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

12 In the Matter of the Accusation Against:

Case No. 79/24-6381

13 **ALFREDO AVILES, DBA AVILES SMOG**
12062 Centralia Rd., Unit B
14 Hawaiian Gardens, CA 90716
Automotive Repair Dealer Registration No.
15 **ARD 281589**
Smog Check Test Only Station License No.
16 **TC 281589,**

ACCUSATION

17 **ALFREDO AVILES**
22317 Arline Ave.
18 Hawaiian Gardens, CA 90716
Smog Check Inspector License No.
19 **EO 637646,**

20 **and**

21 **BRIAN MEJIA REYES**
2744 E 8th St.
22 Los Angeles, CA 90023
Smog Check Inspector License No.
23 **EO 638732**

24 Respondents.

25
26 **PARTIES**

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

1 **Respondent Aviles**

2 2. On or about September 28, 2015, the bureau issued Automotive Repair Dealer
3 Registration number ARD 281589 to Alfredo Aviles, doing business as Aviles Smog (respondent
4 Aviles or Aviles Smog). The Automotive Repair Dealer Registration was in full force and effect
5 at all times relevant to the charges brought herein and will expire on September 30, 2025, unless
6 renewed.

7 3. On or about October 30, 2015, the bureau issued Smog Check Test Only Station
8 License number TC 281589 to respondent Aviles. The Smog Check Test Only Station License
9 was in full force and effect at all times relevant to the charges brought herein and will expire on
10 September 30, 2025, unless renewed.

11 4. On or about December 15, 2014, the bureau issued Smog Check Inspector License
12 number EO 637646 to respondent Alfredo Aviles (respondent Aviles). The Smog Check
13 Inspector License was in full force and effect at all times relevant to the charges brought herein
14 and will expire on January 31, 2025, unless renewed.

15 **Respondent Reyes**

16 5. On or about November 13, 2015, the bureau issued Smog Check Inspector License
17 number EO 638732 to respondent Brian Mejia Reyes (respondent Reyes). The Smog Check
18 Inspector License was in full force and effect at all times relevant to the charges brought herein
19 and will expire on June 30, 2025, unless renewed.

20 **JURISDICTION**

21 6. This Accusation is brought before the Director of the Department of Consumer
22 Affairs (director) for the Bureau of Automotive Repair, under the authority of the following laws.

23 7. Business and Professions Code section 118, subdivision (b), provides that suspension,
24 expiration, surrender, or cancellation of a license shall not deprive the director of jurisdiction to
25 proceed with a disciplinary action during the period within which the license may be renewed,
26 restored, reissued or reinstated.

27 8. Business and Professions Code section 9884.7 provides that the director may revoke
28 an automotive repair dealer registration.

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

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

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

STATUTORY PROVISIONS

12. Business and Professions Code section 9884.7 states, in pertinent part:

(a) The director, if 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) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

...

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is,

engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

...

(e) For purposes of this section, "fraud" includes, but is not limited to, violations of this chapter involving misrepresentations and all of the following:

(1) Any act or omission that is included within the definition of either "actual fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573 of the Civil Code.

(2) A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact.

(3) A promise or representation not made honestly and in good faith.

(4) An intentional failure to disclose a material fact.

(5) Any act in violation of Section 484 of the Penal Code.

13. Business and Professions Code section 477 provides, in pertinent part, that "board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Business and Professions Code.

14. Health and Safety Code section 44012 provides, in pertinent part, that tests at smog check stations shall be performed in accordance with procedures prescribed by the department.

15. Health and Safety Code section 44015, subdivision (b), provides that a certificate of compliance shall be issued if a vehicle meets the requirements of Health and Safety Code section 44012.

16. Health and Safety Code section 44032 provides that qualified technicians shall perform tests of emissions control devices and systems in accordance with Health and Safety Code section 44012.

17. Health and Safety Code section 44072.2 states, 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:

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

4 ...

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

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

9 18. Health and Safety Code section 44072.10 states, in pertinent part:

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

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

15 (2) Tampering with a vehicle emission control system or test analyzer system.

16 (3) Tampering with a vehicle in a manner that would cause the vehicle to falsely
17 pass or falsely fail an inspection.

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

20 19. Health and Safety Code section 44072.8 states that when a license has been revoked
21 or suspended following a hearing under this article, any additional license issued under this
22 chapter in the name of the licensee may be likewise revoked or suspended by the director.

23 **REGULATORY PROVISIONS**

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

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

28 21. California Code of Regulations, title 16, section 3340.30, subdivision (a), states that a

1 licensed smog technician shall at all times “[i]nspect, test and repair vehicles, as applicable, in
2 accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and
3 Safety Code, and section 3340.42 of this article.

4 22. California Code of Regulations, title 16, section 3340.35, subdivision (c), states that a
5 licensed smog check station “shall issue a certificate of compliance or noncompliance to the
6 owner or operator of any vehicle that has been inspected in accordance with the procedures
7 specified in section 3340.42 of this article and has all the required emission control equipment
8 and devices installed and functioning correctly.”

9 23. California Code of Regulations, title 16, section 3340.41 states, in pertinent part:

10 (b) No person shall enter any access or qualification number other than
11 as authorized by the Bureau into the EIS or OIS, nor in any way tamper with the EIS
12 or OIS.

13 (c) No person shall enter any vehicle identification information or
14 emission control system identification data for any vehicle other than the one being
15 tested into the EIS or OIS. Nor shall any person enter into the EIS or OIS any false
16 information about the vehicle being tested...

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

19 **COST RECOVERY**

20 25. Business and Professions Code section 125.3 provides, in pertinent part, that the
21 bureau may request the administrative law judge to direct a licentiate found to have committed a
22 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
23 investigation and enforcement of the case.

24 **CALIFORNIA’S SMOG CHECK PROGRAM**

25 26. California’s Smog Check Program requires most vehicles in the State to undergo a
26 smog check inspection every two years or when the vehicle’s title is transferred.

27 27. A smog check inspection in certain Enhanced areas of the State is an Acceleration
28 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons (HC),

Carbon Monoxide (CO), Oxides of Nitrogen (NOx), Carbon Dioxide (CO₂) and Oxygen (O₂). The first part of the test is a loaded mode test of the vehicle's tailpipe emissions on a dynamometer. The vehicle's drive wheels are placed on rollers, and the vehicle is driven to simulate driving conditions while the emissions are sampled by the EIS.

28. In Basic areas of the State, or depending on a vehicle's configuration, a similar test called a Two Speed Idle test is performed, but instead of applying a load to the vehicle's drive wheels with a dynamometer, the EIS measures the emissions of HC, CO, O₂, and CO₂ at idle as well as 2,500 revolutions per minute (rpm).

29. In the visual portion of a smog check, the technician inspects the emission control components to verify that the required emission control devices are present and properly connected.

30. An On-Board Diagnostics (OBD II) functional test is also performed on most 1996 to 1999 model year vehicles. The EIS retrieves information through the Diagnostic Link Connector (DLC) from the vehicle's onboard computer about its ability to communicate, the status of the I/M readiness monitors and the MIL light command. The I/M readiness monitors tell whether or not the OBD II system has run a sufficient number of self-tests on the vehicle's emission and engine control systems. A failure of one or more of the OBD II functional criteria, depending on model year, will result in the vehicle failing its smog check inspection. In addition to reporting the outcome of the OBD II functional test, the smog check inspection results also show Diagnostic Trouble Codes (DTC) if there are any in the vehicle's onboard computer memory.

31. The inspector enters the results of the visual and functional inspections into the EIS. The EIS unit makes the determination whether or not the vehicle passes the inspection based on the results of the tailpipe, visual and functional tests.

32. The EIS is connected by internet connection to bureau's Vehicle Information Database (VID). If the vehicle passes the visual, functional and tailpipe tests, it passes the overall inspection. A Certificate of Compliance is issued and transmitted electronically to the VID.

33. Beginning March 9, 2015, California's Smog Check Program was updated to require the use of an On-Board Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check

1 equipment required in all areas of the State when inspecting most model-year 2000 and newer
2 gasoline and hybrid vehicles. The system consists of a certified Data Acquisition Device (DAD),
3 computer, barcode scanner, and printer. The DAD is an OBD scan tool that, when requested by
4 the BAR-OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle
5 indicates it supports is requested by the BAR-OIS software and will be retrieved. The DAD
6 connects between the BAR-OIS computer and the vehicle's DLC. The barcode scanner is used to
7 input inspector information, the vehicle identification number (VIN), and Department of Motor
8 Vehicles renewal information. The printer provides a Vehicle Inspection Report (VIR) containing
9 inspection results for motorists and a Smog Check Certificate of Compliance number for passing
10 vehicles.

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

- 15 a. Engine speed in revolutions per minute (RPM);
- 16 b. Throttle position as measured by a throttle position sensor (TPS) mounted onto the
17 throttle shaft. Measured in a percentage of opening from zero percent at idle and near or up to 100
18 percent at full throttle;
- 19 c. Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
20 connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a
21 normally aspirated vehicle as follows: zero kpa being absolute vacuum, 25 to 45 kpa at idle, 101
22 kpa at full throttle, same as atmospheric pressure at sea level; and,
- 23 d. Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's
24 air intake tract. Measured in grams per second (gps).

25 35. 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 zero percent. The MAP
27 and/or MAF readings are also steady. For the engine speed to increase, the throttle would have to
28 be opened in order to increase airflow through the engine. The engine's management systems

1 supply fuel and spark timing appropriate to any changes in throttle position and engine speed. An
2 increase in throttle, measured by the TPS, which increases engine RPM, would result in a
3 corresponding increases in MAF as well as a change in MAP. Any movement in the throttle from
4 the idle position will result in an increase of airflow through the engine with corresponding
5 increases RPM and MAF along with changes in MAP.

6 36. During an OIS Smog Check inspection, along with other visual and functional
7 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
8 with the engine idling and, when requested by the OIS analyzer, and an elevated or increased
9 engine speed. The increase in engine speed is performed by the inspector by stepping on the
10 throttle pedal or manually opening the throttle resulting in a corresponding increase in engine
11 RPMs by allowing an increase in airflow into the engine.

12 37. The bureau has become aware of methods that some Smog Check stations and Smog
13 Check inspectors use to fraudulently issue smog certificates to vehicles that may not pass a smog
14 check test on their own, or in some instances, are not even present during the time the test is
15 performed. "Clean plugging" is a method by which another vehicle's OBD II system, or another
16 source such as defeat devices, are used to generate passing data readings or diagnostic
17 information for the purpose of fraudulently issuing smog certificates to vehicles that are not in
18 smog compliance, and or not present for testing. Defeat devices attempt to simulate engine
19 operation during a smog check inspection by transmitting OBD II data to the VID which has been
20 modified or replaced entirely for the purportedly inspected vehicle during the functional portion
21 of the OIS inspection.

22 **FACTUAL ALLEGATIONS**

23 **Station Data Review**

24 38. A bureau representative conducted a review of the VID data for Smog Check
25 inspections performed at Aviles Smog, which showed a pattern of vehicles being certified with
26 engine operating parameters that did not correspond to normal engine operation, confirming the
27 vehicles receiving smog certifications were not tested during the OBD II functional test, which
28 constitutes clean plugging. The bureau's review of the Smog Check activities at Aviles Smog

confirmed Smog Check Certificates of Compliance were fraudulently issued to ten vehicles after inspections performed by respondents.

Clean Plug Number 1 - 2000 Toyota Tacoma XTRACAB

39. OIS test data for Aviles Smog shows that on or about November 28, 2023, a 2000 Toyota Tacoma XTRACAB, California license number 89917K3, was tested and Smog Certificate of Compliance number TO268947C was issued by Aviles Smog under respondent Reyes's Smog Check Inspector License.

40. The Dynamic PID Chart for the 2000 Toyota shows between time stamp 223 and 19957 engine speed is steady at around 740 RPM. During this time the throttle is fixed at 11.8% opening. The MAF is also fixed at 0.57gps. Between time stamp 20380 and 39120 the engine speed is accelerated then held steady at around 1500 RPM. During the steady elevated engine RPM, the throttle remained fixed at 11.8% opening. The MAF remained fixed at 0.57gps.

41. The steady idle and steady elevated engine speeds with the associated fixed throttle positions and subsequent fixed MAF readings with the same idle speed parameters are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data show the OIS DAD was not connected to the 2000 Toyota Tacoma XTRACAB being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Clean Plug Number 2 - 2004 Lexus IS300

42. OIS test data for Aviles Smog shows that on or about December 4, 2023, a 2004 Lexus IS300, California license number 5FJX125, was tested and Smog Certificate of Compliance number TO649219C was issued by Aviles Smog under respondent Reyes's Smog Check Inspector License.

43. The Dynamic PID Chart for the 2004 Lexus shows between time stamp 639 and 20712 engine speed is steady at around 650 RPM. During this time the throttle is fixed at 12.5% opening. The MAF is also fixed at 3.04gps. Between time stamp 21191 and 38902 the engine speed is accelerated then held steady at around 1800 RPM. During the steady elevated engine RPM, the throttle remained fixed at 12.5% opening. The MAF remained fixed at 3.04gps.

44. The steady idle and steady elevated engine speeds with the associated fixed throttle

positions and subsequent fixed MAF readings with the same idle speed parameters are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data show the OIS DAD was not connected to the 2004 Lexus IS300 being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Clean Plug Number 3 - 2005 Chevrolet Silverado K1500

45. OIS test data for Aviles Smog shows that on or about December 14, 2023, a 2005 Chevrolet Silverado K1500, California license number 25729M1, was tested and Smog Certificate of Compliance number TO649237C was issued by Aviles Smog under respondent Reyes's Smog Check Inspector License.

46. The Dynamic PID Chart for the 2005 Chevrolet shows between time stamp 139 and 18678 engine speed is steady at around 700 RPM. During this time the throttle is fixed at 3.5% opening. The MAP is fixed at 32kpa. The MAF is also fixed at 3.35gps. Between time stamp 19306 and 36153 the engine speed is accelerated then held steady at around 1625 RPM. During the steady elevated engine RPM, the throttle remained fixed at 3.5% opening. The MAP remained fixed at 32kpa. The MAF remained fixed at 3.35gps.

47. The steady idle and steady elevated engine speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings with the same idle speed parameters are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data show the OIS DAD was not connected to the 2005 Chevrolet Silverado K1500 being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Clean Plug Number 4 - 2002 Honda Accord EX

48. OIS test data for Aviles Smog shows that on or about January 24, 2024, a 2002 Honda Accord EX, California license number 7WJF827 was tested and Smog Check Certificate of Compliance number TQ326916C was issued by Aviles Smog under respondent Reyes's Smog Check Inspector License.

49. The Dynamic PID Chart for the 2002 Honda Accord shows between time stamp 280 and 21561 engine speed is steady at around 595 RPM. During this time the throttle is fixed at 9.8% opening. The MAP is also fixed at 26kpa. Between time stamp 22043 and 39034 the engine

1 speed is accelerated then held steady at around 1630 RPM. During the steady elevated engine
2 RPM, the throttle remained fixed at 9.8% opening. The MAP remained fixed at 26kpa.

3 50. The steady idle and steady elevated engine speeds with the associated fixed throttle
4 positions and subsequent fixed MAP readings with the same idle speed parameters are not
5 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
6 show the OIS DAD was not connected to the 2002 Honda Accord EX being certified, causing the
7 issuance of a fraudulent Smog Certificate of Compliance.

8 **Clean Plug Number 5 - 2003 Toyota Corolla CE**

9 51. OIS test data for Aviles Smog shows that on or about February 3, 2024, a 2003
10 Toyota Corolla CE, California license number 5CNP855 was tested and Smog Check Certificate
11 of Compliance number TS041332C was issued by Aviles Smog under respondent Reyes's Smog
12 Check Inspector License.

13 52. The Dynamic PID Chart for the 2003 Toyota shows between time stamp 277 and
14 20227 engine speed is steady at around 680 RPM. During this time the throttle is fixed at 13.3%
15 opening. The MAF is also fixed at 2.35gps. Between time stamp 20761 and 38580 the engine
16 speed is accelerated then held steady at around 1780 RPM. During the steady elevated engine
17 RPM, the throttle remained fixed at 13.3% opening. The MAF remained fixed at 2.35gps.

18 53. The steady idle and steady elevated engine speeds with the associated fixed throttle
19 positions and subsequent fixed MAF readings with the same idle speed parameters are not
20 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
21 show the OIS DAD was not connected to the 2003 Toyota Corolla CE being certified, causing the
22 issuance of a fraudulent Smog Certificate of Compliance.

23 **Clean Plug Number 6 - 2001 Nissan Frontier Crew Cab XE**

24 54. OIS test data for Aviles Smog shows that on or about February 24, 2024, a 2001
25 Nissan Frontier Crew Cab XE, California license number 00805D3 was tested and Smog Check
26 Certificate of Compliance number TS638626C was issued by Aviles Smog under respondent
27 Reyes's Smog Check Inspector License.

28 55. The Dynamic PID Chart for the 2001 Nissan shows between time stamp 308 and

1 18991 engine speed is steady at around 860 RPM. During this time the throttle is fixed at 0.00%
2 opening. The MAF is also fixed at 0.35gps. Between time stamp 19486 and 38191 the engine
3 speed is accelerated then held steady at around 1950 RPM. During the steady elevated engine
4 RPM, the throttle remained fixed at 0.00% opening. The MAF remained fixed at 0.35gps.

5 56. The steady idle and steady elevated engine speeds with the associated fixed throttle
6 positions and subsequent fixed MAF readings with the same idle speed parameters are not
7 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
8 show the OIS DAD was not connected to the 2001 Nissan Frontier Crew Cab XE being certified,
9 causing the issuance of a fraudulent Smog Certificate of Compliance.

10 **Clean Plug Number 7 - 2003 Ford Ranger**

11 57. OIS test data for Aviles Smog shows that on or about March 13, 2024, a 2003 Ford
12 Ranger, California license number 95192W1 was tested and Smog Check Certificate of
13 Compliance number TS958415C was issued by Aviles Smog under respondent Reyes's Smog
14 Check Inspector License.

15 58. The Dynamic PID Chart for the 2003 Ford shows between time stamp 248 and 19693
16 engine speed is steady at around 600 RPM. During this time the throttle is fixed at 16.9%
17 opening. The MAF is also fixed at 4.54gps. Between time stamp 20104 and 37938 the engine
18 speed is accelerated then held steady at around 1890 RPM. During the steady elevated engine
19 RPM, the throttle remained fixed at 16.9% opening. The MAF remained fixed at 4.54gps.

20 59. The steady idle and steady elevated engine speeds with the associated fixed throttle
21 positions and subsequent fixed MAF readings with the same idle speed parameters are not
22 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
23 show the OIS DAD was not connected to the 2003 Ford Ranger being certified, causing the
24 issuance of a fraudulent Smog Certificate of Compliance.

25 **Clean Plug Number 8 - 2005 Volkswagen GTI**

26 60. OIS test data for Aviles Smog shows that on or about March 27, 2024, a 2005
27 Volkswagen GTI, California license number 7WTZ379 was tested and Smog Check Certificate of
28 Compliance number TU435311C was issued by Aviles Smog under respondent Reyes's Smog

1 Check Inspector License.

2 61. The Dynamic PID Chart for the 2005 Volkswagen shows between time stamp 290
3 and 19034 engine speed is steady at around 700 RPM. During this time the throttle is fixed at
4 13.3% opening. The MAF is also fixed at 3.5gps. Between time stamp 19553 and 36225 the
5 engine speed is accelerated then held steady at around 1750 RPM. During the steady elevated
6 engine RPM, the throttle remained fixed at 13.3% opening. The MAF remained fixed at 3.5gps.

7 62. The steady idle and steady elevated engine speeds with the associated fixed throttle
8 positions and subsequent fixed MAF readings with the same idle speed parameters are not
9 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
10 show the OIS DAD was not connected to the 2005 Volkswagen GTI being certified, causing the
11 issuance of a fraudulent Smog Certificate of Compliance.

12 **Clean Plug Number 9 - 2006 Kia Spectra LX**

13 63. OIS test data for Aviles Smog shows that on or about April 3, 2024, a 2006 Kia
14 Spectra LX, California license number 7SDT059 was tested and Smog Check Certificate of
15 Compliance number TU663366C was issued by Aviles Smog under respondent Reyes's Smog
16 Check Inspector License.

17 64. The Dynamic PID Chart for the 2005 Volkswagen shows between time stamp 237
18 and 20692 engine speed is steady at around 880 RPM. During this time the throttle is fixed at
19 6.7% opening. The MAF is also fixed at 2.17gps. Between time stamp 21175 and 38097 the
20 engine speed is accelerated then held steady at around 1970 RPM. During the steady elevated
21 engine RPM, the throttle remained fixed at 6.7% opening. The MAF remained fixed at 2.17gps.

22 65. The steady idle and steady elevated engine speeds with the associated fixed throttle
23 positions and subsequent fixed MAF readings with the same idle speed parameters are not
24 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
25 show the OIS DAD was not connected to the 2006 Kia Spectra LX being certified, causing the
26 issuance of a fraudulent Smog Certificate of Compliance.

27 **Clean Plug Number 10 - 2001 Chevrolet Astro**

28 66. OIS test data for Aviles Smog shows that on or about April 8, 2024, a 2001 Chevrolet

1 Astro, California license number 4TUT355 was tested and Smog Check Certificate of
2 Compliance number TU663380C was issued by Aviles Smog under respondent Reyes's Smog
3 Check Inspector License.

4 67. The Dynamic PID Chart for the 2001 Chevrolet shows between time stamp 208 and
5 17173 engine speed is steady at around 650 RPM. During this time the throttle is fixed at 0.4%
6 opening. The MAP is fixed at 102kpa. The MAF is also at 0.00gps. Between time stamp 17518
7 and 34600 the engine speed is accelerated then held steady at around 1800 RPM. During the
8 steady elevated engine RPM, the throttle remained fixed at 0.4% opening. The MAP remained
9 fixed at 102kpa. The MAF remained fixed at 0.00gps.

10 68. The steady idle and steady elevated engine speeds with the associated fixed throttle
11 positions and subsequent fixed MAP and MAF readings with the same idle speed parameters are
12 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
13 Data show the OIS DAD was not connected to the 2001 Chevrolet Astro being certified, causing
14 the issuance of a fraudulent Smog Certificate of Compliance.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 **(Automotive Repair Dealer Registration—Respondent Aviles)**

18 69. Respondent Aviles's Automotive Repair Dealer Registration is subject to disciplinary
19 action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that he
20 made statements which were known to be untrue or misleading or, which by exercise of
21 reasonable care should have been known to be untrue or misleading, by issuing electronic smog
22 certificates of compliance to the ten vehicles set forth in paragraphs 38–68, certifying that those
23 vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles
24 had not been so inspected. Complainant realleges in paragraphs 38–68.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 **(Automotive Repair Dealer Registration—Respondent Aviles)**

28 70. Respondent Aviles's Automotive Repair Dealer Registration is subject to disciplinary

1 action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that he
2 committed acts that constitute fraud by issuing electronic certificates of compliance to the ten
3 vehicles set forth in paragraphs 38–68, without performing bona fide inspections of the emission
4 control devices and systems on those vehicles, thereby depriving the People of the State of
5 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
6 realleges paragraphs 38–68.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Material Violation of Automotive Repair Act)**

9 **(Automotive Repair Dealer Registration—Respondent Aviles)**

10 71. Respondent Aviles’s Automotive Repair Dealer Registration is subject to disciplinary
11 action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), in that he
12 failed in a material respect to comply with the provisions of this chapter or regulations adopted
13 pursuant to it when he issued electronic certificates of compliance to the ten vehicles set forth in
14 paragraphs 38–68 without performing bona fide inspections of the emission control devices and
15 systems on those vehicles, thereby depriving the People of the State of California of the
16 protection afforded by the Motor Vehicle Inspection Program. Complainant realleges paragraphs
17 38–68.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 **(Smog Check Test Only Station License—Respondent Aviles)**

21 72. Respondent Aviles’s Smog Check Test Only Station License is subject to disciplinary
22 action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he failed to
23 comply with the following sections of that Code:

24 a. **Section 44012**: Respondent Aviles failed to ensure that the emission control tests
25 were performed on the ten vehicles set forth in paragraphs 38–68, in accordance with procedures
26 prescribed by the department.

27 b. **Section 44015, subdivision (b)**: Respondent Aviles issued electronic smog
28 certificates of compliance to the ten vehicles set forth in paragraphs 38–68 without properly

1 testing and inspecting those vehicles to determine if they were in compliance with Health and
2 Safety Code section 44012.

3 Complainant realleges paragraphs 38–68.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**
6 **(Smog Check Test Only Station License—Respondent Aviles)**

7 73. Respondent Aviles’s Smog Check Test Only Station License is subject to disciplinary
8 action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that he failed to
9 comply with provisions of California Code of Regulations, title 16, as follows:

10 a. **Section 3340.24, subdivision (c)**: Respondent Aviles falsely or fraudulently issued
11 electronic smog certificates of compliance to the ten vehicles set forth in paragraphs 38–68.

12 b. **Section 3340.30, subdivision (a)**: Respondent Aviles failed to inspect and test the ten
13 vehicles set forth in paragraphs 38–68, in accordance with Health and Safety Code sections 44012
14 and 44035, and California Code of Regulations, title 16, section 3340.42.

15 c. **Section 3340.35, subdivision (c)**: Respondent Aviles issued electronic smog
16 certificates of compliance to the ten vehicles set forth in paragraphs 38–68, even though those
17 vehicles had not been inspected in accordance with section 3340.42.

18 d. **Section 3340.41, subdivision (c)**: Respondent Aviles knowingly entered false
19 information into the emissions inspection system to the ten vehicles set forth in paragraphs 38–68.

20 e. **Section 3340.42**: Respondent Aviles failed to ensure that the smog inspections
21 conducted the ten vehicles set forth in paragraphs 38–68, were done in accordance with the
22 bureau’s specifications.

23 Complainant realleges paragraphs 38–68.

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 **(Smog Check Test Only Station License—Respondent Aviles)**

27 74. Respondent Aviles’s Smog Check Test Only Station License is subject to disciplinary
28 action pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with

1 Health and Safety Code section 44072.10, subdivision (c), in that he committed dishonest,
2 fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates
3 of compliance to the ten vehicles set forth in paragraphs 38–68 without performing bona fide
4 inspections of the emission control devices and systems on those vehicles, thereby depriving the
5 People of the State of California of the protection afforded by the Motor Vehicle Inspection
6 Program. Complainant realleges paragraphs 38–68.

7 **SEVENTH CAUSE FOR DISCIPLINE**

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

9 **(Smog Check Station Test Only Station License—Respondent Aviles)**

10 75. Respondent Aviles’s Smog Check Test Only Station License is subject to disciplinary
11 action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he failed to
12 comply with the following sections of that code:

13 a. **Section 44032**: Respondent Aviles failed to perform tests of emission control devices
14 and systems of the ten vehicles set forth in paragraphs 38–68 in accordance with Health and
15 Safety Code section 44012.

16 b. **Section 44015, subdivision (b)**: Respondent Aviles caused electronic smog
17 certificates of compliance to be issued to the ten vehicles set forth in paragraphs 38–68 without
18 ensuring that they were properly tested and inspected to determine if they were in compliance
19 with Health and Safety Code section 44012.

20 Complainant realleges paragraphs 38–68.

21 **EIGHTH CAUSE FOR DISCIPLINE**

22 **(Untrue or Misleading Statements)**

23 **(Smog Check Inspector License—Respondent Aviles)**

24 76. Respondent Aviles’s Smog Check Inspector License is subject to disciplinary action
25 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that he made
26 statements which were known to be untrue or misleading or, which by exercise of reasonable care
27 should have been known to be untrue or misleading, by issuing electronic smog certificates of
28 compliance to the ten vehicles set forth in paragraphs 38–68, certifying that those vehicles were

1 in compliance with applicable laws and regulations when, in fact, those vehicles had not been so
2 inspected. Complainant realleges in paragraphs 38–68.

3 **NINTH CAUSE FOR DISCIPLINE**

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

5 **(Smog Check Inspector License—Respondent Aviles)**

6 77. Respondent Aviles’s Smog Check Inspector License is subject to disciplinary action
7 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
8 and Safety Code section 44072.10, subdivision (c), in that he committed dishonest, fraudulent, or
9 deceitful acts whereby another was injured by issuing electronic smog certificates of compliance
10 to the ten vehicles set forth in paragraphs 38–68 without performing bona fide inspections of the
11 emission control devices and systems on those vehicles, thereby depriving the People of the State
12 of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
13 realleges paragraphs 38–68.

14
15 **TENTH CAUSE FOR DISCIPLINE**

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

17 **(Smog Check Inspector License—Respondent Reyes)**

18 78. Respondent Reyes’s Smog Check Inspector License is subject to disciplinary action
19 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he failed to comply
20 with the following sections of that code:

21 a. **Section 44032**: Respondent Reyes failed to perform tests of emission control devices
22 and systems of the ten vehicles set forth in paragraphs 38–68 in accordance with Health and
23 Safety Code section 44012.

24 b. **Section 44015, subdivision (b)**: Respondent Reyes caused electronic smog
25 certificates of compliance to be issued to the ten vehicles set forth in paragraphs 38–68 without
26 ensuring that they were properly tested and inspected to determine if they were in compliance
27 with Health and Safety Code section 44012.

28 Complainant realleges paragraphs 38–68.

ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)
(Smog Check Inspector License—Respondent Reyes)

79. Respondent Reyes's Smog Check Inspector License is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that respondent Reyes failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent Reyes falsely or fraudulently issued electronic smog certificates of compliance to the ten vehicles set forth in paragraphs 38–68.

b. **Section 3340.30, subdivision (a)**: Respondent Reyes failed to inspect and test the ten vehicles set forth in paragraphs 38–68 in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.41, subdivision (c)**: Respondent Reyes knowingly entered false information into the emissions inspection system for the ten vehicles set forth in paragraphs 38–68.

d. **Section 3340.42**: Respondent Reyes failed to ensure that the smog inspections conducted on the ten vehicles set forth in paragraphs 38–68 were done in accordance with the bureau's specifications.

Complainant realleges paragraphs 38–68.

TWELFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

(Smog Check Inspector License—Respondent Reyes)

80. Respondent Reyes's Smog Check Inspector License is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10, subdivision (c), in that respondent Reyes committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates of compliance to the ten vehicles set forth in paragraphs 38–68 without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle

1 Inspection Program. Complainant realleges paragraphs 38–68.

2 **OTHER MATTERS**

3 81. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the
4 director may suspend, revoke, or place on probation the registration for all places of business
5 operated in this state by respondent Aviles, upon a finding that respondent Aviles has, or is,
6 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
7 automotive repair dealer.

8 82. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
9 Station License No. TC 281589, issued to respondent Aviles, is revoked or suspended, any
10 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code
11 in the name of said licensee may be likewise revoked or suspended by the director.

12 83. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
13 License No. EO 637646, issued to respondent Aviles, is revoked or suspended, any additional
14 license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name
15 of said licensee may be likewise revoked or suspended by the director.

16 84. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
17 License No. EO 638732, issued to respondent Reyes, is revoked or suspended, any additional
18 license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name
19 of said licensee may be likewise revoked or suspended by the director.

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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration number ARD 281589, issued to Alfredo Aviles, doing business as Aviles Smog;
2. Revoking or suspending any other automotive repair dealer registration issued to Alfredo Aviles;
3. Revoking or suspending Smog Check Test Only Station License number TC 281589, issued to Alfredo Aviles, doing business as Aviles 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 Alfredo Aviles;
5. Revoking or suspending Smog Check Inspector License number EO 637646, issued to Alfredo Aviles;
6. Revoking or suspending Smog Check Inspector License number EO 638732, issued to Brian Mejia Reyes;
7. 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 Brian Mejia Reyes;
8. Ordering Alfredo Aviles and Brian Mejia Reyes 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,
9. 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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