, for failing to properly perform emission control tests on two vehicles.

THIRTEENTH CAUSE FOR DISCIPLINE (FAILURE TO COMPLY WITH REGULATIONS FOR THE MOTOR VEHICLE INSPECTION PROGRAM)

19. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (c), to discipline respondent Legler's license, as set forth in Factual Finding 8, for violating each of the following:

a. Failing to inspect and test two vehicles in accordance with Health and Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section 3340.42. (Cal. Code Regs., tit. 16, § 3340.30, subd. (a).)

b. Failing to conduct the functional inspection in accordance with the smog check manual. (Cal. Code Regs., tit. 16, § 3340.42.)

FOURTEENTH CAUSE FOR DISCIPLINE (DISHONESTY, FRAUD OR DECEIT)

20. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (d), to discipline respondent Legler's smog check inspector license for engaging in the fraudulent testing and certification of two vehicles, as set forth in Factual Finding 8.

Other Matters

21. Business and Professions Code section 9884.7 provides that the Director may discipline the registration for all places of business operated in California by respondent Vallejo Smog Test, upon a finding of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer. Respondent Bolden testified that he has another facility. The evidence established that respondent Vallejo Smog Test engaged in repeated and willful violations of the law.

22. Health and Safety Code section 44072.8, provides that when a license has been revoked or suspended under the Motor Vehicle Inspection Program, it constitutes cause to suspend or revoke any additional license issued under the Motor Vehicle Inspection Program. Other than respondent Bolden's testimony that he has another facility, there is no evidence that any other licenses were issued to the remaining respondents under the Motor Vehicle Inspection Program.

Disciplinary Considerations

23. Cause for discipline against respondents having been established, the issue is the appropriate discipline to impose. Under the Bureau's Guidelines for Disciplinary Orders and Terms of Probations (Guidelines) (rev. March 2016), the recommended discipline for the most egregious violations, fraud/dishonesty, is five years of probation.

The Guidelines also enumerate aggravating and mitigating factors to be considered. In this case, there is one aggravating factor: "evidence that the unlawful act was part of a pattern of practice." The evidence established six fraudulent smog certifications, which occurred due to respondent Vallejo Smog Test's improper business practices. In mitigation, respondents have no prior history of license

discipline (other than the minor citation against respondent Morales). There was evidence of retraining and initiation of steps to minimize recurrence and evidence of substantial measures to correct business practices to minimize recurrence.

Respondents acknowledge that they were not performing inspections in compliance with the Smog Check Manual's requirements, which led to the issuance of fraudulent certifications. Notwithstanding these violations, it is determined that respondents are appropriate candidates for probation. They have changed their business practice to work at a less rushed pace and should be better able to focus on following the required procedures for each inspection.

Upon consideration of the record as a whole, it is determined that allowing respondents to keep their registration and licenses on a probationary basis, subject to appropriate conditions set forth below, including a period of suspension for the facility and the completion of a training course for each of the technicians, will adequately protect the public and impress upon respondents the importance of following the Bureau's required inspection procedures. As the owner of the facility, a five-year probation period is appropriate for respondent Vallejo Smog Test, and a three-year probation period is appropriate for each of the three technicians.

Cost Recovery

24. Business and Professions Code section 125.3, provides that a respondent 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's certification constitutes prima facie evidence of its costs, as set forth in Factual Finding 21.

25. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court sets forth standards by which a licensing board must

exercise its discretion to reduce or eliminate costs awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his position in this case, 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 of the respondent.

26. The *Zuckerman* factors have been considered and do not support a reduction of the Bureau's cost recovery in the amount of \$8,720.10. As the owner of the facility and for condoning the inappropriate business practices that resulted in the discipline imposed from this Accusation, respondent Vallejo Smog Test shall be responsible to pay the total cost recovery.

ORDER

I. Respondent Vallejo Smog Test Only Center, Michael James Bolden, Partner, Naomi Jean Bolden, Partner

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 279478 and Smog Check, Test Only, Station License No. TC 279478 issued to respondent Vallejo Smog Test Only Center, Michael James Bolden, Partner, Naomi Jean Bolden, Partner, are revoked. However, the revocation is stayed and respondent is placed on probation for five years on the following terms and conditions:

1. ACTUAL SUSPENSION

Automotive Repair Dealer Registration No. ARD 279478 and Smog Check, Test Only, Station License No. TC 279478 issued to respondent Vallejo Smog Test Only Center, Michael James Bolden, Partner, Naomi Jean Bolden, Partner, are suspended for 30 consecutive days beginning on the effective date of the Decision and Order.

2. POSTING

During the period of suspension, respondent Vallejo Smog Test Only Center shall prominently post a sign or signs, provided by the 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 the Bureau and shall remain posted during the entire period of actual suspension.

3. OBEY ALL LAWS

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

4. QUARTERLY REPORTING

During the period of probation, respondent Vallejo Smog Test Only Center 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.

5. REPORT FINANCIAL INTERESTS

Respondent Vallejo Smog Test Only Center 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 respondent may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

6. ACCESS TO EXAMINE VEHICLES AND RECORDS

Respondent Vallejo Smog Test Only Center 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.

7. TOLLING OF PROBATION

If, during probation, respondent Vallejo Smog Test Only Center 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 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 is conducted or performed during the tolling period.

8. VIOLATION OF PROBATION

If respondent Vallejo Smog Test Only Center 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.

9. MAINTAIN VALID LICENSE

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

10. COST RECOVERY

Respondent Vallejo Smog Test Only Center shall pay the Bureau \$8,720.10 for the reasonable costs of investigation and enforcement of case No. 79/18-3549. This amount shall be paid to the Bureau within 60 days of the effective date of this decision, unless the Bureau, upon a request from respondent, allows payment to be made in installments. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six 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. 79/18-3549. 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. The Bureau 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.

11. COMPLETION OF PROBATION

Upon successful completion of probation, respondent Vallejo Smog Test Only Center'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.

12. LICENSE SURRENDER

Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent Vallejo Smog Test Only Center 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 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 license, or apply for a new 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 license at any time after that date, respondent must meet all current requirements for licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

II. Respondent Michael James Bolden

Smog Check Inspector License number EO 147201 and Smog Check Repair Technician License number EI 147201 issued to respondent Michael James Bolden are revoked. However, the revocation is stayed and respondent is placed on probation for three years on the terms and conditions set forth below:

1. OBEY ALL LAWS

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

2. QUARTERLY REPORTING

During the period of probation, respondent Michael James Bolden 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

Respondent Michael James Bolden 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 respondent 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

Respondent Michael James Bolden 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.

5. TOLLING OF PROBATION

If, during probation, respondent Michael James Bolden 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 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 is conducted or performed during the tolling period.

6. VIOLATION OF PROBATION

If respondent Michael James Bolden 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

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

current and active license during the period of probation shall also constitute a violation of probation.

8. COMPLETION OF PROBATION

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

9. LICENSE SURRENDER

Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent Michael James Bolden 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 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 license, or apply for a new 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 license at any time after that date, respondent must meet all current requirements for licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

10. TRAINING COURSE

During the period of probation, respondent Michael James Bolden 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 respondent. Respondent shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. 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 respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

11. NOTIFICATION TO EMPLOYER

When performing services that fall within the scope of his license, respondent Michael James Bolden shall provide each of his current or future employers a copy of the decision and the underlying Accusation before commencing employment. Notification to respondent's current employer shall occur no later than the effective date of the decision. Respondent shall submit to BAR, upon request, satisfactory evidence of compliance with this term of probation.

III. Respondent Kurt Prospero Morales

Smog Check Inspector License No. EO 635550 issued to respondent Kurt Prospero Morales is revoked. However, the revocation is stayed and respondent is placed on probation for three years on the terms and conditions set forth below:

1. OBEY ALL LAWS

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

2. QUARTERLY REPORTING

During the period of probation, respondent Kurt Prospero Morales 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

Respondent Kurt Prospero Morales 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 respondent 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

Respondent Kurt Prospero Morales 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.

5. TOLLING OF PROBATION

If, during probation, respondent Kurt Prospero Morales 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 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 is conducted or performed during the tolling period.

6. VIOLATION OF PROBATION

If respondent Kurt Prospero Morales 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

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

8. COMPLETION OF PROBATION

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

9. LICENSE SURRENDER

Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent Kurt Prospero Morales 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 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 license, or apply for a new 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 license at any time after that date, respondent must meet all current requirements for licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

10. TRAINING COURSE

During the period of probation, respondent Kurt Prospero Morales 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 respondent. Respondent shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. 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 respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

11. NOTIFICATION TO EMPLOYER

When performing services that fall within the scope of his license, respondent Kurt Prospero Morales shall provide each of his current or future employers a copy of the decision and the underlying Accusation before commencing employment. Notification to respondent's current employer shall occur no later than the effective

date of the decision. Respondent shall submit to BAR, upon request, satisfactory evidence of compliance with this term of probation.

IV. Respondent Edward V. Legler

Smog Check Inspector License No. EO 145186 issued to respondent Edward V. Legler is revoked. However, the revocation is stayed and respondent is placed on probation for three years on the terms and conditions set forth below:

1. OBEY ALL LAWS

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

2. QUARTERLY REPORTING

During the period of probation, respondent Edward V. Legler 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

Respondent Edward V. Legler 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 respondent 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

Respondent Edward V. Legler 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.

5. TOLLING OF PROBATION

If, during probation, respondent Edward V. Legler 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 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 is conducted or performed during the tolling period.

6. VIOLATION OF PROBATION

If respondent Edward V. Legler 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

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

8. COMPLETION OF PROBATION

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

9. LICENSE SURRENDER

Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent Edward V. Legler 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 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 license, or apply for a new 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 license at any time after that date, respondent must meet all current requirements for licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

10. TRAINING COURSE

During the period of probation, respondent Edward V. Legler 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 respondent. Respondent shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. 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 respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

11. NOTIFICATION TO EMPLOYER

When performing services that fall within the scope of his license, respondent Edward V. Legler shall provide each of his current or future employers a copy of the decision and the underlying Accusation before commencing employment. Notification to respondent's current employer shall occur no later than the effective date of the decision. Respondent shall submit to BAR, upon request, satisfactory evidence of compliance with this term of probation.

V. Additional Registration or License

1. Any other automotive repair dealer registration issued to Michael James Bolden or Naomi Jean Bolden is revoked and placed on probation under the same terms and conditions imposed on Automotive Repair Dealer Registration No. ARD 279478, including a 30-day suspension but excluding the payment of costs.

2. Any additional license issued under the Motor Vehicle Inspection Program in the name of Michael James Bolden or Naomi Jean Bolden is revoked and placed on probation under the same terms and conditions imposed on Smog Check, Test Only, Station License No. TC 279478.

DATE: February 14, 2020

DocuSigned by:
Pegina Brown
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REGINA BROWN

Administrative Law Judge

Office of Administrative Hearings