

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

In the Matter of the First Amended Accusation Against:

**EID WALID HADDAD- PRESIDENT/SECRETARY/TREASURER- HADDAD MOTORS,  
INC. dba PALMDALE SMOG CHECK**

2627 East Palmdale Blvd. Unit B

Palmdale, CA 93550

Mailing Address

5765 West Avenue, J15

Lancaster, CA 93535

Automotive Repair Dealer Registration No. ARD 290010

Smog Check Station License No. RC 290010

and

**JUAN JOSE FERNANDEZ**

45465 25th Street East, Spc. 237

Lancaster, CA 93535

Smog Check Inspector License No. EO 141389

Smog Check Repair Technician License No. EI 141389

(formerly Advanced Emission Specialist Technician License No. EA 141389)

Respondents.

Case No. 79/21-16878

OAH No. 2022080325

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on September 29, 2023.

IT IS SO ORDERED this 23rd day of August, 2023.

Signature on file

GRACE ARUPO RODRIGUEZ

Assistant Deputy Director

Legal Affairs Division

Department of Consumer Affairs

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

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

**HADDAD MOTORS INC. DBA PALMDALE SMOG CHECK,**

**EID WALID HADDAD, President/Secretary/Treasurer**

**Automotive Repair Dealer Registration No. ARD 290010,**

**Smog Check Station License No. RC 290010,**

**and**

**JUAN JOSE FERNANDEZ,**

**Smog Check Inspector License No. EO 141389,**

**Smog Check Repair Technician License No. EI 141389**

**Respondents.**

**Agency Case No. 79/21-16878**

**OAH No. 2022080325**

## **PROPOSED DECISION**

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 18 and 19, 2023.

Michael Brown, Deputy Attorney General, represented complainant Patrick Dorais, Chief, Bureau of Automotive Repair (BAR or Bureau), Department of Consumer Affairs (complainant).

William D. Ferreira, Attorney at Law, Automotive Defense Specialists, represented Haddad Motors Inc. doing business as Palmdale Smog Check (respondent). Eli Walid Haddad, president of respondent was also present.

Juan Jose Fernandez failed to file a Notice of Defense and did not appear for the hearing. A default is pending with the Bureau as to Juan Jose Fernandez.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on July 19, 2023.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Complainant brought an initial Accusation on July 27, 2022 and an Amended Accusation on March 15, 2023. Respondent filed a timely Notice of Defense. All jurisdictional requirements have been met as to respondent. Juan Jose Fernandez failed to file a Notice of Defense and did not appear for the hearing. A default is

pending as to Juan Jose Fernandez. Therefore, no findings are made as to Causes for Discipline six, seven and eight that pertain solely to Juan Jose Fernandez.

2. On March 5, 2013, the Bureau issued Smog Check Repair Technician (EI) License number 150565 and Smog Check Inspector License Number EO 150656 to Eid Walid Haddad in his individual capacity. The licenses were in full force and effect at all relevant times. The dates of expiration was not established by the evidence.

3. On March 26, 2018, the Bureau issued Automotive Repair Dealer (ARD) Registration number ARD 290010 to respondent. The ARD Registration was in full force and effect at all relevant times and will expire on March 31, 2024, unless renewed.

4. On April 5, 2018, the Bureau issued Smog Check Station License number RC 290010 to respondent. The Smog Check Station License was in full force and effect at all relevant times and will expire on March 31, 2024, unless renewed.

5. On February 24, 2014, the Bureau issued Smog Check Inspector (EO) license number 141389 and Smog Check Repair Technician Inspector (EO) license number 141389 to Juan Jose Fernandez. The licenses will expire on February 29, 2024, unless renewed.

6. Respondent is certified as a STAR Station. The Bureau's STAR program establishes performance standards that smog check stations must meet or exceed to become STAR certified. (See Cal. Code Regs., tit. 16, § 3340.1.) The Bureau certified respondent as a STAR Station on May 7, 2018. The certification will remain active unless respondent's ARD Registration and/or Smog Check Station License are revoked or canceled, the licenses become delinquent, or the certification is invalidated.

7. The First Amended Accusation also alleges that: respondent holds a brake station license and a lamp station license; Eid Walid Haddad doing business as Elite Car Care holds an ARD, a smog check station, brake and lamp licenses. It also alleges that Eid Walid Haddad holds brake and lamp adjuster licenses. The existence of these licenses was established by the testimony of Mr. Haddad. However, complainant failed to provide any documentary evidence supporting their existence or establishing the license numbers or status of these licenses. Additionally, Complainant did not establish that any of those licenses were involved in the malfeasances at respondent.

### **Smog Check Program**

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

9. Smog inspection consists of three tests—an emissions test, visual test and functional test. The emissions test analyzes tailpipe emissions obtained while the vehicle's engine is running. The visual test requires the smog inspector to verify the presence of required emission control systems and components. The functional test requires the smog inspector to physically test certain emission system components.

10. Beginning March 9, 2015, California's Smog Check Program was updated to keep pace with advancing vehicle technology. The program update requires use of an On-Board Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of the state when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and 1998 and newer diesel vehicles subject to the program. The system consists of a certified Data Acquisition Device (DAD),

computer, bar code scanner, and printer. The DAD is an on-board diagnostic (OBD) scan tool that, when requested by the California BAR-OIS software, retrieves OBD data from the vehicle.

11. All OBD data that the vehicle indicates it supports is requested by the California BAR-OIS software and will be retrieved. The DAD connects between the BAR-OIS computer and the vehicle's diagnostic link connector. The DAD is the only BAR-certified component of the BAR-OIS. The data retrieved and recorded during a BAR-OIS smog check includes: the eVIN, a digitally (or electronically) stored vehicle identification number (VIN) programmed into the vehicle's powertrain control module (PCM); the communication protocol, which is the manufacturer/specific language the PCM uses to relay information; and the number of Parameter Identifications (PID) which includes the specific data values each PCM uses related to emissions controls.

12. By issuing a certificate of compliance for a vehicle, the issuing smog station certifies that the vehicle has been properly inspected and has all the required emission control equipment devices installed and functioning correctly.

13. The Bureau has become aware of methods some smog check stations and smog check inspectors use to fraudulently issue smog certificates to vehicles that will not pass a properly performed smog check inspection. One such method is known as clean plugging. Like its prohibited predecessor, clean piping, clean plugging refers to the use of another vehicle's properly functioning OBD system, generation II (OBD II), or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent certificates of compliance to vehicles that are not in smog compliance and/or not present for testing. One method of clean plugging is to plug the DAD into a surrogate vehicle rather than the one registered as the vehicle to be smog inspected on the Department of Motor Vehicle (DMV) notice.

## **Analysis of Test Data**

14. Juan Jose Fernandez and Eid Walid Haddad, president of respondent, were the only two licensed smog inspectors at respondent and all of the referenced smog checks were performed by Mr. Fernandez.

15. The Bureau, in its First Amended Accusation, alleges Mr. Fernandez engaged in clean plugging of the following seven vehicles, one in March 2020, one in April 2020, one in July 2020, one in October 2021, one in November 2021 and two in December 2021:

Clean Plug Number 1 occurred on March 17, 2020, during the smog check of a 2002 Mazda Protégé PR5 (Exs. 5-9);

Clean Plug Number 2 occurred on April 29, 2020, during the smog check of a 2005 Hyundai Sonata GL (Exs. 5, 8,10-12);

Clean Plug Number 3 occurred on July 6, 2020, during a smog check of a 2012 Toyota Camry Base (Exs. 5, 8,13-16);

Clean Plug Number 4 occurred on October 22, 2021, during the smog check of a 2005 Kia Spectra LX (Exs. 5, 8, 17-19);

Clean Plug Number 5 occurred on November 5, 2021 during the smog check of a 2003 Honda Accord (Exs. 5, 8, 21-24);

Clean Plug Number 6 occurred on December 2, 2021, during the smog test of a 2007 Ford 150 (Exs. 5, 8, 25-28); and

Clean Plug Number 7 occurred on December 17, 2021, during the smog test of a 2006 Chevrolet Aveo LT (Exs. 5, 8, 29-31, 32).

15. Ian Evans testified at the hearing. Mr. Evans worked at the Bureau for more than 16 years and is now retired. He was a Program Specialist II and has extensive experience investigating smog check stations and assessing data transmitted from smog check stations, retrieved by the BAR to record smog checks and collected in the Bureau's smog check database.

16. Mr. Evans has the requisite skills and experience with data retrieval and analysis and experience to properly review and assess the smog check data base and is experienced in automotive repair and smog check procedures. Mr. Evans provided straightforward and unbiased testimony of his research of the smog check data base. Mr. Evans provided credible testimony supported by reliable data from the BAR-OIS and confirmed the subject automobiles were issued certificates of compliance based upon information obtained through a DAD plugged into a different vehicle.

17. The Bureau relied solely upon its analysis of data from the BAR-OIS. It did not conduct surveillance of respondent. The Bureau pursued disciplinary charges after finding seven incidents of clean-plugging and based its findings on the reliable BAR-OIS data base. Mr. Evans reviewed the general statewide data for each specific vehicle to confirm the expected protocols and PID counts for the make and model. He also looks for the vehicles' unique electronic vehicle identification number (eVIN). He looked at vehicles tested statewide from the Bureau's data base, inclusive of vehicle inspection reports (VIR), BAR-OIS test details and Certificate Purchase History. He found the expected protocol and PID Count (summarized in Exhibits 5 and 8 from the exhibits referenced above for each vehicle) for each vehicle:

Clean Plug number one, 2002 Mazda Protégé PR5 expected protocol I914, expected PID Count 18 and no eVIN was expected. On March 17, 2020, the communication protocol was transmitted as JVPW, PID count as 21 and the eVIN was

not transmitted. Certificate of Compliance number RG549185C was issued for the vehicle by respondent on March 17, 2020. This vehicle was previously inspected on March 2, 2020, at another smog check station with the correct protocol and PID Count consistent with the expected similar vehicle OIS data.

Clean Plug number two, 2005 Hyundai Sonata GL expected protocol KWPF, expected PID count 21 or 21/1 and expected eVIN, KMHWF25H65A167589. On April 29, 2020, the Communication Protocol was transmitted as I914, the PID as 17 and no eVIN was transmitted. Certificate of Compliance number R1349632C was issued for the vehicle by respondent on April 29, 2020. This vehicle was previously inspected on February 13, 2018, at another smog check station with the correct protocol, PID Count and eVIN consistent with the expected similar vehicle OIS data.

Clean Plug number three, 2012 Toyota Camry Base expected protocol ICAN11bt5, expected PID count 42 and expected eVIN, 4T1BF1FK4CU576964. On July 6, 2020, the Communication Protocol was transmitted as ICAN11bts, the PID as 50 and the eVIN as 4TIBFIFK4C. Certificate of Compliance number RM295436C was issued for the vehicle by respondent on July 6, 2020. This vehicle was previously inspected on June 25, 2018, at another smog check station with the correct protocol, PID Count and eVIN consistent with the expected similar vehicle OIS data.

Clean Plug number four, 2005 Kia Spectra LX expected protocol KWPF, expected PID count 16/1 or 17/1 and expected eVIN, KNAFE122855199127. On October 22, 2021, the Communication Protocol was transmitted as I1914, the PID as 17 and the eVIN as 4TIBE32K95US586574. Certificate of Compliance number SI283544C was issued for the vehicle by respondent on October 22, 2021. This vehicle was previously inspected on October 11, 2019, at another smog check station with the correct protocol, PID Count and eVIN consistent with the expected similar vehicle OIS data.

Clean Plug number five, 2003 Honda Accord expected protocol I914, expected PID count 20 and no eVIN expected. On November 5, 2021, the Communication Protocol was transmitted as ICAN29bt5, the PID was 39/18 and the eVIN was 2HGFA1F50AH331708. Certificate of Compliance number S1731483C was issued for the vehicle by respondent on November 5, 2021. This vehicle was previously inspected on August 30, 2019 at another smog check station with the correct protocol and PID Count consistent with the expected similar vehicle OIS data.

Clean Plug number six, 2007 Ford F150 expected protocol ICAN11bt5, expected PID count 47 and expected eVIN, 1FTRF12237KD55818. On December 2, 2021, the Communication Protocol was transmitted as ICAN11bts, the PID as 47 and the eVIN as 1FTNE24W77DA74164. Certificate of Compliance number SK336572C was issued for the vehicle by respondent on December 2, 2021. This vehicle was previously inspected on November 9, 2019, at another smog check station with the correct protocol and PID Count consistent with the expected similar vehicle OIS data.

Clean Plug number seven, 2006 Chevrolet Alveo LT expected protocol KWPF, expected PID count 36/1 and expected eVIN, KLITG66636. On December 17, 2021, the Communication Protocol was transmitted as I914, the PID as 21 and the eVIN as 1HGCM56405A091394. Certificate of Compliance number SK788555C was issued for the vehicle by respondent on December 17, 2021. This vehicle was previously inspected on December 30, 2019, at another smog check station with the correct protocol and PID Count consistent with the expected similar vehicle OIS data.

18. Based upon his findings for each vehicle, Mr. Evans concluded each of the vehicles referenced was not connected to the Bureau's BAR-OIS DAD during the inspection. After Mr. Evans confirmed Mr. Fernandez, on behalf of respondent, issued smog certificates of compliance for the subject vehicles under penalty of perjury, he

concluded the certificates of compliance for each of the subject vehicles were issued as a result of clean plugging. As such, he also concluded respondent through its technician Juan Jose Fernandez, issued false and fraudulent certificates because each certificate contained false and misleading information that the subject vehicles had been properly inspected when, in fact, they had not.

19. A smog technician is given multiple opportunities during the smog inspection through the screen prompts built into the computerized smog check eVIN system to correct the information. The system provides the technician an opportunity to confirm if the information is correct, continue after each operation or abort the inspection.

### **Respondent's Testimony and Contentions**

20. Mr. Haddad testified extensively about his training and selection of Mr. Fernandez, a technician who came to him with excellent scores (for STAR purposes) and experience. Mr. Haddad trusted him and believed that the seven instances of clean plugging were anomalies resulting from Mr. Fernandez's negligence and not intentional. He surmised that Mr. Fernandez had forgotten to remove the DAD from the vehicle testified prior to each of the referenced vehicles on busy days. According to Mr. Haddad, respondent is a test and repair facility and as such has no incentive to conduct fraudulent smog inspections. According to Mr. Haddad, it is more lucrative for the inspector/technician to recommend repairs (for which he receives a commission from respondent) than to falsify smog inspections. Respondent no longer employs Mr. Fernandez. A new technician, with high scores (for STAR purposes), has been hired to conduct smog inspections at respondent. Mr. Haddad makes daily visits to respondent to review the smog check records. Respondent has installed video cameras that give Mr. Haddad a view of all areas of respondent's smog check bay and that can be

reviewed remotely when Mr. Haddad is not on the premises. Mr. Haddad has committed to more vigilance in supervision of respondent and employees. Additionally, respondent has instituted written policies, procedures and audit checklists to avoid recurrence of smog check irregularities and fraud. Respondent's STAR certification provides approximately 80 percent of its revenue and without the STAR certification, respondent fears the smog check station would have to close. Based on the extensive remedial measures taken by respondent, the interests of public protection do not require revocation or suspension of its STAR certification.

### **Cost Recovery**

21. The Bureau incurred costs of enforcement in this matter of \$10,600 in attorneys' fees charged by the Attorney General's Office (Ex. 4) and \$804.22 in investigative costs from its own employees (Ex. 4.) for a total of \$11,404.22. These costs are found to be reasonable.

22. Respondent requested that the costs be apportioned between respondent and Juan Jose Fernandez and that consideration be given to the breadth of the Bureau's investigation, and the elimination of certain allegations that were contained in the original Accusation but not in the First Amended Accusation. Respondent requested a payment plan if ordered to pay the Bureau's costs.

### **Prior Discipline**

23. Eid Walid Haddad was cited on June 15, 2015 for violation of Health and Safety Code section 44032 and served with an order of abatement for issuing a Certificate of Compliance to a 2005 Chevrolet Express 3500 using the BAR97 when an OBD inspection using the OIS system was required. The citation service conference

was held on October 22, 2015 and the citation became final effective November 22, 2014. Mr. Haddad satisfied the terms of the citation.

## **LEGAL CONCLUSIONS**

### **Legal Principles**

#### **BURDEN AND STANDARD OF PROOF**

1. The burden of proof in a licensing disciplinary action is on the party making the charges in an accusation. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789 fn. 9.) In a case that involves an occupational license, complainant bears the burden of proving cause for discipline by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

#### **AUTOMOTIVE REPAIR ACT**

2. The Automotive Repair Act is set forth at Business and Professions Code section 9880 et seq. and relates to ARD registrations.

3. Pursuant to Business and Professions Code section 9884.7, subdivision (a), the Director of Consumer Affairs may suspend, revoke, or place on probation the registration of an automotive repair dealer for certain acts or omissions related to the conduct of the automotive repair dealer's business which are done by the automotive repair dealer or any automotive technician or employee, including but not limited to:

(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.

### **MOTOR VEHICLE INSPECTION PROGRAM**

4. The Motor Vehicle Inspection Program is set forth at Health and Safety Code section 44000 et seq. and relates to smog check station and inspector licenses. The implementing regulations are set forth at California Code of Regulations, title 16 (CCR), section 3340.1 et seq.

5. Health and Safety Code section 44072.2 provides, in pertinent 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.

6. Health and Safety Code section 44012 provides, in pertinent part: "The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in

enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board."

7. Health and Safety Code section 44015, subdivision (b), states: "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."

8. CCR section 3340.24, subdivision (c), states: "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."

9. CCR section 3340.35, subdivision (c), states in pertinent part: "A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly."

10. CCR section 3340.42 states, in part: "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45."

## **ARD Registration**

11. First Cause for Discipline: Cause exists to discipline respondent's ARD Registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that between March 17, 2020 and December 17, 2021, respondent, made untrue and misleading statements which it knew, or in the exercise of reasonable care should have known, to be untrue and misleading, by issuing electronic certificates of

compliance for each of the subject vehicles, which certified the vehicles had passed inspection and were in compliance with applicable laws and regulations when, in fact, the vehicles had been inspected using the clean plugging method and, thus, were not tested or inspected as required by Health and Safety Code section 44012 as set forth in the.

12. Second Cause for Discipline: Cause exists to discipline respondent pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that between March 17, 2020 and December 17, 2021, respondent, committed acts which constitute fraud, by issuing electronic certificates of compliance for each of the subject vehicles without first performing bona fide inspections of the emission control devices and systems on those vehicles, and thereby deprived the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program. The preponderance of the evidence established the smog inspections of the subject vehicles were the result of clean plugging, as set forth in the factual findings, which is fraudulent conduct.

### **Smog Check Station License**

13. Third Cause for Discipline: Cause exists to discipline respondent's Smog Check Station License, pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between March 17, 2020, and December 17, 2021, respondent, with respect to the subject vehicles, violated the Health and Safety Code, as follows:

- Violated Health and Safety Code section 44012 by failing to ensure that the emission control tests were performed on the subject vehicles in accordance with procedures prescribed by the department.

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- Violated Health and Safety Code section 44015, subdivision (b), by issuing electronic smog certificates of compliance for the subject vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with Health and Safety Code section 44012.
- Violated Health and Safety Code section 44059 by willfully making false statements or entries for the electronic smog certificates of compliance by certifying that the subject vehicles had been inspected as required when, in fact, they had not.

14. Fourth Cause for Discipline: Cause exists to discipline respondent's Smog Check Station License, pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between March 17, 2020, and December 17, 2021, respondent, with respect to the subject vehicles, violated the CCR, as set forth in the factual findings, as follows:

- Violated CCR section 3340.24, subdivision (c), by falsely or fraudulently issuing electronic smog certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012.
- Violated CCR section 3340.35, subdivision (c), by issuing certificates of compliance even though the vehicles had not been properly inspected.
- Violated CCR section 3340.42 by failing to conduct the required smog tests and inspections in accordance with the Bureau's specifications.

15. Fifth Cause for Discipline: Cause exists to discipline respondent's Smog Check Station License, pursuant to Health and Safety Code sections 44072.2,

subdivision (d), and 44072.10, subdivision (c), in that between March 17, 202 and December 17, 2021, respondent committed acts involving dishonesty, fraud or deceit whereby another was injured, by issuing electronic smog certificates of compliance for the subject vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program as set forth in the factual findings.

### **Level of Discipline**

16. Administrative proceedings to revoke, suspend or impose discipline on a professional or occupational license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.) The statutes relating to the licensing of professions and occupations are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Protection of the public is the Bureau's highest priority in exercising its licensing, regulatory, and disciplinary functions. (Bus. & Prof. Code, § 9880.3.)

17. The Bureau's "Guidelines for Disciplinary Orders and Terms and Conditions of Probation (Rev. June 2021)" (Guidelines), which are incorporated by reference in the Bureau's regulations at CCR section 3395.4. The Guidelines have been considered. The Guidelines include recommended levels of discipline for various violations. For the specific violations alleged against respondent in this matter, the recommended probation periods range from two to five years.

18. The Guidelines also contain factors in aggravation and factors in mitigation that are to be considered in determining the level of discipline to be

imposed in a given case. (Guidelines, pp. 1-2.) The factors in aggravation include prior warnings from BAR; prior office conferences with BAR; prior history of citations; prior history of formal disciplinary action; evidence that the unlawful act was of a pattern of practice; and evidence of any other conduct which constitutes fraud or gross negligence. The factors in mitigation include the absence of prior disciplinary action, evidence that the violation was not part of a pattern or practice, evidence of substantial measures to correct its business practices and/or business operations so as to minimize the likelihood of recurrence of the violation; and evidence of any other conduct which could constitute a factor in mitigation.

19. Here, respondent no longer employs the technician that committed the misconduct. Respondent's president, Mr. Haddad, makes daily visits to respondent to review the smog check records. Respondent has installed video cameras that give Mr. Haddad a view of all areas of respondent's smog check bay and that can be reviewed remotely when Mr. Haddad is not on the premises. Respondent employed a new smog tech inspector/technician who has a high rating (for STAR purposes) and Mr. Haddad has committed to more vigilance in the supervision of the employee. Additionally, respondent has written policies, procedures and audit checklists in place to avoid recurrence of smog check irregularities and fraud. Respondent's STAR certification provides approximately 80 percent of its revenue and without the STAR certification, respondent fears the smog check station would have to close.

20. In this case, respondent has undertaken substantial measures to avoid recurrence of the malfeasance which gave rise to this matter. Respondent has no prior discipline and the citation issued in 2015 to Mr. Haddad, its president, was minor for one instance and over seven years ago. Accordingly, the appropriate level of discipline

is a stayed revocation with two years' probation against respondent's ARD and smog check station license under the terms and conditions set forth in the Order below.

## **Cost Recovery**

21. In any order issued in resolution of a disciplinary proceeding, at the request of the Bureau, the ALJ may direct the licentiate found to have committed a violation to pay a sum not to exceed the reasonable costs of investigation and enforcement. A certified copy of the actual costs, signed by the Bureau or its designated representative, is prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General. (Bus. & Prof. Code § 125.3, subds. (a), (c); see Cal. Code Regs., tit. 1, § 1042, subd. (b).)

22. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. Those factors include: (1) the licentiate's success in getting the charges dismissed or reduced; (2) the licentiate's subjective good faith belief in the merits of his or her position; (3) whether the licentiate raised a colorable challenge to the proposed discipline; (4) the licentiate's financial ability to pay; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

23. The declarations signed with the attached statements constitute prima facie evidence of the reasonableness of the costs incurred for prosecution. (Bus. & Prof. Code, § 125.3, subd. (c).) Respondent succeeded in obtaining a reduction in the

severity of discipline imposed, the case was narrowed by a First Amended Accusation, and one respondent (Mr. Fernandez) was subject to a default. For the foregoing reasons, costs are reduced from \$11,404.22 to \$6,000. Therefore, cause exists, pursuant to Business and Professions Code section 125.3, to order respondent to pay the Bureau \$6,000 for the reasonable costs of the investigation and enforcement of this matter. Such payment shall be made pursuant to a payment plan approved by the Bureau.

## **ORDER**

IT IS HEREBY ORDERED that ARD Registration No. ARD 290010 and Smog Check Station License No. RC 290010, and any additional licenses issued by BAR, to Haddad Motors, Inc. doing business as Palmdale Smog Check (respondent), are revoked. However, the revocation is stayed, and the ARD and licenses, are placed on probation for two years on the terms and conditions set forth below.

1. Obey All Laws

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

2. 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. Reporting 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 a Valid License

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

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## 8. Cost Recovery

Respondent shall pay the BAR \$6,000 for the reasonable costs of the investigation and enforcement of Case No. 79/21-16878. Respondent shall make such payment on a payment plan as directed by 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. 79/21-16878. 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/or 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.

DATE: **07/25/2023**

*Signed Copy on File*

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings