

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

In the Matter of the Accusation Against:

**ABRAHAM SALAZAR, dba DEADEND SMOGS**

4433 Firestone Blvd.

South Gate, CA 90280

Automotive Repair Dealer Registration No. ARD 293206

Smog Check Test Only Station License No. TC 293206

and

**ARMANDO TORRES**

1570 S. Harlan Ave.

Compton, CA 90220

Mailing Address:

3024 Tweedy Blvd.

South Gate, CA 90280

Smog Check Inspector License No. EO 641672

Respondents.

Case No. 79/20-5228

///

///

**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 with the following reduction in penalty pursuant to Government Code section 11517(c)(2)(B):

The revocations of licenses identified in the Proposed Decision are stayed for five (5) years under the following terms and conditions:

**(A) Obey All Laws**

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

**(B) Quarterly Reporting**

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

**(C) Report Financial Interests**

Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by BAR during the period of probation, report any financial interest which any Respondent or any partners, officers, or owners of any

Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

**(D) Access to Examine Vehicles and Records**

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

**(E) Tolling of Probation**

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

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

Any period of time of 30 days or more in which Respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the

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

**(F) Violation of Probation**

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

Once Respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

**(G) Maintain Valid License**

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

**(H) Cost Recovery**

Respondents, jointly and severally, shall reimburse the Bureau of Automotive Repair \$12,047.72, for the reasonable costs of the investigation and enforcement of this matter. Respondents may pay these costs according to a payment plan determined by the Bureau or its designee.

Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

**(I) Completion of Probation**

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

**(J) License Surrender**

Following the effective date of a decision that orders a stay of invalidation or revocation, if Respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate the Respondent's request and to exercise discretion whether to grant the request or take any other action deemed

appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

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

This Decision shall be effective on October 25, 2021.

IT IS SO ORDERED this 20 day of September, 2021.

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

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

**In the Matter of the Accusation Against:**

**ABRAHAM SALAZAR, DBA DEADEND SMOGS**

**Automotive Repair Dealer Registration No. ARD 293206**

**Smog Check, Test Only, Station License No. TC 293206**

**Respondent.**

**ARMANDO TORRES**

**Smog Check Inspector License No. EO 641672**

**Respondent.**

**Agency Case No. 79/20-5228**

**OAH No. 2021020837**

**PROPOSED DECISION**

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 27, 2021.

William D. Gardner, Deputy Attorney General, represented complainant Patrick Dorais, Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

William D. Ferreira, Esq., Automotive Defense Specialists, represented respondents Abraham Salazar, doing business as Deadend Smogs, and Armando Torres. Neither respondent appeared personally at the hearing.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 27, 2021.

### **FACTUAL FINDINGS**

1. On January 25, 2019, the Bureau issued Automotive Repair Dealer Registration No. ARD 293206 to Salazar dba Deadend Smogs. On April 2, 2019, the Bureau issued Smog Check, Test Only, Station License No. TC 293206 to Salazar dba Deadend Smogs. The registration and license were scheduled to expire on January 31, 2021, unless renewed.

2. Deadend Smogs is certified as a STAR Station. The Bureau's STAR program establishes performance standards that smog check stations must meet or exceed to become STAR certified. (See Cal. Code Regs., tit. 16, § 3340.1.) The Bureau certified Deadend Smogs as a STAR station on July 31, 2019, and the certification will remain active until the business' automotive repair dealer registration and/or smog check station license is revoked, canceled, or becomes delinquent, or the certification is invalidated.



3. On January 22, 2019, the Bureau issued Smog Check Inspector License No. EO 641672 to Torres. The license was scheduled to expire on February 28, 2021, unless renewed.

4. Deadend Smogs is a smog check station located at 4433 Firestone Boulevard, South Gate, California 90280. Salazar owns the station, and Torres is a smog check inspector for the station.

5. California's smog check program is designed to reduce air pollution by identifying and requiring the repair of polluting vehicles. The smog check program requires most vehicles in the state to undergo a smog check inspection every two years or when title is transferred.

6. Smog check inspections of pre-2000 model year vehicles include visual, functional, and tailpipe tests. In certain "Enhanced Areas," i.e., areas that do not meet air quality standards for ozone and carbon monoxide, the tailpipe test in an inspection is an Acceleration Simulation Mode (ASM) test, which is performed using an Emissions Inspection System (EIS), also known as a BAR-97. The EIS is a computer-based, five-gas analyzer that measures hydrocarbons (HC), carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), carbon dioxide (CO<sub>2</sub>), and oxygen (O<sub>2</sub>). The ASM inspection entails two loaded mode sequences ("Mode 1" and "Mode 2") that measure the vehicle's tailpipe emissions while the vehicle is running on a dynamometer. The vehicle's drive wheels are placed onto rollers, and the vehicle is driven at speeds of 15 miles per hour during Mode 1 and 25 miles per hour during Mode 2. The purpose of the ASM inspection is to simulate driving conditions while the emissions are sampled and measured by the EIS.

7. If the vehicle passes the visual, functional, and tailpipe tests, it passes the overall inspection, and a certificate of compliance is issued and transmitted electronically to the Bureau's Vehicle Information Database (VID). The VID also contains second-by-second emissions data that the EIS records during the tailpipe test.

8. On a date not established, Ian Evans, a Bureau Program Representative, began reviewing smog test data transmitted from Deadend Smogs to the VID. Evans identified 10 pre-2000 model year vehicles tested and passed in March and April 2020 under Torres's license for which the second-by-second emissions data were unusual. In each test, the data showed at least one sharp, simultaneous drop in the concentrations of NO<sub>x</sub>, CO, and HC during the ASM test at a period of steady-state speed. The simultaneous drop in pollutants was followed by a simultaneous rise of the same pollutants about 20 to 30 seconds later. Nine of the 10 vehicles also had a second sharp, simultaneous drop in the same pollutant concentrations later in the tests. Evans also determined that seven of the 10 vehicles had failed prior smog inspections due to elevated pollutant concentration levels measured by the EIS.

9. On November 8, 2020, complainant filed an Accusation in his official capacity alleging that the simultaneous drops and rises of pollutants during the 10 tests evidenced fraudulent "clean gassing," i.e., introducing a surrogate gas into the EIS during an inspection in order to skew pollutant emission readings. The Accusation lists the 10 specific smog tests and vehicles at issue (Exhibit 1, pp. AGO-0011 through AGO-0015), and that list is incorporated by reference. Respondents filed a timely notice of defense.

## Hearing

10. Complainant presented testimony and an investigative report from Evans, who opined that the data from the 10 smog tests showed a pattern of unusual gas readings consistent with clean gassing. Complainant also presented testimony and a declaration from Francis J. Di Genova, an Air Quality Engineer for the Bureau, who opined that the data from the 10 tests cannot plausibly be explained by changes in engine operation, catalyst light-off, air dilution, malfunction of an EIS component, or anything other than clean gassing. According to Di Genova, he has not seen pollutant concentration changes and other gas concentration changes like these in Bureau roadside tests (see Health & Saf. Code, § 44081), in Bureau referee tests (see Health & Saf. Code, § 44014), or in any legitimate smog check tests.

11. Complainant also presented a photograph of a compressed gas cylinder labeled as containing a mixture of argon and carbon dioxide that Evans took during a visit to Deadend Smogs on May 19, 2020. Di Genova testified the mixture of argon and carbon dioxide in the cylinder would be “perfect” for clean gassing. In addition, Evans testified that he and other Bureau representatives visited Deadend Smogs on June 24, 2021 and observed a revolution per minute (RPM) simulator – a known smog test “cheat” device – on the station’s BAR-97 analyzer while Salazar and Torres were working together on a smog test. Evans also observed a low-pressure fuel evaporative tester (LPFET) test hose connected to a calibration tank test port during a smog check inspection, which Evans testified can be indicative of a fraudulent test practice known as “clean tanking” for older vehicles that require a low-pressure test of evaporative emissions controls.

12. Finally, complainant presented certifications stating that the Department of Justice has billed the Bureau \$10,211.25 concerning the case, and that the Bureau incurred an additional \$1,836.47 in investigating it, for a total of \$12,047.72.

13. Respondents did not call witnesses or present documents in support of their defense. But their counsel's cross-examinations of Evans and Di Genova established that the Bureau performed no surveillance of Deadend Smogs and never saw anyone at the station clean gassing a vehicle using the compressed gas cylinder or otherwise. Further, Bureau representatives did not see the RPM simulator or LPFET test hose and calibration tank in use during the visit on June 24, 2021, and the vehicle being smog tested during that visit was not old enough to require a low-pressure test of evaporative emissions controls. Moreover, complainant concedes that neither the RPM simulator nor the LPFET test hose and calibration tank was involved in the 10 smog tests at issue. The Bureau also did not contact any of the vehicle owners with respect to the 10 tests.

### **Analysis of Evidence**

14. Complainant's evidence that the 10 vehicles at issue were clean gassed was persuasive and unrebutted. The exhibits and testimony from Evans and Di Genova establish there is no other plausible explanation for the smog test data transmitted under Torres's license from Deadend Smogs to the Bureau's VID. Further, Evans observed a compressed gas cylinder at Deadend Smogs that was labeled as containing a mixture of gases that was "perfect" for clean gassing. Evans also observed an RPM simulator that is a known "cheat" device for smog tests on the BAR-97 analyzer while both Salazar and Torres were present. While the RPM simulator was not involved in the 10 smog tests, finding it and the compressed gas cylinder at Deadend Smogs lend support to the other evidence that the 10 vehicles were clean gassed. The fact that

seven of the 10 vehicles failed their prior smog inspections also supports complainant's allegations that the smog inspections at issue were fraudulent. Respondents' critiques of the Bureau's investigation and analysis lack persuasive force as compared to this evidence.

## **LEGAL CONCLUSIONS**

### **Legal Standards**

1. The Director of the Department may suspend, revoke, or impose probation on an automotive repair dealer registration for certain acts or omissions related to the conduct of the repair dealer's business, including: "(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. [¶] . . . [¶] (4) Any other conduct that constitutes fraud. [¶] . . . [¶] (6) Failure in any material respect to comply with the provisions of this chapter [i.e., the Automotive Repair Act, Bus. & Prof. Code, div. 3, ch. 20.3] or regulations adopted pursuant to it. . . ." (Bus. & Prof. Code, § 9884.7, subd. (a).) The acts or omissions may be "done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer." (*Ibid.*) The Director may take such disciplinary action "where the automotive repair dealer cannot show there was a bona fide error . . . ." (*Ibid.*)

2. Similarly, the Director may suspend, revoke, or take other disciplinary action against a smog check station license or smog check inspector license "if the licensee, or any partner, officer, or director thereof, does any of the following: [¶] (a) Violates any section of this chapter [i.e., the Motor Vehicle Inspection Program, Health

& Saf. Code, div. 26, pt. 5, ch. 5] and the regulations adopted pursuant to it, which related to the licensed activities. [¶] . . . [¶] (c) Violates any of the regulations adopted by the director pursuant to this chapter. [¶] (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured. . . ." (Health & Saf. Code, § 44072.2.)

3. An automotive repair dealer registration is a nonprofessional license because it does not have extensive educational, training, or testing requirements similar to a professional license. (See *Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917 (*Imports Performance*); *Mann v. Dept. of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1894.) To the contrary, an automotive repair dealer registration "shall" be issued to any person who simply applies for it and pays a fee. (Bus. & Prof. Code, § 9884.2.) To impose discipline on such a nonprofessional license, complainant must prove cause for discipline by a preponderance of the evidence (*Imports Performance, supra*, 201 Cal.App.4th at pp. 916-917), which means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri- Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

4. Smog check station and inspector licenses also do not have extensive educational, training, or testing requirements, and are therefore also nonprofessional licenses. (*Imports Performance, supra*, 201 Cal.App.4th at pp. 916-917.) An automotive repair dealer may become licensed as a smog test station simply by submitting an application, paying a fee, and passing a Bureau inspection. (Cal. Code Regs., tit. 16, § 3340.10.) Although an applicant for a smog check inspector license must complete certain course work (Cal. Code Regs., tit. 16, § 3340.28, subd. (b)) and pass an examination (Cal. Code Regs., tit. 16, § 3340.29), "such requirements are not similar to

the 'extensive educational, training and testing requirements' necessary to obtain a professional license. [Citation]." (*Imports Performance, supra*, 201 Cal.App.4th at p. 916.) Therefore, to impose discipline on a smog check station or inspector license, complainant's burden of proof is also proof by a preponderance of the evidence. (*Id.* at pp. 916-917.) The expiration of a registration or license does not deprive the Director of jurisdiction to take disciplinary action. (Bus. & Prof. Code, §§ 118, subd. (b), 9884.13, and 9889.7; Health & Saf. Code, § 44072.6.)

## **Analysis**

### **CAUSES FOR DISCIPLINE AGAINST SALAZAR**

5. The preponderance of the evidence established that that the 10 smog tests were the product of clean gassing, which is fraudulent conduct. Complainant's evidence of clean gassing was persuasive and unrebutted. (Factual Findings 8-14.)

6. While Salazar himself was not the smog inspector on the tests, his automotive repair dealer registration and smog check station license are nonetheless subject to discipline for the fraudulent tests. As the Bureau's licensee, Salazar is responsible for ensuring that his business operates lawfully, and "[a] licensee may not insulate himself from regulations by electing to function through employees or independent contractors. [Citations.]" (*Eisenberg v. Myers* (1983) 148 Cal.App.3d 814, 824; see also *California Assn. of Health Facilities v. Dept. of Health Services* (1997) 16 Cal.4th 284, 296 ["[A] licensee will be held liable for the acts of its agents . . ."]; *Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 360 ["The courts have repeatedly held that licensees are responsible for the acts of their employees."].)

7. Based on the above, there is cause for the Director to revoke or suspend Salazar's automotive repair dealer registration for the following reasons:

a. First Cause for Discipline – making or authorizing statements that he in the exercise of reasonable care should have known to be untrue or misleading, by certifying that the 10 vehicles had passed inspection and were in compliance with applicable laws and regulations, when in fact those vehicles had not been properly inspected. (Bus. & Prof. Code, §§ 9884.7, subd. (a)(1), 9889.22.)

b. Second Cause for Discipline – fraud, by issuing electronic smog certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).)

c. Third Cause for Discipline – materially violating the Automotive Repair Act and regulations adopted under it by issuing certificates of compliance for the 10 vehicles without properly inspecting them. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).)

8. In addition, there is cause for the Director to revoke or suspend Salazar's smog check station license for the following reasons:

a. Fourth Cause for Discipline – violation of the Motor Vehicle Inspection Program. The violations included failing to ensure that the emission control tests complied with Department procedures (Health & Saf. Code, § 44012); issuing certificates of compliance without properly testing and inspecting the vehicles (Health & Saf. Code, § 44015, subd. (b)); and willfully making false entries for smog certificates of compliance for the vehicles (Health & Saf. Code, § 44059).

b. Fifth Cause for Discipline – committing acts involving dishonesty, fraud or deceit whereby another is injured, by issuing electronic smog certificates of compliance for vehicles without performing bona fide inspections of the emission



control devices and systems on the vehicles, thereby depriving the people of the State of California of the protections afforded by the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (d).)

c. Sixth Cause for Discipline – violation of regulations adopted under the Motor Vehicle Inspection Program. The violations included issuing certificates of compliance for vehicles that had not been properly inspected (Cal. Code Regs., tit. 16, § 3340.35, subd. (c)); failing to conduct the smog tests and inspections in accordance with the Bureau's specifications (Cal. Code Regs., tit. 16, §§ 3340.42); failing to perform smog check inspections as prescribed in the operative Smog Check Manual (Cal. Code Regs., tit. 16, § 3340.45); and issuing false and misleading smog certificates of compliance for vehicles without performing bona fide inspections on them (Cal. Code Regs., tit. 16, § 3373).

#### **CAUSES FOR DISCIPLINE AGAINST TORRES**

9. There is cause for the Director to revoke or suspend Torres's smog check inspector license for the following reasons:

a. Seventh Cause for Discipline – willfully making false and misleading statements with regard to the smog certificates of compliance issued under Torres's license for the 10 vehicles. (Bus. & Prof. Code, §§ 9884.7, subd. (a)(1), 9889.22.)

b. Eighth Cause for Discipline – violations of the Motor Vehicle Inspection Program. The violations included failures to perform the smog tests in accordance with procedures prescribed by the Department and willful false entries on certificates of compliance. (Health & Saf. Code, §§ 44012, 44032, 44059, and 44072.2, subd. (a)).

c. Ninth Cause for Discipline – committing acts involving dishonesty, fraud or deceit whereby another is injured, by issuing electronic smog certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the people of the State of California of the benefits of the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (d).)

d. Tenth Cause for Discipline – violation of regulations adopted under the Motor Vehicle Inspection Program. The violations included failing to inspect and test the 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)); and failing to perform smog check inspections as prescribed in the operative Smog Check Manual (Cal. Code Regs., tit. 16, § 3340.45).

### **DISCIPLINARY ACTION**

10. “The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. . . .” (Health & Saf. Code, § 44072.10, subd. (c).) For a station licensee, the Bureau’s Guidelines for Disciplinary Orders and Terms of Probation (rev. March 2016) (Guidelines) also recommend revocation of any applicable automotive repair dealer registration for such fraud. (Guidelines, p. 8 [recommending “Invalidation/Revocation of applicable registration/license” for “Fraudulent certification/inspection of vehicle”].) The primary purpose of administrative license proceedings is to protect the public, and the object of discipline is not to punish the licensee. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817; see also *Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448-450; *Imports Performance, supra*, 201 Cal.App.4th at p. 919.)

11. Here, respondents performed 10 fraudulent smog tests at Deadend Smogs resulting in 10 fraudulent certificates of compliance. The violations were serious and numerous, and respondents presented no evidence of any changed practices or procedures since receiving the Accusation, giving the Bureau no assurances, they will operate lawfully in the future. Further, neither respondent presented any other rehabilitation evidence. Therefore, the proper level of discipline is revocation of Salazar's automotive repair dealer registration and smog check station license, not suspension or a period of probation. Revocation is also proper as to the smog check inspector license of Torres, who is the listed inspector on the fraudulent smog tests.

### **COSTS**

12. Complainant also requests \$12,047.72 in investigation and enforcement costs related to the case. Unless otherwise provided by law, "in any order issued in resolution of a disciplinary proceeding before any board within the [Department of Consumer Affairs] . . . upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." (§ 125.3, subd. (a).)

13. In evaluating a request for costs, the administrative law judge must consider whether complainant's investigation was "disproportionately large" compared to the violation, and whether the licensee: (1) committed some misconduct but "used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed;" (2) had a "subjective good faith belief in the merits of his or her position;" (3) raised a "colorable challenge" to the proposed discipline; and (4) "will be financially able to make later payments." (*Zuckerman v. State Board of*

*Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 (*Zuckerman*) [quoting *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 342, 345].)

14. Complainant offered certifications of the Bureau's enforcement costs, which are prima facie evidence that those costs are reasonable. (§ 125.3, subd. (c).) Respondents presented no evidence to the contrary. Respondents did not obtain a reduction in the severity of the discipline imposed from the maximum discipline requested in the Accusation, i.e., revocation. They also did not raise a colorable challenge to the requested discipline, and the Bureau's investigation was not disproportionately large in light of the violations. Further, respondents did not present evidence of any financial inability to pay the costs. Therefore, respondents will be ordered to pay the costs.

#### **OTHER MATTERS**

15. "[T]he director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of [the Automotive Repair Act], or regulations adopted pursuant to it." (Bus. & Prof. Code, § 9884.7, subd. (c).) Complainant requests a statewide order against Salazar under this provision, and the evidence established 10 similar and willful violations of the Automotive Repair Act. Therefore, the request will be granted.

16. "When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter [i.e., the Motor Vehicle Inspection Program] in the name of the licensee may be likewise revoked or suspended by the director." (Health & Saf. Code, § 44072.8.) Complainant also requests

relief against Salazar and Torres under this statute, and complainant presented evidence supporting revocation of any additional licenses they hold under the Motor Vehicle Inspection Program. Therefore, this request will also be granted.

### **ORDER**

Automotive Repair Dealer Registration No: ARD 293206, issued to respondent Abraham Salazar, dba Deadend Smogs, is revoked.

Any other automotive repair dealer registration issued to respondent Abraham Salazar is revoked.

Smog Check, Test Only, Station License No. TC 293206, issued to respondent Abraham Salazar, dba Deadend Smogs, is revoked.

Any additional license issued to respondent Abraham Salazar under the Motor Vehicle Inspection Program (Health & Saf. Code, div. 26, pt. 5, ch. 5) is revoked.

Smog Check Inspector License No. EO 641672, issued to respondent Armando Torres, is revoked.

Any additional license issued to respondent Armando Torres under the Motor Vehicle Inspection Program (Health & Saf. Code, div. 26, pt. 5, ch. 5) is revoked.

///

///

///

Respondents Abraham Salazar and Armando Torres shall pay the Bureau \$12,047.72 for the reasonable costs of the investigation and enforcement of case number 79/20-5228 within 30 days of the effective date of this order.

DATE: 08/25/2021

Thomas Heller  
Thomas Heller (Aug 25, 2021 16:10 PDT)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings