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

13 In the Matter of the Citation Against:

Case No. **79/24-18510**

14 **YESSENIA MARTINEZ RODRIGUEZ,**
15 **d.b.a. AINESSEY SMOG**
16 **3186 Madison Ave**
17 **Riverside, CA 92504**

OAH No.

ACCUSATION

18 **Automotive Repair Dealer Registration**
19 **Number ARD 291206, Smog Test, Test**
20 **Only, Station License Number TC 291206**

21 **JOHN DANIAL**
22 **3323 Clipstone Court**
23 **Riverside, CA 92503**

24 **Smog Check Inspector License Number EO**
25 **638012**

26 **RON E. ROGERS**
27 **130 Cape Elizabeth Way**
28 **Riverside, CA 92506**

Smog Check Inspector License Number EO
644073

Respondents.

PARTIES

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

2. On or about May 30, 2018, Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 291206 to Yessenia Martinez Rodriguez, dba Ainessey Smog (Respondent Ainessey Smog). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2025, unless renewed.

3. On or about June 8, 2018, Bureau of Automotive Repair issued Smog Check Test-Only Station License Number TC 291206 to Yessenia Martinez Rodriguez, dba Ainessey Smog (Respondent Ainessey Smog). The Smog Check Test-Only Station License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2025, unless renewed.

4. Respondent is also certified as a STAR Station. The certification was issued on August 16, 2018, and will remain active unless the ARD registration and/or Smog Check Station license is revoked, canceled, licenses become delinquent, or the certification is invalidated.

5. On or about April 3, 2015, Bureau of Automotive Repair issued Smog Check Inspector License Number EO 638012 to John Danial¹ (Respondent Danial). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2027, unless renewed.

6. On or about December 22, 2022, Bureau of Automotive Repair issued Smog Check Inspector License Number EO 644073 to Ron E. Rogers (Respondent Rogers). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2026, unless renewed.

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¹ At all times alleged herein, Respondents John Danial and Ron E. Rogers were acting as employees of Respondent Ainessey Smog and committed the acts alleged herein in the course and scope of their employment at Respondent Ainessey Smog.

1 **JURISDICTION**

2 7. This Accusation is brought before the Director of the Department of Consumer
3 Affairs (“Director”) for the Bureau, under the authority of the following laws.

4 8. Section 9884.7 of the Business and Professions Code² provides that the Director may
5 revoke an ARD registration.

6 9. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
7 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
8 proceeding against an automotive repair dealer or to render a decision invalidating a registration
9 temporarily or permanently.

10 10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
11 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
12 the Motor Vehicle Inspection Program.

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

17 **STATUTORY PROVISIONS**

18 12. Section 9884.7 of the Code states:

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

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

28 . . .

(4) Any other conduct which constitutes fraud.

. . .

² All statutory references herein shall be to the Business and Professions Code unless specifically stated otherwise.

1 (6) Failure in any material respect to comply with the provisions of this chapter or
2 regulations adopted pursuant to it.

3 13. Section 44072.2 of the Health and Safety Code states:

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

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

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

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

11 14. Section 44072.10 of the Health and Safety Code states, in pertinent part:

12 . . .

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

16 (1) Clean piping, as defined by the department. . . .

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

18 **REGULATORY PROVISIONS**

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

20 The bureau may suspend or revoke the license of or pursue other legal action
21 against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate
of compliance or a certificate of noncompliance.

22 16. California Code of Regulations, title 16, section 3340.30, states:

23 A smog check technician shall comply with the following requirements at all
24 times while licensed.

25 (a) A licensed technician shall inspect, test and repair vehicles 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. . . .”

26 ///

27 ///

28 ///

1 17. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

2

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

7 18. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions
8 test methods and procedures which apply to all vehicles inspected in the State of California.

9 **COST RECOVERY**

10 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
15 included in a stipulated settlement.

16 **VID DATA REVIEW**

17 20. Beginning March 9, 2015, California's Smog Check Program was updated to require
18 the use of an On-Board Diagnostic Inspection System ("OIS"). OIS is the Smog Check
19 equipment required in all areas of the State when inspecting most model-year 2000 and newer
20 gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a
21 certified Data Acquisition Device ("DAD"), computer, bar code scanner, and printer. The DAD
22 is an On-Board Diagnostic ("OBD") scan tool that, when requested by the California OIS
23 software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it
24 supports is requested by the California OIS software and will be retrieved. The DAD connects
25 between the OIS computer and the vehicle's DLC. The California OIS software requires a
26 continuous Internet connection when performing a Smog Check inspection and the OIS software
27 communicates with BAR's central database through the Internet connection. The bar code
28 scanner is used to input technician information, the vehicles identification number ("VIN"), and
DMV renewal information. The printer provides a Vehicle Inspection Report ("VIR") containing

1 inspection results for motorists and a Smog Check Certificate of Compliance number for passing
2 vehicles.

3 21. Data retrieved and recorded during an OIS smog check includes; the eVIN, which is
4 the digitally stored VIN programmed into the vehicle's Powertrain Control Module ("PCM"); the
5 communication protocol, which is the manufacturer/vehicle specific language the PCM uses to
6 relay information; and the number of Parameter Identifications ("PIDs"), which is the number of
7 specific data values each PCM uses related to emissions controls.

8 22. During an OIS inspection, engine operating parameters are retrieved from the
9 vehicle's OBD II system and recorded to the VID. This is accomplished during the functional
10 portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when
11 prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- 12 • Engine speed in revolutions per minute (RPM)
- 13 • Throttle position as measured by a throttle position sensor (TPS) mounted onto
14 the throttle shaft. Measured in a percentage of opening from 0% at idle and near
15 or up to 100% at full throttle.
- 16 • Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
17 connected to an intake manifold source, measured in kilo pascals (kpa). Typical
18 readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum,
19 25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at
20 sea level.
- 21 • Mass air flow as measured by a mass air flow sensor (MAF) mounted in the
22 engine's air intake tract. Measured in grams per second (gps).³
- 23 • Ignition timing is set by the vehicle PCM based on engine speed and load, and is
24 measured in degrees Before Top Dead Center (BTDC).

25 23. During normal engine operation at idle, engine speed is relatively steady around its
26 target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or

27 ³ Not all vehicles include both MAP and MAF parameters. Many vehicles will have either
28 MAP or MAF parameters separately.

1 MAF readings are also steady. For the engine speed to increase, the throttle would have to be
2 opened to increase airflow through the engine. The engine's management systems supply fuel and
3 spark timing appropriate to any changes in throttle position and engine speed. An increase in
4 throttle, measured by the TPS, which increases engine RPM, would result in corresponding
5 increases in MAF as well as a change in MAP. Stated another way, any movement in the throttle
6 from the idle position will result in an increase of airflow through the engine with corresponding
7 increases RPM and/or MAF along with changes in MAP.

8 24. During an OIS Smog Check inspection, along with other visual and functional
9 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
10 with the engine idling and, when requested by the OIS analyzer, and an elevated or increased
11 engine speed.

12 25. If the vehicle passes the visual, functional and tailpipe tests, it passes the overall
13 inspection, and a Certificate of Compliance is issued and transmitted electronically to the Vehicle
14 Information Database ("VID"). These Certificates of Compliance are purchased in blocks of fifty
15 (50) through the EIS or OIS from the VID, using a pre-arranged electronic bank account debit
16 system or by check, via mail, from Bureau Headquarters in Sacramento. Each Certificate of
17 Compliance has a unique control number so that it can be tracked to determine which Smog
18 Check Station purchased the Certificate of Compliance and to which vehicle it was issued.

19 26. The VID contains registration data from Department of Motor Vehicles ("DMV")
20 plus emission standards, vehicle smog check inspections, smog check stations and technicians,
21 and Certificates of Compliance. The VID receives the passing smog check results immediately
22 following the inspection. During the vehicle registration process, the DMV accesses the VID to
23 verify that the vehicle has been tested and certified. The Bureau can also access the VID to view
24 test data on smog check inspections performed at any Smog Check Station, or search for, retrieve,
25 and print a test record for a particular vehicle which has been tested. The EIS or OIS, depending
26 on the test type, also prints a Vehicle Inspection Report ("VIR"), which is a physical record of the
27 test results and shows the Certificate of Compliance number that was issued if the vehicle passed
28 the smog inspection.

1 27. The smog check technician must sign the VIR under penalty of perjury to indicate
2 that the inspection was done within Bureau guidelines. Smog Check Stations are required by law
3 to maintain a copy of the VIR along with a copy of the repair invoice for three years. The
4 consumer's VIR serves as a receipt and proof that the VID was updated, and a Certificate of
5 Compliance was issued. Licensed Smog Check Technicians are the only persons authorized by
6 the Bureau to perform official inspections. They are issued a personal access code and a license,
7 which are used to gain access to the EIS and OIS to perform smog check inspections.
8 Unauthorized use of another technician's access code or license is prohibited.

9 28. Respondents have engaged in numerous acts or omissions constituting violations of
10 the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*) and Motor
11 Vehicle Inspection Program (Health and Safety Code section 44000 *et seq.*) through their practice
12 of "clean plugging."⁴ Respondent's employees' OIS Test Data available on the State database
13 indicates that Respondents are involved in fraudulent smog inspection activities. A Bureau
14 representative initiated an investigation based on information transmitted to the VID for smog
15 check inspections performed by Respondent's employees. The investigation revealed that the
16 data related to certain vehicles certified by Respondent's employees contained a pattern of
17 unmistakable discrepancies between the information transmitted during the inspections and
18 documented information known about the vehicles at issue. Specifically, the representative
19 compared the data received from the certified vehicles to data from vehicles of the same year,
20 make, and model and determined that the data from at least ten (10) of the certified vehicles were
21 fraudulently tested by Respondent's employees during the smog inspection using the "clean
22 plugging" method as follows:

23 **Fraudulent Inspection #1 (Danial)**

24 29. Bureau Program Representative Steve Koch (Koch) reviewed the OIS Test Data for
25 Ainessey Smog. The review indicates on March 17, 2023, a 2000 Chevrolet Silverado K1500, CA

26 ⁴ "Clean plugging" refers to the use of another vehicle's properly functioning On Board
27 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic
28 readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that
are not in smog compliance and/or not present for testing.

license 6E31938, VIN 2GCEK19T3Y1190508 (2000 Silverado), was tested and smog certificate # IT499844C was issued under licensed Smog Check Technician #EO638012, Danial.

30. The Dynamic OBDII PID Chart for the 2000 Silverado shows between time stamp 39 and 19431 engine speed is steady at approximately 725 RPM. During this time the throttle is fixed at 0% opening, MAF is fixed at 4.9 gps, MAP is fixed at 28 kPa, and the ignition timing advance for #1 cylinder is fixed at 17 degrees BTDC. After time stamp 19431 the engine speed accelerates to approximately 1700 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0% opening, MAF is fixed at the same 4.9 gps, MAP is fixed at the same 28 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 17 degrees BTDC.

31. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, MAP, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2000 Silverado being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Previous Failing Tests: 2000 Silverado

32. Two previous failing tests were performed on the 2000 Silverado. The most recent failing test was performed on the 2000 Silverado by Licensed Inspector Danial at Ainessey Smog on March 9, 2023. The 2000 Silverado failed the test for incomplete OBDII readiness monitors. The prior failing test was performed on the 2000 Silverado at another station on March 2, 2023. The 2000 Silverado failed the test for incomplete OBDII readiness monitors. No dynamic OBDII PID data was collected during either test.

Fraudulent Inspection #2 (Danial)

33. Koch reviewed the OIS Test Data for Ainessey Smog. The review indicates on April 13, 2023, a 2004 Toyota Highlander Base, CA license 5HLN610, VIN JTEDP21A440032709 (2004 Highlander), was tested and smog certificate # TG165886C was issued under licensed Smog Check Technician #EO638012, Danial.

1 34. The Dynamic OBDII PID Chart for the 2004 Highlander shows between time stamp
2 158 and 17116 engine speed is steady at approximately 850 RPM. During this time the throttle is
3 fixed at 17.6% opening, MAF is fixed at 3.32 gps, and the ignition timing advance for #1 cylinder
4 is fixed at 16 degrees BTDC. After time stamp 17116 the engine speed accelerates to
5 approximately 1800 RPM. From the time the engine RPM increases off idle to the higher RPMs,
6 the throttle is fixed at the same 17.6% opening, MAF is fixed at the same 3.32 gps, and the
7 ignition timing advance for #1 cylinder is also still fixed at the same 16 degrees BTDC.

8 35. During the entire period the dynamic data was collected, the only parameter that
9 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
10 remained unchanged even though the engine speed was increased. These readings are not
11 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
12 prove the OIS DAD was not connected to the 2004 Highlander being certified, causing the
13 issuance of a fraudulent Smog Check Certificate of Compliance.

14 **Previous Failing Test: 2004 Highlander**

15 36. A previous failing test was performed on the 2004 Highlander by Licensed Inspector
16 Danial at Ainessey Smog on April 11, 2023. The 2004 Highlander failed the test for incomplete
17 OBDII readiness monitors. The Dynamic OBDII PID data collected during the test shows the
18 expected change in the throttle, MAF, and ignition timing advance parameters as characteristic or
19 expected for normal engine operation.

20 **Fraudulent Inspection #3 (Danial)**

21 37. Koch reviewed the OIS Test Data for Ainessey Smog. The review indicates on April
22 21, 2023, a 2001 GMC New Sierra C1500, CA license 6M55934, VIN 1GTEC14W01Z201668
23 (2001 New Sierra), was tested and smog certificate # TG523760C was issued under licensed
24 Smog Check Technician #EO638012, Danial.

25 38. The Dynamic OBDII PID Chart for the 2001 New Sierra shows between time stamp
26 117 and 16526 engine speed is steady at approximately 950 RPM, before decelerating to
27 approximately 775 RPM. During this time the throttle is fixed at 0% opening, MAF is fixed at
28 4.91 gps, MAP is fixed at 31 kPa, and the ignition timing advance for #1 cylinder is fixed at 19

degrees BTDC. After time stamp 16526 the engine speed accelerates to approximately 1850 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0% opening, MAF is fixed at the same 4.91 gps, MAP is fixed at the same 31 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 19 degrees BTDC.

39. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, MAP, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2001 New Sierra being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Previous Failing Tests: 2001 New Sierra

40. Two previous failing tests were performed on the 2001 New Sierra. The most recent failing test was performed on the 2001 New Sierra by Licensed Inspector Danial at Ainessey Smog on April 15, 2023. The 2001 New Sierra failed the test for a tampered catalyst, and incomplete OBDII readiness monitors.

41. The Dynamic OBDII PID data collected during the test shows the expected change in the throttle, MAF, MAP, and ignition timing advance parameters as characteristic or expected for normal engine operation. The prior failing test was performed on the 2001 New Sierra at another station on January 9, 2023. The 2001 New Sierra failed the test for a tampered catalyst, confirmed OBDII DTC P0137, and incomplete OBDII readiness monitors. No dynamic OBDII PID data was collected during the test.

Fraudulent Inspection #4 (Rogers)

42. Koch reviewed the OIS Test Data for Ainessey Smog. The review indicates on July 31, 2023, a 2003 Toyota Camry LE, CA license 5EEJ519, VIN JTDBE32K630240488 (2003 Camry), was tested and smog certificate # TK925876C was issued under licensed Smog Check Technician #EO644073, Rogers.

43. The Dynamic OBDII PID Chart for the 2003 Camry shows between time stamp 165 and 17171 engine speed is steady at approximately 650 RPM. During this time the throttle is

1 fixed at 14.5% opening, MAF is fixed at 4.62 gps, and the ignition timing advance for #1 cylinder
2 is fixed at 15 degrees BTDC. After time stamp 17171 the engine speed accelerates to
3 approximately 1850 RPM. From the time the engine RPM increases off idle to the higher RPMs,
4 the throttle is fixed at the same 14.5% opening, MAF is fixed at the same 4.62 gps, and the
5 ignition timing advance for #1 cylinder is also still fixed at the same 15 degrees BTDC.

6 44. During the entire period the dynamic data was collected, the only parameter that
7 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
8 remained unchanged even though the engine speed was increased. These readings are not
9 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
10 prove the OIS DAD was not connected to the 2003 Camry being certified, causing the issuance of
11 a fraudulent Smog Check Certificate of Compliance.

12 **Previous Failing Test: 2003 Camry**

13 45. A previous failing test was performed on the 2003 Camry by Licensed Inspector
14 Rogers at Ainessey Smog on July 27, 2023. The 2003 Camry failed the test for an illuminated
15 MIL, and confirmed OBDII DTCs P0136, P0142, and P2423. No dynamic OBDII PID data was
16 collected during the test.

17 **Fraudulent Inspection #5 (Rogers)**

18 46. Koch reviewed the OIS Test Data for Ainessey Smog. The review indicates on
19 September 12, 2023, a 2001 Nissan Xterra XE, CA license 7FEL877, VIN N1ED28T71C503394
20 (2001 Xterra), was tested and smog certificate # TM909176C was issued under licensed Smog
21 Check Technician #EO644073, Rogers.

22 47. The Dynamic OBDII PID Chart for the 2001 Xterra shows between time stamp 218
23 and 17104 engine speed is steady at approximately 800 RPM. During this time the throttle is
24 fixed at 0% opening, MAF is fixed at 5.29 gps, and the ignition timing advance for #1 cylinder is
25 fixed at 10 degrees BTDC. After time stamp 17104 the engine speed accelerates to approximately
26 1800 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is
27 fixed at the same 0% opening, MAF is fixed at the same 5.29 gps, and the ignition timing advance
28 for #1 cylinder is also still fixed at the same 10 degrees BTDC.

48. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2001 Xterra being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Previous Failing Test: 2001 Xterra

49. A previous failing test was performed on the 2001 Xterra by Licensed Inspector Rogers at Ainessey Smog on September 7, 2023. The 2001 Xterra failed the test for incomplete OBDII readiness monitors. No dynamic OBDII PID data was collected during the test.

Fraudulent Inspection #6 (Rogers)

50. Koch reviewed the OIS Test Data for Ainessey Smog. The review indicates on September 14, 2023, a 2004 Toyota Tundra Double Cab Limited, CA license 49429F1, VIN 5TBET38134S451365 (2004 Tundra), was tested and smog certificate # TM909181C was issued under licensed Smog Check Technician #EO644073, Rogers.

51. The Dynamic OBDII PID Chart for the 2004 Tundra shows between time stamp 160 and 17428 engine speed is steady at approximately 575 RPM. During this time the throttle is fixed at 15.7% opening, MAF is fixed at 5.56 gps, and the ignition timing advance for #1 cylinder is fixed at 11 degrees BTDC. After time stamp 17428 the engine speed accelerates to approximately 1650 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 15.7% opening, MAF is fixed at the same 5.56 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 11 degrees BTDC.

52. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2004 Tundra being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #7 (Danial)

53. Koch reviewed the OIS Test Data for Ainessey Smog. The review indicates on November 6, 2023, a 2004 Nissan Murano SL, CA license 8CUV769, VIN JN8AZ08T34W204498 (2004 Murano), was tested and smog certificate # IV998270C was issued under licensed Smog Check Technician #EO638012, Danial.

54. The Dynamic OBDII PID Chart for the 2004 Murano shows between time stamp 214 and 17314 engine speed is steady at approximately 650 RPM. During this time the throttle is fixed at .8% opening, MAF is fixed at 3.07 gps, and the ignition timing advance for #1 cylinder is fixed at 16 degrees BTDC. After time stamp 17314 the engine speed accelerates to approximately 1750 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same .8% opening, MAF is fixed at the same 3.07 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 16 degrees BTDC.

55. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2004 Murano being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #8 (Danial)

56. Koch reviewed the OIS Test Data for Ainessey Smog. The review indicates on December 1, 2023, a 2004 BMW X3 3.0i, CA license 8MYR017, VIN WBXPA93424WA65147 (2004 X3), was tested and smog certificate # IV998276C was issued under licensed Smog Check Technician #EO638012, Danial.

57. The Dynamic OBDII PID Chart for the 2004 X3 shows between time stamp 187 and 17788 engine speed is steady at approximately 650 RPM. During this time the throttle is fixed at 10.2% opening, MAF is fixed at 3.21 gps, and the ignition timing advance for #1 cylinder is fixed at -3.5 degrees BTDC. After time stamp 17788 the engine speed accelerates to approximately 1600 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is

fixed at the same 10.2% opening, MAF is fixed at the same 3.21 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same -3.5 degrees BTDC.

58. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2004 X3 being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #9 (Rogers)

59. Koch reviewed the OIS Test Data for Ainessey Smog. The review indicates on January 26, 2024, a 2000 Ford Mustang, CA license 4KEU131, VIN 1FAFP4042YF178281 (2000 Mustang), was tested and smog certificate # TQ843375C was issued under licensed Smog Check Technician #EO644073, Rogers.

60. The Dynamic OBDII PID Chart for the 2000 Mustang shows between time stamp 21 and 16915 engine speed is steady at approximately 775 RPM. During this time the throttle is fixed at 19.2% opening, MAF is fixed at 4.91 gps, and the ignition timing advance for #1 cylinder is fixed at 18 degrees BTDC. After time stamp 16915 the engine speed accelerates to approximately 1750 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 19.2% opening, MAF is fixed at the same 4.91 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 18 degrees BTDC.

61. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2000 Mustang being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

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1 **Fraudulent Inspection #10 (Rogers)**

2 62. Koch reviewed the OIS Test Data for Ainessey Smog. The review indicates on
3 February 5, 2024, a 2002 Mitsubishi Lancer OZ Rally, CA license 8JNW117, VIN
4 JA3AJ86E32U010180 (2002 Lancer), was tested and smog certificate # IZ067525C was issued
5 under licensed Smog Check Technician #EO644073, Rogers.

6 63. The Dynamic OBDII PID Chart for the 2002 Lancer shows between time stamp 177
7 and 32036 engine speed is steady at approximately 650 RPM. During this time the throttle is
8 fixed at 1.2% opening, MAF is fixed at 2.06 gps, and the ignition timing advance for #1 cylinder
9 is fixed at 8 degrees BTDC. After time stamp 32036 the engine speed accelerates to
10 approximately 1700 RPM. From the time the engine RPM increases off idle to the higher RPMs,
11 the throttle is fixed at the same 1.2% opening, MAF is fixed at the same 2.06 gps, and the ignition
12 timing advance for #1 cylinder is also still fixed at the same 8 degrees BTDC.

13 64. During the entire period the dynamic data was collected, the only parameter that
14 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
15 remained unchanged even though the engine speed was increased. These readings are not
16 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
17 prove the OIS DAD was not connected to the 2002 Lancer being certified, causing the issuance of
18 a fraudulent Smog Check Certificate of Compliance.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements - Respondent Ainessey Smog)**

21 65. Respondent Ainessey Smog's registration is subject to disciplinary action pursuant to
22 section 9884.7, subdivision (a)(1), in that Respondent's employees made or authorized statements
23 which they knew or in the exercise of reasonable care should have known to be untrue or
24 misleading, as follows: Respondent's employees certified that the vehicles set forth above in
25 paragraphs 29-64, had passed inspection and were in compliance with applicable laws and
26 regulations. In fact, Respondent's employees conducted the inspections on those vehicles using
27 the clean plugging method in order to issue smog certificates of compliance, and did not test or
28 insect the vehicles as required by Health and Safety Code section 44012.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud - Respondent Ainessey Smog)**

3 66. Respondent Ainessey Smog's registration is subject to disciplinary action pursuant to
4 section 9884.7, subdivision (a)(4), in that Respondent Ainessey Smog's employees committed
5 acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set
6 forth above in paragraphs 29-64, without performing bona fide inspections of the emission
7 control devices and systems on those vehicles, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with the Motor Vehicle Inspection Program –**

11 **Respondent Ainessey Smog)**

12 67. Respondent Ainessey Smog's smog station license is subject to disciplinary action
13 pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health
14 and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
15 paragraphs 29-64, Respondent Ainessey Smog failed to comply with the following sections of the
16 Health and Safety Code:

17 (a) **Section 44012:** Respondent Ainessey Smog's employees failed to ensure that the
18 emission control tests were performed on the vehicles, in accordance with procedures prescribed
19 by the department.

20 (b) **Section 44015:** Respondent Ainessey Smog's employees issued electronic
21 certificates of compliance for the vehicles, without ensuring that the vehicles were properly tested
22 and inspected to determine if they were in compliance with Health and Safety Code section
23 44012.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program -**

26 **Respondent Ainessey Smog)**

27 68. Respondent Ainessey Smog's smog station license is subject to disciplinary action
28 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the

1 vehicles set forth above in paragraphs 29-64, Respondent's employees failed to comply with the
2 following provisions of the California Code of Regulations, Title 16, as follows:

3 (a) **Section 3340.35, subdivision (c)**: Respondent Ainessey Smog's employees issued
4 electronic certificates of compliance even though those vehicles had not been inspected in
5 accordance with section 3340.42, Title 16, of the California Code of Regulations.

6 (b) **Section 3340.42**: Respondent Ainessey Smog's employees failed to conduct the
7 required smog tests and inspections on those vehicles in accordance with the Bureau's
8 specifications.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Dishonesty, Fraud or Deceit - Respondent Ainessey Smog)**

11 69. Respondent Ainessey Smog's smog station license is subject to disciplinary action
12 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
13 and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
14 paragraphs 29-64, Respondent Ainessey Smog's employee's committed acts involving
15 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
16 compliance for those vehicles without performing bona fide inspections of the emission control
17 devices and systems on the vehicles, thereby depriving the People of the State of California of the
18 protection afforded by the Motor Vehicle Inspection Program.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Violations of the Motor Vehicle Inspection Program – Respondent Danial)**

21 70. Respondent Danial's smog check inspector license is subject to discipline pursuant to
22 Health and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth
23 above in paragraphs 29-31, 33-35, 37-39, 53-55, and 56-58, Respondent Danial failed to comply
24 with section 44012 of the Health and Safety Code in a material respect, as follows: Respondent
25 Danial failed to perform the emission control tests on those vehicles in accordance with
26 procedures prescribed by the department.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

4 71. Respondent Danial's smog check inspector license is subject to discipline pursuant to
5 Health and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth
6 above in paragraphs 29-31, 33-35, 37-39, 53-55, and 56-58, Respondent Danial failed to comply
7 with provisions of the California Code of Regulations, title 16, as follows:

8 (a) **Section 3340.30, subdivision (a)**: Respondent Danial failed to inspect and test those
9 vehicles in accordance with Health and Safety Code section 44012.

10 (b) **Section 3340.41, subdivision (c)**: Respondent Danial entered false information into
11 the EIS.

12 (c) **Section 3340.42**: Respondent Danial failed to conduct the required smog tests and
13 inspections on those vehicles in accordance with the Bureau's specifications.

14 **EIGHTH CAUSE FOR DISCIPLINE**

15 **(Dishonesty, Fraud or Deceit - Respondent Danial)**

16 72. Respondent Danial's smog check inspector license is subject to discipline pursuant to
17 Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety
18 Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
19 paragraphs 29-31, 33-35, 37-39, 53-55, and 56-58, Respondent Danial committed acts involving
20 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
21 compliance for those vehicles without performing bona fide inspections of the emission control
22 devices and systems on the vehicles., thereby depriving the People of the State of California of
23 the protection afforded by the Motor Vehicle Inspection Program.

24 **NINTH CAUSE FOR DISCIPLINE**

25 **(Violations of the Motor Vehicle Inspection Program – Respondent Rogers)**

26 73. Respondent Rogers's smog check inspector license is subject to discipline pursuant to
27 Health and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth
28 above in paragraphs 42-44, 46-48, 50-52, 59-61, and 62-64, Respondent Rogers failed to comply

1 with section 44012 of the Health and Safety Code in a material respect, as follows: Respondent
2 Rogers failed to perform the emission control tests on those vehicles in accordance with
3 procedures prescribed by the department.

4 **TENTH CAUSE FOR DISCIPLINE**

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

7 74. Respondent Rogers's smog check inspector license is subject to discipline pursuant to
8 Health and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth
9 above in paragraphs 42-44, 46-48, 50-52, 59-61, and 62-64, Respondent Rogers failed to comply
10 with provisions of the California Code of Regulations, title 16, as follows:

11 (a) **Section 3340.30, subdivision (a)**: Respondent Rogers failed to inspect and test those
12 vehicles in accordance with Health and Safety Code section 44012.

13 (b) **Section 3340.41, subdivision (c)**: Respondent Rogers entered false information into
14 the EIS.

15 (c) **Section 3340.42**: Respondent Rogers failed to conduct the required smog tests and
16 inspections on those vehicles in accordance with the Bureau's specifications.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

18 **(Dishonesty, Fraud or Deceit - Respondent Rogers)**

19 75. Respondent Rogers's smog check inspector license is subject to discipline pursuant to
20 Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety
21 Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
22 paragraphs 42-44, 46-48, 50-52, 59-61, and 62-64, Respondent Rogers committed acts involving
23 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
24 compliance for those vehicles without performing bona fide inspections of the emission control
25 devices and systems on the vehicles., thereby depriving the People of the State of California of
26 the protection afforded by the Motor Vehicle Inspection Program.

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1 **OTHER MATTERS**

2 76. Pursuant to Business & Professions Code section 9884.7, subdivision (c), the Director
3 may suspend, revoke, or place on probation the registration for all places of business operated in
4 this State by Respondent Ainessey Smog upon a finding that Respondent Ainessey Smog has, or
5 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
6 an automotive repair dealer.

7 77. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station
8 License Number TC 291206 issued to Respondent Ainessey Smog is revoked or suspended
9 following a hearing under this article, any additional license issued under Chapter 5, Part 5,
10 Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

11 78. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
12 Number EO 644073, issued to Respondent Rogers, is revoked or suspended following a hearing
13 under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name
14 of said licensee may be likewise revoked or suspended by the Director.

15 79. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
16 Number EO 638012, issued to Respondent Danial, is revoked or suspended following a hearing
17 under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name
18 of said licensee may be likewise revoked or suspended by the Director.

19 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 291206, issued to Yessenia Martinez Rodriguez, dba Ainessey Smog;

25 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to
26 Respondent Yessenia Martinez Rodriguez;

27 3. Revoking or suspending Smog Check Test-Only Station License Number TC 291206,
28 issued to Yessenia Martinez Rodriguez, dba Ainessey Smog;

4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent Yessenia Martinez Rodriguez;

5. Revoking or suspending Smog Check Inspector License Number EO 638012, issued to John Danial;

6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent John Danial;

7. Revoking or suspending Smog Check Inspector License Number EO 644073, issued to Ron E. Rogers;

8. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent Ron E. Rogers;

9. Ordering Yessenia Martinez Rodriguez, John Danial and Ron E. Rogers to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3 and if placed on probation, the costs of probation monitoring; and,

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

DATED: As of digital signature date

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

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