

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

In the Matter of the Accusation Against:

**USA SMOG AUTOMOTIVE
ESSA RASHEED JOULANI, Owner**
710 North Kirby Street
Hemet, CA 92545

Automotive Repair Dealer Registration No.:
ARD 257842
Smog Check Station License No.: RC 257842

and

TAREK ESSA JOULANI
1420 Genoa Lane
San Jacinto, CA 92583

Smog Check Inspector License No.: EO
636971

and

IYAD A. ALSAYEH
19511 Tyler Rd.
Perris, CA 92570

Smog Check Inspector License No.: EO
637265
Smog Check Repair Technician License No.:
EI 637265

Case No.: 79/16-3305

OAH No.: 2018030925

Respondents.

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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 become effective January 29, 2019.

DATED: Dec. 20, 2018



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

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

In the Matter of the Accusation Against:

U S A SMOG AUTOMOTIVE, ESSA
RASHEED JOULANI, Owner
Automotive Repair Dealer Registration No.
ARD 257842
Smog Check Station License No. RC
257842,

TAREK ESSA JOULANI
Smog Check Inspector License No. EO
636971,

and

IYAD A. ALSAYEH
Smog Check Inspector License No. EO
637265
Smog Check Repair Technician License No.
EI 637265,

Respondents.

Case No. 79/16-3305

OAH No. 2018030925

PROPOSED DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 30, 2018, in San Diego, California.

Robert T. White, Deputy Attorney General, Department of Justice, represented complainant Patrick Dorais, Chief, Bureau of Automotive Repair, Department of Consumer Affairs, State of California.

Respondent Essa Rasheed Joulani (Essa Joulani), owner, represented himself and U S A Smog Automotive (U S A Smog).

Respondent Tarek Essa Joulani (Tarek Joulani) represented himself.

Respondent Iyad A. Alsayeh represented himself.

Oral and documentary evidence was presented. The record remained open until August 31, 2018, for complainant to submit a legible copy of Exhibit 45. The record further remained open until September 14, 2018, for respondents to file a response to the document submitted by complainant.

Complainant and respondent timely submitted those documents. Complainant filed a legible copy of Exhibit 45 and a declaration of Steve P. Koch describing how he enlarged the previously illegible document and reiterating his testimony concerning what the document shows. Complainant was authorized only to provide a legible copy of Exhibit 45. To the extent Mr. Koch's declaration documents his prior testimony, that part was not relied upon in reaching the decision. The legible copy of Exhibit 45 is received and will be substituted for the prior illegible version of Exhibit 45. Mr. Koch's declaration is marked as Exhibit 48 and received only as it relates to the production of Exhibit 45. Respondent's letter in response to Exhibit 45 is marked as Exhibit D and received as argument.

On September 14, 2018, the record was closed, and the matter was submitted.

FACTUAL FINDINGS

1. On April 20, 2009, the bureau issued Automotive Repair Dealer Registration No. ARD 257842 to U S A Smog, Essa Joulani, owner. This registration will expire on March 31, 2019, unless renewed. On May 4, 2009, the bureau issued Smog Check Station License No. RC 257842 to U S A Smog, Essa Joulani, owner. This license will expire on March 31, 2019, unless renewed.
2. On June 9, 2014, the bureau issued Smog Check Inspector License No. EO 636971 to Tarek Joulani. This license will expire on March 31, 2020, unless renewed.
3. On December 19, 2014, the bureau issued Smog Check Inspector License No. EO 637265 to Iyad A. Alsayeh. This license will expire on September 30, 2018, unless renewed. On September 5, 2014, the bureau issued Smog Check Repair Technician License No. EI 637265 to Iyad A. Alsayeh. This license will expire on September 30, 2018, unless renewed.

Prior Disciplinary History

4. On August 27, 2013, the bureau issued a citation to U S A Smog. This citation was withdrawn by the bureau following U S A Smog's request for a formal appeal. On September 4, 2015, the bureau issued a citation to U S A Smog. U S A Smog requested a formal appeal, and that appeal is pending.

5. On September 4, 2015, the bureau issued a citation to Iyad A. Alsayeh. The citation was affirmed on November 11, 2015.

6. There is no history of other citations or discipline having been imposed against the license issued to Tarek Joulani.

Accusation

On October 24, 2017, complaint signed Accusation No. 79/16-3305. The accusation contained 24 causes for discipline alleging that U S A Smog, through its employees Tarek Joulani and Iyad Alsayeh, unlawfully certified that three vehicles – a 1992 Toyota, a 1995 Toyota, and a 1991 Buick – passed a Low Pressure Fuel Evaporative Test (LPFET) without having performed the LPFET on those vehicles. The accusation sought the revocation of all bureau licenses and/or registrations held by respondents and reimbursement for the bureau's costs of investigation. The accusation also sought reimbursement for reasonable costs of the enforcement of the case.

7. Respondents each timely signed a Notice of Defense and requested a hearing.

FACTUAL FINDINGS

California's Clean Air Legislation and Smog Check Inspections

8. The California Legislature enacted clean air legislation to reduce toxic emissions that are a result of the operation of motor vehicles. This legislation requires every motor vehicle registered in California to pass a smog check inspection upon change of ownership and to undergo an inspection every two years in areas that are subject to the biennial smog certification program.

9. A licensed smog check station causes an electronic certificate of compliance to be issued when the vehicle being tested passes a smog check inspection. A certificate of compliance cannot be issued until a vehicle passes a properly conducted inspection. Only a licensed smog check technician working at a licensed smog check station may conduct a smog check inspection.

10. A smog check inspection is accomplished by using either a computer-based device known as an emission inspection system (EIS) or by accessing the bureau's web-based smog test program through the consumer's vehicle's onboard computer (OIS).¹ Each testing program has a unique identification number and is capable of communicating online

¹ Beginning March 9, 2015, the bureau required smog stations to use the OIS system when testing 2000 model year and newer gas-powered vehicles with 14,000 gross weight rating (GVWR) and under, and 1998 and newer diesel powered vehicles with 14,000 GVWR and under.

with a statewide database. The programs guide a smog technician to perform required tests of the consumer's vehicle. Information entered into an EIS or sent through the OIS website concerning a smog check inspection is stored in the statewide database.

11. After information concerning the engine emissions is gathered, the EIS and OIS require the technician to conduct a visual inspection in which the technician must determine whether required vehicle emission control systems and devices are present on the vehicle. If the technician has questions about which components are required or the location of particular emission control systems, he or she can consult manuals that are required to be maintained in every station. Also, typically, there is a diagram of a vehicle's required emission control system under the hood. A technician must enter his or her observations concerning the required emission control systems and devices into the smog check system he or she is utilizing.

12. When smog testing vehicles with manufacturing date from 1976 to 1995 that have an evaporative emissions system (charcoal canister) that is easily accessible, the smog technician is required to perform a LPFET. This test is designed to ensure that the emissions systems of the vehicle hold in gas vapors between the gas tank filler cap and the charcoal canister in the engine so that the vapors are not released into the atmosphere. If there is a hole somewhere in this part of the emissions control system, the system is compromised and hydrocarbons are leaked to the atmosphere as pollution.

To perform the LPFET, a technician must enter the last four digits of the Vehicle Identification Number (VIN) into the LPFET device and attach the test hose from the device to an adapter. The technician must then remove the fuel tank filler cap, insert the vacuum sealed adapter into the neck of the filler pipe, attach a set of approved locks to pinch off the fuel evaporative canister hose, pressurize the gas tank with Nitrogen, and observe and report the pressure reading obtained during testing. If the lines are in good working order, there should be no more than a minimal drop in pressure after the gas tank is pressurized; however, if there is a defect in the fuel neck or any line or hose, there will be a significant loss of pressure. The LPFET device determines whether the vehicle tested has passed the pressure test. The smog technician must manually enter the result obtained from the LPFET test device at the conclusion of testing as a "pass" or "fail." In a vehicle for which the LPFET test is not required, the smog technician manually enters "NA" or not applicable.

LPFET test devices are manufactured by two companies. Each LPFET device maintained at a smog station carries a serial number. The device periodically transmits data it has collected to the bureau through a modem.

13. When a smog check inspection is completed, the testing program generates a written report – known as a vehicle inspection report (VIR) – that contains a description of the vehicle that was tested and the results of the inspections. If the vehicle passes the smog check inspection, an electronic certificate of compliance is issued automatically to the Department of Motor Vehicles (DMV). If the vehicle does not pass the smog check inspection, the vehicle must be repaired and retested. A vehicle that passes all other

emission control tests will fail the inspection if it fails the LPFET. A certificate of compliance may not be issued for a vehicle that fails the LPFET.

The Bureau's Video Surveillance Operation of February 25, 2016

14. Steven M. Gauronski is a Program Representative II in the bureau's Fontana Forensic Documentation Laboratory (lab). Mr. Gauronski did not testify at the hearing. His testimony was received through his declarations under penalty of perjury dated January 20, 2016, and March 10, 2016.

15. One of the vehicles the bureau uses in its undercover inspection program is a 1992 Toyota Corolla. This vehicle has an evaporative emission control system charcoal canister. The system and its associated hoses are easily accessible at the driver's side rear area of the engine compartment. The 1992 Toyota Corolla is required to be given an LPFET as part of a smog inspection's functional test.

16. Prior to January 13, 2016, Mr. Gauronski removed the fuel filler pipe assembly of the 1992 Toyota Corolla, which is part of the evaporative emission control system, and installed a fuel filler pipe assembly that had a 0.125 inch hole in it. The hole in the pipe caused a leak in the vehicle's evaporative emissions system that would cause the vehicle to fail a properly performed LPFET. Mr. Gauronski installed tamper indicators to detect any changes made to the pipe assembly after he introduced the defect.

17. On January 14, 2016, Mr. Gauronski performed an LPFET on the 1992 Toyota Corolla. The vehicle failed the LPFET as a gross leak was detected. Mr. Gauronski entered "F" into the EIS for the results of the LPFET. Because the 1992 Toyota Corolla failed the LPFET, the overall results of the inspection resulted in the issuance of a failed VIR that noted "FAIL" next to the words "Fuel Evap Test."

18. On February 24, 2016, Steve Koch, a Program Representative I,² obtained the 1992 Toyota Corolla in order to conduct an undercover operation of one or more smog stations. Mr. Koch has been employed by the bureau for 18 years. During the majority of his employment, Mr. Koch specialized in the bureau's smog emissions program. Mr. Koch was an independent mechanic for 10 years prior to his employment with the bureau. He has held a smog technician license since 1996 and is an ASE certified master technician. He last conducted a smog inspection a few years ago in a training class.

19. On February 25, 2016, Mr. Koch provided the 1992 Toyota Corolla to an undercover operative for the bureau and instructed the undercover operative to take the vehicle to respondent U S A Smog and request a smog inspection. The 1992 Toyota Corolla was equipped with three video cameras – one focused on the driver, one placed under the hood and the third focused on the vehicle's gas cap. Before releasing the 1992 Toyota Corolla to the undercover operative, Mr. Koch activated the video recorders.

² Mr. Koch testified at the hearing.

14. U S A Smog's employee, Iyad A. Alsayeh, performed a smog test on the 1992 Toyota Corolla. After the test was completed, the undercover operative was given an invoice and a VIR that indicated the vehicle had passed the inspection, including the "Fuel Evap Test." The operative paid \$60 for the smog check inspection. Mr. Alsayeh signed the VIR. U S A Smog transmitted Smog Check Certificate No. [REDACTED] to the bureau's database and to the DMV. The VIR provided for the 1992 Toyota Corolla was false in that, with the introduced defect, the 1992 Toyota Corolla could not pass the LPFET, and it was not in compliance with the laws and regulations pertaining to California emissions standards.

20. After obtaining the VIR, the undercover operative returned the vehicle to Mr. Koch. Mr. Koch stopped the video recorders on the vehicle. Mr. Koch reviewed the videotapes from the 1992 Toyota Corolla and observed that, during the smog inspection, the gas cap door to the vehicle was opened, the gas cap was removed, and approximately six minutes later, the gas cap was reinstalled and the gas cap door was closed. Mr. Koch observed and testified that the vacuum sealed LPFET adapter from the LPFET machine was not installed³ during the smog inspection. Review of the videotapes from the 1992 Toyota Corolla by the administrative law judge confirmed that the gas cap was removed and reinstalled without the insertion of a LPFET adapter into the gas tank opening. It is not possible to conduct an LPFET test without installing the LPFET adapter.

21. On March 7, 2016, Mr. Gauronski performed a re-inspection of the 1992 Toyota Corolla and documented his findings. The 1992 Toyota Corolla failed the LPFET functional portion of the smog inspection. Mr. Gauronski verified that the tamper indicators he installed were intact and that the evaporative emission control system in the 1992 Toyota Corolla had not been altered. He documented his inspection and the condition of the 1992 Toyota Corolla.

22. As a result of the undercover operation, Mr. Koch determined that U S A Smog and Mr. Alsayeh fraudulently issued a Certificate of Compliance to the 1992 Toyota Corolla.

The Bureau's Video Surveillance Operation of April 27, 2016

23. Raymond Keays is a Program Representative I in the bureau's Fontana lab. Mr. Keays did not testify at the hearing. His testimony was received through his declarations under penalty of perjury dated March 23, 2016, and May 11, 2016.

24. One of the vehicles the bureau uses in its undercover inspection program is a 1995 Toyota Corolla. This vehicle has a fuel evaporative emission control system with a charcoal canister. A smog technician is required to perform an LPFET test on 1995 Toyota Corollas as part of a smog inspection's functional test.

³ The vacuum sealed adapter takes the place of the gas cap.

25. On March 17, 2016, Mr. Keays removed the fuel inlet pipe from the 1995 Toyota Corolla, which is part of the evaporative emission control system, and installed a fuel inlet pipe that was unable to retain pressure in its place. The modified fuel inlet pipe would cause the vehicle to fail a properly performed LPFET.

26. On March 18, 2016, Mr. Keays installed tamper indicators to detect any changes made to the pipe after he installed it. Mr. Keays also installed the left rear wheel cover so the modification on the fuel inlet pipe was inaccessible.

27. On March 18, 2016, Mr. Keays performed an LPFET on the 1995 Toyota Corolla. The vehicle failed the LPFET portion of the smog inspection. Because the 1995 Toyota Corolla failed the LPFET, the overall results of the inspection resulted in the issuance of a failed VIR that noted "FAIL" next to the words "Fuel Evap Test."

28. On April 27, 2016, Mr. Koch obtained possession of the 1995 Toyota Corolla. He provided the 1995 Toyota Corolla to an undercover operative for the bureau and instructed the undercover operative to take the vehicle to U S A Smog and request a smog inspection. The 1995 Toyota Corolla was equipped with an onboard video recording system. Before releasing the 1995 Toyota Corolla to the undercover operative, Mr. Koch activated the video recorders.

29. U S A Smog's employee, Tarek Joulani performed a smog test on the 1995 Toyota Corolla. After the test was completed, the undercover operative was given an invoice and a VIR that indicated the vehicle had passed the inspection, including the "Fuel Evap Test." The operative paid \$60 for the smog check inspection. Tarek Joulani signed the VIR. U S A Smog transmitted Smog Check Certificate No. [REDACTED] to the bureau's database and to the DMV. The VIR provided for the 1995 Toyota Corolla was false in that, with the introduced defect, the 1995 Toyota Corolla could not pass the LPFET, and it was not in compliance with the laws and regulations pertaining to California emissions standards.

30. After obtaining the VIR, the undercover operative returned the vehicle to Mr. Koch. Mr. Koch stopped the video recorders on the vehicle. Mr. Koch reviewed the videotapes from the 1995 Toyota Corolla and observed that, during the smog inspection, the gas cap door to the vehicle was opened, the gas cap was removed, and approximately one minute later, the gas cap was reinstalled and the gas cap door was closed. Mr. Koch observed and testified that the vacuum sealed LPFET adapter from the LPFET machine was not installed during the smog inspection. Review of the videotapes from the 1995 Toyota Corolla by the administrative law judge confirmed that the gas cap was removed and reinstalled without the insertion of a LPFET adapter into the gas tank opening. It is not possible to conduct an LPFET test without installing the LPFET adapter.

31. On May 3, 2016, Mr. Keays performed a re-inspection of the 1995 Toyota Corolla and documented his findings. The 1995 Toyota Corolla failed the LPFET functional portion of the smog inspection. Mr. Keays confirmed that the tamper indicators he had

installed had not been disturbed, and he documented the inspection and the condition of the 1995 Toyota Corolla.

32. As a result of the undercover operation, Mr. Koch determined that U S A Smog and Tarek Joulani fraudulently issued a Certificate of Compliance to the 1995 Toyota Corolla.

The Bureau's Video Surveillance Operation of May 6, 2016

33. Paul Stump is a Program Representative I in the bureau's Fontana lab. Mr. Stump did not testify at the hearing. His testimony was received through his declarations under penalty of perjury dated April 22, 2016, and June 9, 2016.

34. One of the vehicles the bureau uses in its undercover inspection program is a 1991 Buick. This vehicle has a fuel evaporative emission control system with a charcoal canister. A smog technician is required to perform an LPFET test on 1991 Buicks as part of a smog inspection's functional test.

35. On April 15, 2016, Mr. Stump performed a smog inspection of the 1991 Buick.⁴ The vehicle passed all aspects of the inspection, including the LPFET portion of the functional test.

36. On April 18, 2016,⁵ Mr. Stump removed the original hose between the steel line from the fuel tank and the plastic line to the vent orifice of the Evaporative Control Canister, which are parts of the evaporative emission control system on the 1991 Buick. Mr. Stump replaced the removed parts with a modified hose with a hole in it to cause a leak in the evaporative control system. Mr. Stump installed tamper indicators to detect any changes made to the pipe after he installed it. The modified hose would cause the vehicle to fail a properly performed LPFET.

37. On April 19, 2016, Mr. Stump performed an LPFET on the 1991 Buick. The vehicle failed the LPFET portion of the smog inspection. Because the 1991 Buick failed the LPFET, the overall results of the inspection resulted in the issuance of a failed VIR that noted "FAIL" next to the words "Fuel Evap Test."

38. On April 26, 2016, Mr. Koch obtained possession of the 1991 Buick. On May 6, 2016, he provided the 1991 Buick to an undercover operative for the bureau and instructed

⁴ In his declarations, Mr. Stump states the 1991 Buick passed a smog inspection he performed on April 20, 2016. The VIR received in evidence shows that this inspection occurred on April 15, 2016.

⁵ In his declarations, Mr. Stump does not state the date he replaced a functioning hose in the evaporative emission control system of the 1991 Buick with a defective part. Photographs received in evidence show that these actions were taken on April 18, 2016.

the undercover operative to take the vehicle to U S A Smog and request a smog inspection. The 1991 Buick was equipped with an onboard video recording system. Before releasing the 1991 Buick to the undercover operative, Mr. Koch activated the video recorders.

39. U S A Smog's employee, Tarek Joulani, performed a smog test on the 1991 Buick. After the test was completed, the undercover operative was given an invoice and a VIR that indicated the vehicle had passed the inspection, including the "Fuel Evap Test." The operative paid \$50 for the smog check inspection. Tarek Joulani signed the VIR. U S A Smog transmitted Smog Check Certificate No. [REDACTED] to the bureau's database and to the DMV. The VIR provided for the 1991 Buick was false in that, with the introduced defect, the 1991 Buick could not pass the LPFET, and it was not in compliance with the laws and regulations pertaining to California emissions standards.

40. After obtaining the VIR, the undercover operative returned the vehicle to Mr. Koch. Mr. Koch stopped the video recorders on the vehicle. Mr. Koch reviewed the videotapes from the 1991 Buick and observed that, during the smog inspection, the gas cap door to the vehicle was opened, the gas cap was removed, and approximately one minute later, the gas cap was reinstalled and the gas cap door was closed. Mr. Koch observed and testified that the vacuum sealed LPFET adapter from the LPFET machine was not installed during the smog inspection. Review of the videotapes from the 1991 Buick by the administrative law judge confirmed that the gas cap was removed and reinstalled without the insertion of a LPFET adapter into the gas tank opening. It is not possible to conduct an LPFET test without installing the LPFET adapter.

41. On May 27, 2016, Mr. Stump performed a re-inspection of the 1991 Buick and documented his findings. The 1991 Buick failed the LPFET functional portion of the smog inspection. Mr. Stump confirmed that the tamper indicators he had installed had not been disturbed, and he documented the inspection and the condition of the 1991 Buick.

42. As a result of the undercover operation, Mr. Koch determined that U S A Smog and Tarek Joulani fraudulently issued a Certificate of Compliance to the 1991 Buick.

Testimony of Steve P. Koch

43. In addition to testimony relating to the three undercover operations described above, Mr. Koch acknowledged that the bureau receives weekly communication from smog station owners and technicians reporting problems they are experiencing with their LPFET devices. Mr. Koch testified that there are "tens of thousands" of LPFET devices in circulation. Each LPFET device has a unique serial number that is recorded in bureau data bases when the LPFET is used.

44. Mr. Koch testified that if a LPFET device is not functioning correctly the smog station should test only newer cars that do not require an LPFET. In no circumstances should a smog technician complete a smog inspection for a vehicle that requires a LPFET without performing the test. If the smog technician learns at the end of a smog inspection

that the LPFET device is malfunctioning, the technician may not pass the vehicle and cause a Certificate of Compliance to issue, even if the vehicle passes all the other emission control tests.

45. In rebuttal testimony, Mr. Koch identified bureau records showing that the LPFET device owned by U S A Smog was “recording and transmitting data from August 2, 2015 through August 23, 2018, in near continuous use.” Further, he testified that in three years of data maintained by the bureau, only one serial number appears in U S A Smog records transmitted to the bureau. He stated that, had different machines been received from the manufacturer and used by U S A Smog, different serial numbers would have shown in the bureau’s data.

46. Mr. Koch also testified in rebuttal testimony that the data logs showed the testing performed on the three cars at issue in the accusation. He noted that, in each case, the LPFET device transmitted information to the bureau’s data base. From this, Mr. Koch concluded that the LPFET was performed by plugging the device in to a vehicle other than the one being tested and/or the calibration tank. The accusation filed against respondents did not allege “clean plugging” as a cause for discipline, and Mr. Koch’s conclusion on this issue was not considered in reaching the decision in this case.

Evidence Presented on Behalf of Respondents

IYAD A. ALSAYEH

47. Iyad A. Alsayeh was employed by U S A Smog for two years. He is no longer employed there. He testified he never intentionally performed a fraudulent smog test. No one at U S A Smog ever told him to perform an illegal test and, to his knowledge, none had ever been done.

48. Mr. Alsayeh was dismayed that the bureau waited so long to bring the accusation against him. He left his employment with U S A Smog the same day he performed the smog inspection on the 1992 Toyota Corolla. He works as a smog technician in his new employment, but he only performs inspections on newer cars that do not require an LPFET.

49. Mr. Alsayeh is concerned that the bureau is seeking to revoke his license. He cannot afford to lose his license and his job. He has monthly expenses he is obligated to pay, including for housing, and he is responsible for caring for his father and his sister. He drives an old car because he cannot afford a newer one.

50. Mr. Alsayeh stated that the video of his inspection of the 1992 Toyota shows he tried to perform the LPFET and called over another mechanic to try to fix the LPFET

device.⁶ He said he tried for 15 minutes to fix the device, but he could not get it to work. He conceded that the vehicle he was working on required an LPFET, and he did not do the test. He stated he did not smell any gas and did not see any broken hoses or other parts. Since the vehicle passed the other parts of the smog inspection indicating it was not a polluter, he believed he could pass the vehicle.

51. Mr. Alsayeh said the LPFET device worked sometimes, and other times, it did not work. He was aware that U S A Smog had recurring problems with the LPFET device. He stated U S A Smog made multiple calls to the LPFET device manufacturer trying to get a device that was reliable.

TAREK JOULANI

52. Tarek Joulani admitted the LPFET device was not connected to the 1995 Toyota Corolla or the 1991 Buick when he performed a smog test on those vehicles and caused a certificate of compliance to issue. He asserted the LPFET device had a history of working on some occasions and not working on others. He said U S A Smog returned "multiple" units to the manufacturer with the hopes of having them repaired, but the smog technicians still experienced problems with the devices. When the devices were returned to the manufacturer, it could take hours or days before U S A Smog would get a refurbished, repaired or replacement device. Tarek Joulani represented he had notified the bureau about these issues.

53. Tarek Joulani said if a car had passed the other emission control tests, and the LPFET device unexpectedly malfunctioned, he would pass the vehicle and issue a certificate of compliance. Tarek Joulani said the inspections at issue in this case occurred in 2016, and they have changed their practice since then. He said they do the LPFET test first when it is required to do one. If the LPFET device is not functioning, they do not perform the rest of the test and refer the customer elsewhere. He objected to the costs requested by the bureau and maintained that if the bureau had alerted them to the issue earlier, they would have corrected the problem sooner. Tarek Joulani objected to being charged with doing something fraudulently. He said, "human errors occur," and he only passed a vehicle after thoroughly conducting the other portions of a smog test and determining the vehicle was not a polluter. Tarek Joulani testified he had passed a vehicle after the LPFET device failed to work on a "handful of times" in 2016.

ESSA JOULANI

54. Essa Joulani testified his business has been in the same location for 10 years. He stated he believes in honesty and answers only to God. He has never taken something that was not his own, committed an illegal or fraudulent act, or taken money for work that

⁶ The videotape did not have sound and the point of view was limited. It was not possible to determine the content of conversations between Mr. Alsayeh and any other person.

was not done. Essa Joulani has been offered money to perform an illegal smog test, and his response is always to tell the person asking to put that money towards repairing the vehicle so it will legally pass the inspection. He believes some smog stations do engage in this type of illegal activity, and he is frustrated by that.

55. Essa Joulani stated that his smog technicians advised him when the LPFET device was not working properly. He would become angry about it and contact the manufacturer. He said it was his instruction that U S A Smog would not do smog inspections on older vehicles that required the LPFET until the LPFET device was repaired or replaced.

56. Essa Joulani contacted the manufacturer of his LPFET device to show the frequency with which the device was returned for repairs. He received a letter from the company that recently had purchased the LPFET manufacturer advising him that they did not have records relating to transactions or communication he had with the original manufacturer.

57. Essa Joulani understands the importance of smog checks on motor vehicles and the damage pollution can do to a person's lungs. He is not originally from the United States, and his country does not have stringent anti-pollution rules and regulations as does the United States. He wants to do his part to make sure "air quality is good for all human beings." He suggested the bureau was unethical by allowing vehicles they modified to be polluters to be driven.

58. Essa Joulani testified that U S A Smog is losing money and he cannot afford to pay the costs sought by the bureau. He said four families are trying to make a living from U S A Smog. He raised two sons who both went to college and one went to law school. He is not rich; he spent his money to educate his children. Essa Joulani said that, in the 38 years he has been in the United States, he had not done anything illegal. He raised his children to be honest and law-abiding. He objected to being accused of doing a fraudulent act. He stated that when he makes a mistake, he admits the error and fixes the mistake.

Costs

59. The bureau submitted a document signed by Mark Fernandez, Program Manager I, that certified the costs incurred by the bureau for the investigation and prosecution of the accusation against U S A Smog and a Certification of Prosecution Costs with Declaration of Robert Tomlin White seeking to recover costs of investigation and prosecution pursuant to Business and Professions Code section 125.3.

60. The certification of prosecution costs filed by the Attorney General sought recovery of costs in the amount of \$21,647.50 and was supported by a billing summary detailing the professionals who worked on the matter, the date the professional worked on the matter, the tasks performed, the amount of time billed for the activity and the hourly rate of the professional who performed the work.

61. The certifications of investigative costs signed by Mr. Fernandez sought the recovery of \$3,857.40. The certification listed the total of investigative hours spent working on the case, the hourly rate charged and the fiscal year in which the charges were incurred. The certification did not name the person or persons who worked on the case and provided only that one or more Program Representatives I worked 49 hours and one or more Program Representatives II worked three hours. Additionally, the cost document sought undefined “evidence costs” of \$170. The document also failed to identify the date investigative activities were performed or the time spent performing those activities on each date. Due to the lack of specificity, it cannot be determined whether the costs claimed for these investigative hours are reasonable.

LEGAL CONCLUSIONS

Purpose of Administrative Discipline

1. Administrative proceedings to revoke, suspend, or impose discipline on a license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

Burden and Standard of Proof

2. Absent a statute to the contrary, the burden of proof in an administrative disciplinary proceeding is on the party filing the accusation, which is ordinarily the agency. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

3. Although an applicant for a Smog Check Inspector license must complete certain coursework and pass an examination, these requirements are not similar to the extensive educational, training and testing requirements necessary to obtain a professional license. A smog check technician license is a nonprofessional license, and proceedings to revoke such a license are governed by the preponderance of evidence standard of proof. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

4. Respondent U S A Smog’s liability was based on the misconduct of its agents and employees. The standard of proof that applies to the smog check inspector license – a preponderance of the evidence – applies to an automotive repair dealer registration and a smog check station license. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair, supra*, at 918.)

Statutes and Regulations

5. Business and Professions Code section 9884.7 provides in part:

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

(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. Health and Safety Code section 44072.2 provides in part:

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

(a) Violates any section of this chapter 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.

[¶] . . . [¶]

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

7. Health and Safety Code section 44012 provides in part:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department

The department shall ensure, as appropriate to the test method, the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

[¶] . . . [¶]

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

[¶] . . . [¶]

(f) A visual or functional check is made of emission control devices specified by the department The visual or functional check shall be performed in accordance with procedures prescribed by the department

(g) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

[¶] . . . [¶]

(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

8. Health and Safety Code section 44015 provides in part:

(a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

[¶] . . . [¶]

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance

9. Health and Safety Code section 44035 provides in part:

(a) A smog check station's license or a qualified smog check technician's qualification may be suspended or revoked by the department, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. The department shall adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses and qualifications and the conduct of the hearings

10. Health and Safety Code section 44072.10, subdivision (c)(4), requires the Department to “revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to . . . [i]ntentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

11. California Code of Regulations, title 16, section 3340.24, subdivision (c), provides that the bureau “may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.”

12. California Code of Regulations, title 16, section 3340.30, subdivision (a), requires a licensed smog technician to “[i]nspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.”

13. California Code of Regulations, title 16, section 3340.35, subdivision (c), authorizes a licensed smog check station to issue a certificate of compliance to the owner or operator of any vehicle that has been inspected with specified procedures and possesses all required emission control equipment and devices installed and functioning correctly.

14. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions test methods and procedures that apply when conducting a smog check inspection in California.

The Smog Check Manual

15. Official notice was taken of the Bureau’s 2013 Smog Check Manual, which applied to the smog check inspections that are the subject of this proceeding. The manual is incorporated by reference into California Code of Regulations, title 16, section 3240.45. It

specifies procedures required to perform smog check inspections, including the LPFET, which is set forth in the manual at pages 24 through 25. That section provides in part:

Inspection: Smog Check stations and Smog Check inspectors shall perform the low pressure test of a vehicle's fuel evaporative systems, using a BAR certified low pressure fuel evaporative tester (LPFET). The test shall be performed in accordance with the test procedures and specifications contained in the LPFET instruction manual provided by the tester manufacturer, and the following, as applicable:

If components related to the vehicle's fuel evaporative system tank side are missing, modified, disconnected, or defective enter N (not applicable) at the EIS Low Pressure Fuel Evaporative Test prompt. If the vehicle's tank side fuel evaporative system components are not missing, modified, disconnected, or defective proceed with the test. Tank side means the portion of the fuel evaporative system between the canister pinch or seal point and the fuel tank filler neck. (Tank side visual inspection failures can affect the LPFET. Therefore, in cases where a tank side visual inspection failure exists, the LPFET does not apply). Note: Evaporative system visual inspection results must be entered at the EIS Evaporative System Visual Inspection prompt; see section 1.3.1.

- If, at the conclusion of the test, the LPFET displays a P (pass), enter P in the EIS at the Fuel Evaporative Test prompt.
- If, at the conclusion of the test the LPFET displays an F (fail), perform a seal check in accordance with the procedures and specifications contained in the LPFET instruction manual provided by the tester manufacturers.

Employer Responsibility

16. The owner of a license is obligated to see that the license is not used in violation of the law. If a licensee operates his or her business through employees, the licensee must be responsible to the licensing authority for their conduct in the exercise of the license, and the licensee is responsible for the acts of agents or employees done in the course of the business in the operation of the license. A licensee may not insulate himself or herself from administrative regulation and discipline by electing to function through employees or independent contractors. (*Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797.)

Disciplinary Guidelines

17. California Code of Regulations, title 16, section 3395.4 provides in part:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of Administrative Hearings, the Bureau of Automotive Repair shall consider the disciplinary guidelines entitled “Guidelines for Disciplinary Orders and Terms of Probation” [Rev. March 2016] which are hereby incorporated by reference. The “Guidelines for Disciplinary Orders and Terms of Probation” are advisory. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Bureau of Automotive Repair in its sole discretion determines that the facts of the particular case warrant such deviation.

18. The introduction to the bureau’s disciplinary guidelines provides in part:

The Bureau of Automotive Repair (BAR or Bureau), in keeping with its mandate to protect the public, has adopted these recommended uniform guidelines in order to promote consistency in disciplinary orders for similar offenses on a statewide basis.

BAR requests that the suggested disciplinary orders contained in these guidelines be levied consistently and appropriately, based on the nature and seriousness of the violation(s) confirmed in an administrative action. BAR recognizes that mitigating or aggravating circumstances, in addition to other factors, may necessitate departure from these recommended orders and terms of probation. However, BAR requests that the ALJ include an explanation for departure from these guidelines in the proposed decision so that the circumstances can be better understood and evaluated by BAR before final action is taken.

Additionally, these guidelines only apply to formal administrative disciplinary processes. These guidelines do not apply to other alternatives available to BAR, such as administrative citations and fines, except in cases where an Accusation has been filed against a registrant or licensee for failure to pay an assessed administrative fine and/or comply with an order of abatement issued by BAR.

19. Under the guidelines, factors in aggravation include: prior warnings from the bureau; prior office conferences; prior history of citations or formal disciplinary action; prior adverse inspection reports; prior demonstration of incompetence; a history of citations; a history of formal disciplinary action; negligent or willful improper repair work that endangers consumers; evidence that an unlawful act was part of a pattern of practice; the failure to comply with the bureau's request for corrective action; and evidence of any other conduct which constitutes fraud or gross negligence.

Factors in mitigation include: acceptance of the bureau's suggested resolution of a consumer complaint; restitution to a consumer where appropriate; voluntarily participation in retraining; evidence a respondent has taken specific steps for retraining; initiation of steps to minimize recurrence; changes made in business practices; and evidence of implementing internal control or audits designed to eliminate errors; absence of any loss to a consumer (undercover cars are treated as consumer vehicles); voluntary purchase of proper diagnostic equipment and manuals; the absence of prior disciplinary action; evidence that the violation was not part of a pattern or practice; and any other conduct which would constitute a factor in mitigation.

20. According to the guidelines, the bureau's emphasis is on disciplining licensees who show a pattern of abuse or willful misconduct in dealing with the public. The guidelines provide that "[n]o single factor or combination of the above factors is required to justify either the minimum or maximum disciplinary order as opposed to an intermediate one."

Application of the Guidelines to the Allegations in the Accusation

21. The guidelines provide that the maximum discipline for each individual violation is revocation. The "Recommended Order[s]" of discipline for specific violations are contained in three tables – Table A contains the recommended orders of discipline for violations of the Business and Professions Code, Table B contains the recommended orders of discipline for violations of the Health and Safety Code, and Table C contains the recommended orders of discipline for violations of the California Code of Regulations. Each table recommends that the disciplinary order include revocation of the applicable license, a stay of the revocation, and a suspension of the license for an undefined period of time, and the tables specify a period of probation for each described violation. The tables also suggest "Applicable Optional Terms and Conditions of Probation" in addition to the standard terms and conditions of probation to be included in all orders of probation.

22. The accusation in this matter alleges 24 causes for discipline – the same eight causes for discipline for each of the three undercover operations. The first, ninth, and seventeenth causes for discipline allege that U S A Smog made untrue or misleading statements when its smog technician wrongfully certified that a vehicle has passed the LPFET when the test had not been performed. These causes for discipline allege that U S A Smog's ARD registration is subject to discipline because it knew or should have known the certification was untrue or misleading in violation of Business and Professions Code section

9884.7, subdivision (a)(1). The recommended order for a violation of section 9884.7 subdivision (a)(1), is three years' probation and optional terms 1, 2, 3b, and 3c.

23. The second, tenth, and eighteenth causes for discipline allege that U S A Smog committed acts of fraud when it issued a Certificate of Compliance for each of the three undercover vehicles without having performed "a bona fide inspection of the emission control devices and systems on the vehicle . . ." in violation of Business and Professions Code section 9884.7, subdivision (a)(4). The recommended order for a violation of section 9884.7 subdivision (a)(4), is five years' probation and optional terms 1, 2, 3c, and 7.

24. The third, eleventh, and nineteenth causes for discipline allege that U S A Smog's smog check station license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), because it violated the Motor Vehicle Inspection Program by failing to properly perform emission control tests (section 44012) and issuing a Certificate of Compliance for vehicles that were not properly tested (section 44015).

The recommended order for a violation of Health and Safety Code section 44072.2, subdivision (a), is two years' probation and optional terms 1, 2, 3a, 3c, 4, and 7. The recommended order for a violation of Health and Safety Code section 44012 is five years' probation and optional terms 1, 2, 3a, 3c 4, 5a, 6, and 7. The recommended order for a violation of Health and Safety Code section 44015 is five years' probation and optional terms 1, 2, 3a, 3c 4, 6, and 7.

25. The fourth, twelfth, and twentieth causes for discipline allege that U S A Smog's smog check station license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), because it failed to comply with regulations governing the Motor Vehicle Inspection Program by falsely issuing a Certificate of Compliance for the undercover vehicles (Cal. Code Regs., tit. 16, § 3340.24, sub. (c)); issuing a Certificate of Compliance for a vehicle that had not been properly inspected (Cal. Code Regs., tit. 16, § 3340.35, sub. (c)); and failing to conduct required tests on the vehicles (Cal. Code Regs., tit. 16, § 3340.42).

The recommended order for a violation of Health and Safety Code section 44072.2, subdivision (c), is two years' probation and optional terms 1, 2, 3a, 3c, and 7. There is no recommended order for a violation of California Code of Regulations., title 16, section 3340.24, subdivision. (c). The recommended order for a violation of California Code of Regulations., title 16, section 3340.35, subdivision. (c) is five years' probation and optional terms 1, 2, 3c, 6, and 7. The recommended order for a violation of California Code of Regulations, title 16, section 3340.42, is five years' probation and optional terms 1, 2, 3c, 4, 6, and 7.

26. The fifth, thirteenth, and twenty-first causes for discipline allege that U S A Smog's smog check station license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), because it "committed dishonest, fraudulent or deceitful acts" by issuing Certificates of Compliance for the undercover vehicles without

performing a bona fide inspection, thereby “depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. The recommended order for a violation of Health and Safety Code section 44072.2, subdivision (d), is five years’ probation and optional terms 1, 2, 3a, 3c, and 7.

27. The sixth cause for discipline alleges that Mr. Alsayeh’s Smog Check Inspector and Smog Check Repair Technician licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), because he failed to perform the required emission control tests on the 1992 Toyota in violation of Health and Safety Code section 44012.

The recommended order for a violation of Health and Safety Code section 44072.2, subdivision (a), is two years’ probation and optional terms 1, 2, 3a, 3c, 4, and 7. The recommended order for a violation of Health and Safety Code section 44012 is five years’ probation and optional terms 1, 2, 3a, 3c, 4, 5a, 6, and 7.

28. The seventh cause for discipline alleges that Mr. Alsayeh’s Smog Check Inspector and Smog Check Repair Technician licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), because he failed to comply with regulations governing the Motor Vehicle Inspection Program by falsely issuing a Certificate of Compliance for the 1992 Toyota (Cal. Code Regs., tit. 16, § 3340.24, sub. (c)); failing to properly inspect and test the 1992 Toyota (Cal. Code Regs., tit. 16, § 3340.30, sub. (a)); and failing to conduct required tests on the vehicle (Cal. Code Regs., tit. 16, § 3340.42).

The recommended order for a violation of Health and Safety Code section 44072.2, subdivision (c), is two years’ probation and optional terms 1, 2, 3a, 3c and 7. There is no recommended order for a violation of California Code of Regulations., title 16, section 3340.24, subdivision. (c). The recommended order for a violation of California Code of Regulations., title 16, section 3340.30, subdivision (a), is five years’ probation and optional terms 1, 2, 3c, 4, 6, and 7. The recommended order for a violation of California Code of Regulations, title 16, section 3340.42, is five years’ probation and optional terms 1, 2, 3c, 4, 6, and 7.

29. The eighth cause for discipline alleges that Mr. Alsayeh’s Smog Check Inspector and Smog Check Repair Technician licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), because he “committed dishonest, fraudulent or deceitful acts” by issuing a Certificate of Compliance for the 1992 Toyota without performing a bona fide inspection, thereby “depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. The recommended order for a violation of Health and Safety Code section 44072.2, subdivision (d), is five years’ probation and optional terms 1, 2, 3a, 3c, and 7.

30. The fourteenth and twenty-second causes for discipline allege that Tarek Joulani’s Smog Check Inspector license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), because he failed to perform the required

emission control tests on the 1995 Toyota and 1991 Buick in violation of Health and Safety Code section 44012.

The recommended order for a violation of Health and Safety Code section 44072.2, subdivision (a), is two years' probation and optional terms 1, 2, 3a, 3c, 4, and 7. The recommended order for a violation of Health and Safety Code section 44012 is five years' probation and optional terms 1, 2, 3a, 3c, 4, 5a, 6, and 7.

31. The fifteenth and twenty third cause for discipline allege that Tarek Joulani's Smog Check Inspector license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), because he failed to comply with regulations governing the Motor Vehicle Inspection Program by falsely issuing a Certificate of Compliance for the 1995 Toyota and 1991 Buick (Cal. Code Regs., tit. 16, § 3340.24, sub. (c)); failing to properly inspect and test the 1995 Toyota and 1991 Buick (Cal. Code Regs., tit. 16, § 3340.30, sub. (a)); and failing to conduct required tests on the vehicles (Cal. Code Regs., tit. 16, § 3340.42).

The recommended order for a violation of Health and Safety Code section 44072.2, subdivision (c), is two years' probation and optional terms 1, 2, 3a, 3c and 7. There is no recommended order for a violation of California Code of Regulations., title 16, section 3340.24, subdivision. (c). The recommended order for a violation of California Code of Regulations., title 16, section 3340.30, subdivision (a), is five years' probation and optional terms 1, 2, 3c, 4, 6 and 7. The recommended order for a violation of California Code of Regulations, title 16, section 3340.42, is five years' probation and optional terms 1, 2, 3c, 4, 6, and 7.

32. The sixteenth and twenty fourth causes for discipline alleges that Tarek Joulani's Smog Check Inspector license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), because he "committed dishonest, fraudulent or deceitful acts" by issuing Certificates of Compliance for the 1995 Toyota and 1991 Buick without performing bona fide inspections, thereby "depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. The recommended order for a violation of Health and Safety Code section 44072.2, subdivision (d), is five years' probation and optional terms 1, 2, 3a, 3c, and 7.

Evaluation

CAUSE EXISTS TO IMPOSE DISCIPLINE ON U S A SMOG'S ARD REGISTRATION AND SMOG CHECK STATION LICENSE

33. A preponderance of evidence established cause to impose discipline on U S A Smog's ARD registration and smog check station license under Business and Professions Code section 9884.7, subdivisions (a)(1) and (4) and Health and Safety Code section 44072.2, subdivisions (a), (c) and (d). In connection with the three undercover runs, U S A Smog Check's employees failed to perform required LPFETs and made inaccurate and false

statements when they inputted into the bureau's database that the vehicles had been tested and passed the LPFET. Their actions resulted in U S A Smog unlawfully issuing certificates of compliance for the three vehicles. Mr. Alsayeh and Tarek Joulani admitted they did not perform the LPFET, although they knew one was required. U S A Smog failed to establish a bona fide error under Business and Professions Code section 9884.7.

34. Factors in mitigation include that, although U S A Smog received two prior citations, one was withdrawn and the other is pending. The bureau did not request that the prior citations be considered when determining the degree of discipline, if any, to be imposed on U S A Smog. U S A Smog changed the way it performs smog tests since becoming aware of the issue. Smog technicians at U S A Smog now conduct the LPFET before performing other aspects of a smog inspection, and they do not continue the inspection if the LPFET device is not functioning properly. The evidence was not conclusive that failing to perform LPFET was a pattern or practice of U S A Smog, although it was proven it occurred on three occasions. Essa Joulani was sincere in his testimony when he acknowledged the importance of smog testing on vehicles. He stated U S A Smog technicians would no longer test vehicles that required the LPFET unless U S A Smog's LPFET device was functioning correctly. Mr. Alsayeh and Tarek Joulani testified that no one at U S A Smog told them to issue a certificate of compliance for a vehicle that was not LPFET tested when that test was required.

Factors in aggravation include that, in an approximately three-month period, U S A Smog technicians willfully failed to perform an LPFET on three vehicles but, nonetheless, reported to the bureau that those vehicles were tested and passed the LPFET. The technicians either had been trained to falsely report they had performed the test, or they were not sufficiently trained about what to do when the LPFET device was malfunctioning. The proven allegations, that the smog technicians did not perform tests they were required to perform but reported to the bureau that they did, are very serious.

35. The guideline's recommended orders for the violations against U S A Smog, range from revocation to probationary periods of two to five years with suggested terms of probation. In this case, revoking U S A Smog's ARD registration and/or smog check station license, staying the revocation, placing U S A Smog on three years' probation and directing it to pay a portion of enforcement costs will protect the public. This measure of discipline is consistent with the bureau's disciplinary guidelines.

CAUSE EXISTS TO IMPOSE DISCIPLINE ON MR. ALSAYEH'S LICENSES

36. A preponderance of evidence established cause to impose discipline on Mr. Alsayeh's licenses under Health and Safety Code section 44072.2, subdivisions (a), (c) and (d). In connection with the undercover run involving the 1992 Toyota, Mr. Alsayeh failed to perform a required LPFET, and he made false statements when he input test data into the bureau's database that represented he performed the test and that the vehicle passed. Mr. Alsayeh unlawfully caused a smog certificate to issue for the 1992 Toyota. Mr. Alsayeh admitted he did not perform the LPFET, although he knew one was required. He stated he

believed he could pass the vehicle because it had passed all the other emissions test, and the LPFET device was malfunctioning. This explanation does not establish a bona fide reason to violate the laws and regulations governing the Motor Vehicle Inspection Program. Mr. Alsayeh failed to properly perform LPFET testing and caused a certificate of compliance to be unlawfully issued for the 1992 Toyota.

Mr. Alsayeh was issued a citation in September 2015 for failing to use the OBD inspection system when performing a smog inspection. The date Mr. Alsayeh used the wrong system is unknown. Mr. Alsayeh no longer works for U S A Smog. In his current employment, Mr. Alsayeh performs smog inspections on only newer cars that do not require an LPFET.

37. When a smog check inspector engages in simple negligence and improperly conducts a smog check inspection of a specially-prepared vehicle involved in a bureau undercover run the first time, the bureau usually issues a citation requiring the smog check inspector to complete an 8-hour bureau-approved basic training course; probation is not imposed; the smog check inspector is not required to pay the bureau's costs of investigation or enforcement. Upon a second similar violation, the bureau often issues a citation requiring the smog check inspector to complete a 16-hour bureau-approved training course.

38. In this case, the bureau issued a citation to Mr. Alsayeh in September 2015 for using the BAR 97 program when the OBD Inspection System was required. Mr. Alsayeh complied with the citation. The allegations at issue here relate to conduct that occurred less than five months after the bureau issued the citation; however, the evidence did not establish the date Mr. Alsayeh engaged in the conduct that resulted in his citation.

39. The conduct engaged in by Mr. Alsayeh is more egregious than simple negligence. He failed to conduct a test he knew he was required to perform, and he falsely entered data in the bureau's data base that represented the test was performed, and the vehicle passed the test. The guideline's recommended orders for the violations against Mr. Alsayeh, in addition to revocation, range from two to five years' probation with suggested terms. In this case, revoking Mr. Alsayeh's Smog Check Inspector and Smog Check Repair licenses, staying the revocation, placing him on two years' probation, requiring him to complete a 16-hour bureau-approved basic training program, and directing him to pay a portion of enforcement costs will protect the public. This measure of discipline is consistent with the bureau's disciplinary guidelines.

CAUSE EXISTS TO IMPOSE DISCIPLINE ON TAREK JOULANI'S LICENSE

40. A preponderance of evidence established cause to impose discipline on Tarek Joulani's Smog Check Inspector license under Health and Safety Code section 44072.2, subdivisions (a), (c) and (d). In connection with the undercover runs involving the 1995 Toyota and the 1991 Buick, Tarek Joulani failed to perform required LPFETs, and he made false statements when he input test data in the bureau's database representing he performed the tests, and the vehicles passed. Tarek Joulani unlawfully caused smog certificates to issue

for the 1995 Toyota and the 1991 Buick. Tarek Joulani admitted he did not perform the LPFETs, although he knew they were required. He stated his belief that he could pass the vehicles because they passed all the other emissions tests and U S A Smog's LPFET device was malfunctioning. This explanation does not establish a bona fide reason to violate the laws and regulations governing the Motor Vehicle Inspection Program. Tarek Joulani failed to properly perform LPFET testing and unlawfully caused certificates of compliance to be issued for the 1995 Toyota and 1991 Buick.

Tarek Joulani does not have prior discipline against his license, but the present case involves two separate vehicles for which Tarek Joulani improperly conducted smog tests. Tarek Joulani testified that he has changed his practice of conducting smog tests so that, if a vehicle requires a LPFET, he does that part of the smog test first. If the LPFET device is not functioning, he does not complete the test and advises the customer to go to another shop.

41. Even though Tarek Joulani has no history of prior discipline, the conduct he engaged in regarding the 1995 Toyota and 1991 Buick is more egregious than simple negligence. The guideline's recommended orders for the violations against Tarek Joulani, in addition to revocation, range from two to five years' probation with suggested terms. In this case, revoking Tarek Joulani's Smog Check Inspector license, staying the revocation, placing him on three years' probation, requiring him to complete a 16-hour bureau-approved basic training program, and directing him to pay a portion of enforcement costs will protect the public. This measure of discipline is consistent with the bureau's disciplinary guidelines.

Costs of Investigation and Enforcement

42. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "direct a licentiate 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."

43. The Office of Administrative Hearings has enacted regulations for use when evaluating an agency's request for costs under Business and Professions Code section 125.3. (Cal. Code Regs., tit. 1, § 1042.) Under the regulations, a cost request must be accompanied by a declaration or certification of costs. The declaration "may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost." Alternatively, the agency may provide a bill or invoice. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1).) For services provided by persons who are not agency employees, the declaration must be executed by the person providing the service and must describe the general tasks performed, the time spent on each task and the hourly rate. In lieu of the declaration, the agency may attach copies of the time and billing records submitted by the service provider. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(2).)

44. Complainant seeks costs related to the investigation and prosecution of this matter in the amount of \$25,504.90, based on \$3,857.40 for investigative costs and \$21,647.50 for costs incurred by the Attorney General's Office. Under Business and

Professions Code section 125.3, costs awarded may not exceed the reasonable costs of investigation and enforcement of the case with respect to the licensing act violations. In this case, complainant filed an accusation against one entity and two individuals. The 24 causes for discipline in the accusation alleged that respondents violated the rules, regulations and policies that govern smog inspections. The accusation alleged eight causes for discipline for each of the three wrongfully issued Certificates of Compliance. Each of the 24 causes for discipline was against U S A Smog and its owner Essa Joulani. Eight causes for discipline named Mr. Alsayeh and 16 causes for discipline named Tarek Joulani.

45. As addressed above, the certification of investigative costs signed by Mr. Fernandez did not contain information regarding, who performed investigative tasks, the specific tasks performed, the date they were performed, or how long each task took. It is impossible to determine which part of the claimed charges related to allegations that involved Tarek Joulani and those that related to allegations against Mr. Alsayeh. Because the certification did not comply with the regulation, it is impossible to determine if the costs claimed are permissible charges under Business and Professions Code section 125.3, or to determine the reasonableness of the costs being sought. As a result, complainant's request for investigation costs must be denied.

46. The Certification of Prosecution Costs was prepared by Deputy Attorney General Robert Tomlin White and requested costs of enforcement in the amount of \$21,647.50. The certification included an attached breakdown of tasks by the professional who performed them, their general nature, the amount of time spent, and the amount charged. The certification complied with the OAH regulation. Given the accusation involved three undercover operations and two smog inspectors, it is determined that responsibility and/or joint responsibility of any award of costs must be apportioned between Mr. Alsayeh, Tarek Joulani and Essa Joulani. However, it is not possible to determine which portion of the costs claimed relate to the allegations against Mr. Alsayeh and which relate to the allegations against Tarek Joulani. Additionally, Tarek Joulani argued that, had the board not waited two years to file the accusation, the costs incurred would likely have been less than that now sought. It is determined that the reasonable cost of enforcement by the Attorney General's Office is reduced to \$15,000, which will be further reduced as discussed below.

47. Other factors that must be considered when determining costs are discussed in *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In *Zuckerman*, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and prosecution should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

48. Respondents raised colorable challenges to the proposed discipline and successfully achieved a reduction in the severity of the discipline sought to be imposed.

There was no evidence that U S A Smog or Essa Joulani instructed its employees to forego the LPFET when the LPFET device was not functioning; however, U S A Smog is nonetheless liable for the conduct of its employees and may not deflect responsibility for their conduct.

49. Essa Joulani stated that he would have a financial challenge paying the full cost recovery requested. He testified that U S A Smog is not making money and that four families are supported by working at U S A Smog. He stated the money he made from his business went to educate his two sons who both went to college, and one went to law school.

50. Tarek Joulani challenged the costs asserted and expressed difficulty in paying them. Mr. Alsayeh stated that in addition to monthly expenses, he cares for his father and sister. He cannot afford to pay the costs sought by the bureau.

51. After consideration of all of the relevant factors, it is determined that it is reasonable to require U S A Smog to pay \$5,000, Mr. Alsayeh to pay \$1,000, and Tarek Joulani to pay \$1,000 in costs. The bureau shall permit the cost recovery to be paid by the respondents pursuant to an agreed upon payment plan.

ORDERS

As to Respondent U S A Smog Automotive, Essa Rasheed Joulani, Owner

Automotive Repair Dealer Registration ARD 257842 and Smog Check Station License No. RC 257842 issued to U S A Automotive, Essa Rasheed Joulani, owner, are revoked. However, the revocation is stayed, and Automotive Repair Dealer Registration ARD 257842 and Smog Check Station License No. RC 257842 are placed on probation for a period of three years on the following conditions:

1. Obey All Laws

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

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. Cost Recovery

Respondent U S A Smog Automotive, Essa Joulani, owner, shall pay the BAR \$5,000 for the reasonable costs of the investigation and enforcement of case No.79/16-3305. Respondent shall make such payment in accordance with a pay plan agreed to by the BAR. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No.79/16-3305. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. Completion of Probation

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

10. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if 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.

11. Prescribed Equipment

During the period of probation, respondent shall not perform any form of smog inspection, or emission system diagnosis or repair, until respondent has purchased, installed, and maintained the diagnostic, inspection, and repair equipment prescribed by BAR and necessary to properly perform such work, including a functioning Low Pressure Fuel Evaporative Test device. Respondent shall give BAR at least 10 days' notice of the availability of the equipment for inspection by a BAR representative.

As to Respondent Iyad A. Alsayeh

Smog Check Inspector License No. EO 637265 and Smog Check Repair Technician License No. EI 637265 issued to Iyad A Alsayeh are revoked. However, the revocation is stayed, and Smog Check Inspector License No. EO 637265 and Smog Check Repair Technician License No. EI 637265 are placed on probation for a period of two years on the following conditions:

1. Obey All Laws

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

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. Maintain Valid License

Respondent shall, at all times while on probation, maintain a current and active license(s) with BAR, including any period during which suspension or probation is tolled. If respondent's license(s) is/are expired at the time the decision becomes effective, the license(s) must be renewed by respondent within 30 days of that date. If respondent's license(s) expire 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 licenses during the period of probation shall also constitute a violation of probation.

8. Cost Recovery

Respondent Iyad A. Alsayeh, shall pay the BAR \$1,000 for the reasonable costs of the investigation and enforcement of case No.79/16-3305. Respondent shall make such payment in accordance with a pay plan agreed to by the BAR. Any agreement for a

scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No.79/16-3305. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. Completion of Probation

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

10. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if 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.

11. Training Course

During the period of probation, respondent shall attend and successfully complete a 16-hour BAR-specified and -approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by the 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.

12. Notification to Employer

When performing services that fall within the scope of his license, respondent 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.

As to Respondent Tarek Essa Joulani

Smog Check Inspector License No. EO 636971 issued to Tarek Essa Joulani is revoked. However, the revocation is stayed, and Smog Check Inspector License No. EO 636971 is placed on probation for a period of three years on the following conditions:

1. Obey All Laws

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

2. 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.

3. 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.

4. 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.

//

5. 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.

6. 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.

7. Maintain Valid License

Respondent 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. Cost Recovery

Respondent Tarek Essa Joulani, shall pay the BAR \$1,000 for the reasonable costs of the investigation and enforcement of case No.79/16-3305. Respondent shall make such payment in accordance with a pay plan agreed to by the BAR. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money

order that it is for cost recovery payment for case No.79/16-3305. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. Completion of Probation

Upon successful completion of probation, respondent'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.

10. 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.

11. Training Course

During the period of probation, respondent shall attend and successfully complete a 16-hour BAR-specified and -approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by the 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.

12. Notification to Employer

When performing services that fall within the scope of his license, respondent 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.

DATED: October 5, 2018

DocuSigned by:
Susan Boyle
B1906978EFC743E

SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings

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

11
12 In the Matter of the Accusation Against:

Case No. 79/16-3305

13 **U S A SMOG AUTOMOTIVE**
ESSA RASHEED JOULANI, Owner
14 710 North Kirby Street
Hemet, CA 92545

A C C U S A T I O N

(Smog Check)

15 Automotive Repair Dealer Registration No.
16 ARD 257842
Smog Check Station License No. RC 257842

17
18 **TAREK ESSA JOULANI**
1420 Genoa Lane
19 San Jacinto, CA 92583

20 Smog Check Inspector License No. EO 636971

21 and

22 **IYAD A. ALSAYEH**
19511 Tyler Road
23 Perris, CA 92570

24 Smog Check Inspector License No. EO 637265
Smog Check Repair Technician License No.
25 EI 637265

26 Respondents.
27
28

1 Complainant alleges:

2 **PARTIES**

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

5 **U S A Smog Automotive**

6 2. On or about April 20, 2009, the Bureau of Automotive Repair (Bureau) issued
7 Automotive Repair Dealer (ARD) Registration Number ARD 257842 to U S A Smog
8 Automotive, with Essa Rasheed Joulani as owner (Respondent U S A Smog). The ARD
9 Registration was in full force and effect at all times relevant to the charges brought herein and will
10 expire on March 31, 2018, unless renewed.

11 3. On or about May 4, 2009, the Bureau issued Smog Check Station License Number
12 RC 257842 to Respondent U S A Smog. The Smog Check Station License was in full force and
13 effect at all times relevant to the charges brought herein and will expire on March 31, 2018, unless
14 renewed.

15 **Tarek Essa Joulani**

16 4. On or about June 9, 2014, the Bureau issued Smog Check Inspector (EO) License
17 Number EO 636971 to Tarek Essa Joulani (Respondent Tarek Joulani). The license was in full
18 force and effect at all times relevant to the charges brought herein and will expire on March 31,
19 2018, unless renewed.

20 **Iyad A. Alsayeh**

21 5. On or about December 19, 2014, the Bureau issued Smog Check Inspector (EO)
22 License Number EO 637265 to Iyad A. Alsayeh (Respondent Iyad Alsayeh). The Smog Check
23 Inspector license was in full force and effect at all times relevant to the charges brought herein and
24 will expire on September 30, 2018, unless renewed. On or about September 5, 2014, the Bureau
25 also issued Smog Check Repair Technician (EI) License Number EI 637265 to Respondent Iyad
26 Alsayeh. The Smog Check Repair Technician license was in full force and effect at all times
27 relevant to the charges brought herein and will expire on September 30, 2018, unless renewed.

28 ///

1 **JURISDICTION**

2 6. This Accusation is brought before the Director of the Department of Consumer Affairs
3 (Director) for the Bureau of Automotive Repair, under the authority of the following laws. All
4 references are to the Business and Professions Code, unless otherwise specified.

5 7. Code section 9884.7 provides that the Director may revoke or suspend an automotive
6 repair dealer registration.

7 8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
8 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
9 against an automotive repair dealer or to render a decision temporarily or permanently invalidating
10 (revoking or suspending) a registration.

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

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

18 11. Health & Saf. Code section 44072.8 provides that when a license has been revoked or
19 suspended following a hearing under this article, any additional license issued under this chapter in
20 the name of the licensee may be likewise revoked or suspended by the Director.

21 **STATUTORY PROVISIONS**

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

23 (a) The director, where the automotive repair dealer cannot show there was
24 a bona fide error, may refuse to validate, or may invalidate temporarily or
25 permanently, the registration of an automotive repair dealer for any of the following
26 acts or omissions related to the conduct of the business of the automotive repair
27 dealer, which are done by the automotive repair dealer or any automotive
28 technician, employee, partner, officer, or member of the automotive repair dealer.

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27

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28

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

5

6 (4) Any other conduct which constitutes fraud.

7

8 13. Health & Saf. Code section 44012 states:

9 The test at the smog check stations shall be performed in accordance with
10 procedures prescribed by the department and may require loaded mode
11 dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a
12 vehicle's onboard diagnostic system, or other appropriate test procedures as
13 determined by the department in consultation with the state board. The department
14 shall implement testing using onboard diagnostic systems, in lieu of loaded mode
15 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles
16 only, beginning no earlier than January 1, 2013. However, the department, in
17 consultation with the state board, may prescribe alternative test procedures that
18 include loaded mode dynamometer or two-speed idle testing for vehicles with
19 onboard diagnostic systems that the department and the state board determine
20 exhibit operational problems. The department shall ensure, as appropriate to the
21 test method, the following:

22 (a) Emission control systems required by state and federal law are reducing
23 excess emissions in accordance with the standards adopted pursuant to subdivisions
24 (a) and (c) of Section 44013.

25

26 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative
27 system and crankcase ventilation system are tested to reduce any nonexhaust
28 sources of volatile organic compound emissions, in accordance with procedures
prescribed by the department.

29

30 (f) A visual or functional check is made of emission control devices specified
31 by the department, including the catalytic converter in those instances in which the
32 department determines it to be necessary to meet the findings of Section 44001.
33 The visual or functional check shall be performed in accordance with procedures
34 prescribed by the department.

35 (g) A determination as to whether the motor vehicle complies with the
36 emission standards for that vehicle's class and model-year as prescribed by the
37 department.

38

///

1 (i) The test procedures may authorize smog check stations to refuse the
2 testing of a vehicle that would be unsafe to test, or that cannot physically be
3 inspected, as specified by the department by regulation. The refusal to test a vehicle
4 for those reasons shall not excuse or exempt the vehicle from compliance with all
5 applicable requirements of this chapter.

6 14. e Health & Saf. Code section 44015 states:e

7 (a) A licensed smog check station shall not issue a certificate of compliance,e
8 except as authorized by this chapter, to any vehicle that meets the following
9 criteria:

10 (1) A vehicle that has been tampered with. e

11

12 (b) If a vehicle meets the requirements of Section 44012, a smog check
13 station licensed to issue certificates shall issue a certificate of compliance or a
14 certificate of noncompliance.

15

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

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

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

23

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

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

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

. . . .

(c) The department shall revoke the license of any smog check technician e
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 the
following:

. . . .

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

1 **REGULATIONS**

2 17. California Code of Regulations, title 16, section 3340.24, subdivision (c) states:

3 “The bureau may suspend or revoke the license of or pursue other legal action against a
4 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
5 certificate of noncompliance.”

6 18. California Code of Regulations, title 16, section 3340.35, states:

7 “. . . .

8 “(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner
9 or operator of any vehicle that has been inspected in accordance with the procedures specified in
10 section 3340.42 of this article and has all the required emission control equipment and devices
11 installed and functioning correctly. . . .”

12 19. California Code of Regulations, title 16, section 3340.42, states:

13 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
14 section 3340.45.

15 “(a) All vehicles subject to a smog check inspection, shall receive one of the following test
16 methods:

17 “(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year
18 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-
19 mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen
20 emissions, as contained in the bureau's specifications referenced in subsection (a) of Section
21 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test
22 equipment, including a chassis dynamometer, certified by the bureau.

23 “On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection
24 shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table
25 (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby
26 incorporated by reference. If the emissions standards for a specific vehicle are not included in this
27 table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE
28 I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured

1 emissions are less than or equal to the applicable emission standards specified in the applicable
2 table.

3 “(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-
4 year vehicles, except diesel-powered, registered in all program areas of the state, except in those
5 areas of the state where the enhanced program has been implemented. The two-speed idle mode
6 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and
7 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of
8 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be
9 measured and compared to the emission standards set forth in this section and as shown in TABLE
10 III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or
11 equal to the applicable emissions standards specified in Table III.

12 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
13 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
14 The OBD test failure criteria are specified in section 3340.42.2.

15 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
16 receive the following:

17 “(1) A visual inspection of emission control components and systems to verify the vehicle's
18 emission control systems are properly installed.

19 “(2) A functional inspection of emission control systems as specified in the Smog Check
20 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
21 operation. . . .”

22 20. California Code of Regulations, title 16, section 3340.30, subdivision (a) states:

23 “A licensed smog check inspector and/or repair technician shall comply with the following
24 requirements at all times while licensed:

25 “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
26 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
27 article. . . .”

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1 **COST RECOVERY**

2 21. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **VIDEO SURVEILLANCE OPERATION - FEBRUARY 25, 2016**

7 22. On February 25, 2016, the Bureau conducted a video surveillance operation of
8 Respondent U S A Smog. On that date, a representative of the Bureau drove a 1992 Toyota to
9 Respondent U S A Smog for a smog check. The Toyota's original fuel filler pipe assembly was
10 removed and replaced with one that was defective, which would result in the Toyota not passing
11 the Low Pressure Fuel Evaporative Test (LPFET) during the smog check.¹ Information obtained
12 from the Bureau's Vehicle Information Database (VID) revealed that Respondent Iyad Alsayeh
13 conducted the smog inspection on the Toyota and entered a "pass" for the LPFET inspection. In
14 fact, Respondent Iyad Alsayeh did not conduct the required LPFET inspection, as the surveillance
15 video showed that the LPFET equipment was not connected to the vehicle during the smog check.
16 This resulted in the issuance of fraudulent certificate of compliance for the vehicle.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statement)**

19 23. Respondent U S A Smog's ARD Registration is subject to disciplinary action under
20 Code section 9884.7, subdivision (a)(1), in that Respondent U S A Smog made or authorized
21 statements which it knew or in the exercise of reasonable care should have known to be untrue or
22 misleading as follows: Respondent U S A Smog's technician, Iyad Alsayeh, certified that the 1992
23 Toyota had passed the LPFET, when in fact that test was never performed on the Toyota.

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26 ¹ The LPFET test is performed on 1995 and older vehicles. During the smog check, the Fuel
27 Evaporative Test machine is connected to the vehicle and tests the integrity of the vehicle's fuel evaporative
28 system. The Fuel Evaporative Test machine gives a result of pass or fail, which the technician enters into the
BAR-97 Emissions Inspection System (EIS).

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 24. Respondent U S A Smog's ARD Registration is subject to disciplinary action under
4 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud
5 by issuing an electronic smog certificate of compliance for the 1992 Toyota, identified above,
6 without performing a bona fide inspection of the emission control devices and systems on the
7 vehicle, thereby depriving the People of the State of California of the protection afforded by the
8 Motor Vehicle Inspection Program.

9 **THIRD CAUSE FOR DISCIPLINE**

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

11 25. Respondent U S A Smog's smog check station license is subject to disciplinary action
12 under Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions
13 of that Code, as follows:

14 a. **Section 44012:** Respondent failed to perform emission control tests on the 1992
15 Toyota, identified above, in accordance with procedures prescribed by the department.

16 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
17 the 1992 Toyota, identified above, without properly testing and inspecting the vehicle to determine
18 if it was in compliance with Health & Saf. Code section 44012.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations Pursuant**
21 **to the Motor Vehicle Inspection Program)**

22 26. Respondent U S A Smog's smog check station license is subject to disciplinary action
23 under Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
24 of California Code of Regulations, title 16, as follows:

25 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
26 electronic smog certificate of compliance for the 1992 Toyota, identified above.

1 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
2 electronic smog certificate of compliance for the 1992 Toyota, identified above.

3 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 1992
4 Toyota, identified above, in accordance with Health & Saf. Code sections 44012 and 44035, and
5 California Code of Regulations, title 16, section 3340.42.

6 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1992
7 Toyota, identified above, in accordance with the Bureau's specifications.

8 **EIGHTH CAUSE FOR DISCIPLINE**

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

10 30. Respondent Iyad Alsayeh's Smog Check Inspector (EO) License and Smog Check
11 Repair Technician (EI) License are subject to disciplinary action under Code section 44072.2,
12 subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby
13 another is injured by issuing an electronic smog certificate of compliance to the 1992 Toyota,
14 identified above, without performing a bona fide inspection of the emission control devices and
15 systems on the vehicle, thereby depriving the People of the State of California of the protection
16 afforded by the Motor Vehicle Inspection Program.

17 **VIDEO SURVEILLANCE OPERATION – APRIL 27, 2016**

18 31. On April 27, 2016, the Bureau conducted a second video surveillance operation of
19 Respondent U S A Smog. On that date, a representative of the Bureau drove a 1995 Toyota to
20 Respondent U S A Smog for a smog check. The Toyota's original fuel inlet pipe was removed
21 and replaced with one that was defective, which would result in the Toyota not passing the Low
22 Pressure Fuel Evaporative Test (LPFET) during the smog check. Information obtained from the
23 Bureau's Vehicle Information Database (VID) revealed that Respondent Tarek Joulani conducted
24 the smog inspection on the Toyota and entered a "pass" for the LPFET inspection. In fact,
25 Respondent Tarek Joulani did not conduct the required LPFET inspection, as the surveillance
26 video showed that the LPFET equipment was not connected to the vehicle during the smog check.
27 This resulted in the issuance of fraudulent certificate of compliance for the vehicle.

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1 **NINETH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statement)**

3 32. Respondent U S A Smog's ARD Registration is subject to disciplinary action under
4 Code section 9884.7, subdivision (a)(1), in that Respondent U S A Smog made or authorized
5 statements which it knew or in the exercise of reasonable care should have known to be untrue or
6 misleading as follows: Respondent U S A Smog's technician, Tarek Joulani, certified that the
7 1995 Toyota had passed the LPFET, when in fact that test was never performed on the Toyota.

8 **TENTH CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 33. Respondent U S A Smog's ARD Registration is subject to disciplinary action under
11 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud
12 by issuing an electronic smog certificate of compliance for the 1995 Toyota, identified above,
13 without performing a bona fide inspection of the emission control devices and systems on the
14 vehicle, thereby depriving the People of the State of California of the protection afforded by the
15 Motor Vehicle Inspection Program.

16 **ELEVENTH CAUSE FOR DISCIPLINE**

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

18 34. Respondent U S A Smog's smog check station license is subject to disciplinary action
19 under Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions
20 of that Code, as follows:

21 a. **Section 44012:** Respondent failed to perform emission control tests on the 1995
22 Toyota, identified above, in accordance with procedures prescribed by the department.

23 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
24 the 1995 Toyota, identified above, without properly testing and inspecting the vehicle to determine
25 if it was in compliance with Health & Saf. Code section 44012.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

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

4 35. Respondent U S A Smog's smog check station license is subject to disciplinary action
5 under Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
6 of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
8 electronic smog certificate of compliance for the 1995 Toyota, identified above.

9 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
10 of compliance for the 1995 Toyota, identified above, even though that vehicle had not been
11 inspected in accordance with section 3340.42.

12 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1995
13 Toyota, identified above, in accordance with the Bureau's specifications.

14 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

16 36. Respondent U S A Smog's smog check station license is subject to disciplinary action
17 under Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent
18 or deceitful acts whereby another is injured by issuing an electronic smog certificate of compliance
19 to the 1995 Toyota, identified above, without performing a bona fide inspection of the emission
20 control devices and system on the vehicle, thereby depriving the People of the State of California
21 of the protection afforded by the Motor Vehicle Inspection Program.

22 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

24 37. Respondent Tarek Joulani's Smog Check Inspector (EO) License is subject to
25 disciplinary action under Health & Saf. Code section 44072.2, subdivision (a), in that he failed to
26 comply with provisions of that Code, as follows:

27 a. **Section 44012:** Respondent failed to perform emission control tests on the 1995
28 Toyota, identified above, in accordance with procedures prescribed by the department.

1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

4 38. Respondent Tarek Joulani's Smog Check Inspector (EO) License is subject to
5 disciplinary action under Health & Saf. Code section 44072.2, subdivision (c), in that Respondent
6 failed to comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
8 electronic smog certificate of compliance for the 1995 Toyota, identified above.

9 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 1995
10 Toyota, identified above, in accordance with Health & Saf. Code sections 44012 and 44035, and
11 California Code of Regulations, title 16, section 3340.42.

12 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1995
13 Toyota, identified above, in accordance with the Bureau's specifications.

14 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

16 39. Respondent Tarek Joulani's Smog Check Inspector (EO) License is subject to
17 disciplinary action under Code section 44072.2, subdivision (d), in that Respondent committed
18 dishonest, fraudulent or deceitful acts whereby another is injured by issuing an electronic smog
19 certificate of compliance to the 1995 Toyota, identified above, without performing a bona fide
20 inspection of the emission control devices and systems on the vehicle, thereby depriving the People
21 of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

22 **VIDEO SURVEILLANCE OPERATION – MAY 6, 2016**

23 40. On May 6, 2016, the Bureau conducted a third video surveillance operation of
24 Respondent U S A Smog. On that date, a representative of the Bureau drove a 1991 Buick to
25 Respondent U S A Smog for a smog check. The Buick's original hose located between the steel
26 line from the fuel tank and the plastic line to the vent orifice on the Evaporative Control Canister
27 was removed and replaced with one that was defective, which would result in the Buick not
28 passing the Low Pressure Fuel Evaporative Test (LPFET) during the smog check. Information

1 obtained from the Bureau's Vehicle Information Database (VID) revealed that Respondent Tarek
2 Joulani conducted the smog inspection on the Buick and entered a "pass" for the LPFET
3 inspection. In fact, Respondent Tarek Joulani did not conduct the required LPFET inspection, as
4 the surveillance video showed that the LPFET equipment was not connected to the vehicle during
5 the smog check. This resulted in the issuance of fraudulent certificate of compliance.

6 **SEVENTEENTH CAUSE FOR DISCIPLINE**

7 **(Untrue or Misleading Statement)**

8 41. Respondent U S A Smog's ARD Registration is subject to disciplinary action under
9 Code section 9884.7, subdivision (a)(1), in that Respondent U S A Smog made or authorized
10 statements which it knew or in the exercise of reasonable care should have known to be untrue or
11 misleading as follows: Respondent U S A Smog's technician, Tarek Joulani, certified that the
12 1991 Buick had passed the LPFET, when in fact that test was never performed on the Buick.

13 **EIGHTEENTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 42. Respondent U S A Smog's ARD Registration is subject to disciplinary action under
16 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud
17 by issuing an electronic smog certificate of compliance for the 1991 Buick, identified above,
18 without performing a bona fide inspection of the emission control devices and systems on the
19 vehicle, thereby depriving the People of the State of California of the protection afforded by the
20 Motor Vehicle Inspection Program.

21 **NINETEENTH CAUSE FOR DISCIPLINE**

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

23 43. Respondent U S A Smog's smog check station license is subject to disciplinary action
24 under Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions
25 of that Code, as follows:

26 a. **Section 44012:** Respondent failed to perform emission control tests on the 1991
27 Buick, identified above, in accordance with procedures prescribed by the department.

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1 **OTHER MATTERS**

2 49. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of
4 business operated in this state by Essa Rasheed Joulani, owner of Respondent U S A Smog, upon
5 a finding that said Respondent has, or is, engaged in a course of repeated and willful violations of
6 the laws and regulations pertaining to an automotive repair dealer.

7 50. Pursuant to Health & Saf. Code section 44072.8, if Smog Check License Number RC
8 257842, issued to Essa Rasheed Joulani, owner of Respondent U S A Smog, is revoked or
9 suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health &
10 Saf. Code in the name of said licensee may be likewise revoked or suspended by the Director.

11 51. Under Health and Saf. Code section 44072.8, if Smog Check Inspector License
12 Number EO 636971 issued to Respondent Tarek Essa Joulani is revoked or suspended, any
13 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the
14 name of said licensee may be likewise revoked or suspended by the Director.

15 52. Under Health and Saf. Code section 44072.8, if Smog Check Inspector License
16 Number EO 637265 or Smog Check Repair Technician License Number EI 637265 issued to
17 Respondent Iyad A. Alsayeh is revoked or suspended, any additional license issued under
18 Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee may be
19 likewise revoked or suspended by the Director.

20 **DISCIPLINE CONSIDERATIONS**

21 53. To determine the degree of discipline, if any, to be imposed on Respondent Iyad
22 Alsayeh, Complainant alleges that Iyad Alsayeh was issued Citation No. M2015-2079 on
23 September 4, 2015, for a Notice of Abatement for certifying a 1999 Ford F-350 Diesel using the
24 BAR97 when the OBD Inspection System (OIS) was required. The decision became effective
25 November 11, 2015.

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1 PRAYER

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

- 4 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
5 257842 issued to U S A Smog Automotive, with Essa Rasheed Joulani as owner;
- 6 2. Revoking or suspending any other automotive repair dealer registration issued
7 to Essa Rasheed Joulani;
- 8 3. Revoking or suspending Smog Check Station License Number RC 257842 issued to U
9 S A Smog Automotive, with Essa Rasheed Joulani as owner;
- 10 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
11 Division 26 of the Health & Saf. Code in the name of Essa Rasheed Joulani;
- 12 5. Revoking or suspending Smog Check Inspector License Number EO 636971 issued to
13 Tarek Essa Joulani;
- 14 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
15 Division 26 of the Health & Saf. Code in the name of Tarek Essa Joulani;
- 16 7. Revoking or suspending Smog Check Inspector License No. EO 637265 issued to
17 Iyad A. Alsayeh;
- 18 8. Revoking or suspending Smog Check Repair Technician License No. EI 637265
19 issued to Iyad A. Alsayeh;
- 20 9. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
21 Division 26 of the Health & Saf. Code in the name of Iyad A. Alsayeh;
- 22 10. Ordering U S A Smog Automotive, Essa Rasheed Joulani, Tarek Essa Joulani and
23 Iyad A. Alsayeh to pay the Bureau of Automotive Repair the reasonable costs of the investigation
24 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: October 24, 2017 Patrick Dorais

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

SD2016703354