BEFORE THE DIRECTOR OF THE

DEPARTMENT OF CONSUMER AFFAIRS

BUREAU OF AUTOMOTIVE REPAIR

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ENRIQUE SARDINAS RAYA- PARTNER, ISRAEL LOPEZ- PARTNER dba TJ SMOG

3290 Main St.

Chula Vista, CA 91911

Mailing Address

3200 Highland Ave., Suite 312

National City, CA 91950

Automotive Repair Dealer Registration No. ARD 290272

Smog Check Test Only Station License No. TC 290272

and

SERGIO PACILLAS

6051 Business Center Ct. #4105

San Diego, CA 92154

Smog Check Inspector License No. EO 641070

and

EULISES ASTUDILLO

407 Chestnut Ave

Los Angeles, CA 90042

Smog Check Inspector License No. EO 641584

Smog Check Repair Technician License No. EI 641584

and

SERGIO AMADOR PANTOJA HERRERA

2232 D. Ave. #104

National City, CA 91950

Smog Check Inspector License No. EO 638926

Respondents.

Case No. 79/25-2567

OAH No. 2025090273

DECISION

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

This Decision shall be effective on July 16, 2026.

IT IS SO ORDERED June 10, 2026.

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

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

In the Matter of the Accusation Against:

ENRIQUE SARDINAS RAYA, PARTNER, ISRAEL LOPEZ, PARTNER d.b.a. TJ SMOG,

(Automotive Repair Dealer Registration Number ARD 290272)

(Smog Test, Test Only, Station License Number TC 290272)

and

SERGIO PACILLAS,

(Smog Check Inspector License Number EO 641070)

and

EULISES ASTUDILLO,

(Smog Check Inspector License Number EO 641584)

(Smog Check Repair Technician License Number EI 641584)

and

SERGIO AMADOR PANTOJA HERRERA,

(Smog Check Inspector License Number EO 638926),

Respondents.

Agency Case No. 79/25-2567

OAH No. 2025090273

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on April 14, 2026.

Michael M. Karimi, Deputy Attorney General, Office of the Attorney General, Department of Justice, State of California, represented complainant, Patrick Dorais, Chief of the Bureau of Automotive Repair (BAR or bureau), Department of Consumer Affairs, State of California.

William Ferreira, Attorney at Law, represented respondents, Enrique Sardinas Raya, partner, and Israel Lopez, partner, d.b.a. TJ Smog (TJ Smog), Sergio Pacillas, Eulises Astudillo, and Sergio Amador Pantoja Herrera.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on April 14, 2026.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 24, 2018, the BAR issued Automotive Repair Dealer Registration number ARD 290272 to Enrique Sardinas Raya, partner, and Israel Lopez, partner, d.b.a., TJ Smog. The registration expires on April 30, 2027. On May 21, 2018, the BAR issued Smog Check, Test Only, Station License number TC 290272 to Enrique Sardinas Raya, partner, and Israel Lopez, partner, d.b.a., TJ Smog. The license expires on April 30, 2027. On December 28, 2018, the BAR issued STAR Station certification to Enrique Sardinas Raya, partner, and Israel Lopez, partner, d.b.a., TJ Smog.

2. On April 19, 2018, the BAR issued Smog Check Inspector (EO) License number EO 641070 to Sergio Pacillas. The license is due to expire on October 31, 2027. On June 10, 2019, the BAR issued Brake Adjuster (BA) License number BA 641070 to Sergio Pacillas. The Brake Adjuster License expired on October 31, 2022, and was canceled on June 4, 2023.

3. On December 10, 2018, the BAR issued Smog Check Inspector (EO) License number EO 641584 to Eulises Astudillo. The license is due to expire on December 31, 2026. On June 8, 2020, the BAR issued Smog Check Repair Technician (EI) License number EI 641584 to Eulises Astudillo. The license is due to expire on December 31, 2027.

4. On January 20, 2016, the BAR issued Smog Check Inspector (EO) License number EO 638926 to Sergio Amador Pantoja Herrera. The license is due to expire on June 30, 2026.

5. On May 14, 2025, complainant signed the accusation in this matter alleging 14 causes for discipline with five causes directed at respondent TJ Smog, three causes directed at respondent Pacillas, three causes directed at respondent Astudillo, and three causes directed at respondent Herrera.

The two causes for discipline numbered one and two directed to respondent TJ Smog's Automotive Repair Dealer Registration are as follows:

(Cause No. 1) Untrue and misleading statements in violation of Business and Professions Code section 9884.7, subdivision (a)(1), between January 12, 2024, and May 31, 2024, for certifying 15 vehicles as having passed smog check inspection when, in fact, respondent TJ Smog's employees inspected the vehicles utilizing the "clean plugging" method and issued fraudulent certificates of compliance for each of the 15 vehicles without having actually tested or inspected those 15 vehicles.

(Cause No. 2) Fraud in violation of Business and Professions Code section 9884.7, subdivision (a)(4), between January 12, 2024, and May 31, 2024, for certifying 15 vehicles as having passed smog check inspection when, in fact, respondent TJ Smog's employees inspected the vehicles utilizing the "clean plugging" method and issued fraudulent certificates of compliance for each of the 15 vehicles without having actually tested or inspected those 15 vehicles.

The three causes for discipline numbered three, four, and five directed to respondent TJ Smog's Smog Check Station License are as follows:

(Cause No. 3) Failure to comply with the Motor Vehicle Inspection Program pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44072.10, subdivision (c), in that between January 12, 2024, and May 31, 2024, respondent TJ Smog failed to comply with Health and

Safety Code sections 44012 by failing to properly perform tests of emission control systems on the 15 alleged vehicles; and 44015, subdivisions (a) and (b), for issuing certificates of compliance on the 15 alleged vehicles without properly performing tests of emission control systems on them.

(Cause No. 4) Violation of regulations pursuant to the Motor Vehicle Inspection Program pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between January 12, 2024, and May 31, 2024, respondent TJ Smog failed to comply with the following sections of Title 16, California Code of Regulations: section 3340.35, subdivision (c), for failing to inspect and test the 15 subject vehicles in accordance with required procedures; and section 3340.42 for failing to conduct the required smog inspection on the 15 subject vehicles in accordance with the BAR specifications.

(Cause No. 5) Dishonesty, fraud or deceit in violation of Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that between January 12, 2024, and May 31, 2024, respondent TJ Smog committed dishonest, fraudulent, or deceitful acts by issuing certificates of compliance for the 15 subject vehicles without performing bona fide inspections of the emissions for those vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

The three causes for discipline numbered six, seven, and eight directed to respondent Pacillas's Smog Check Inspector License are as follows:

(Cause No. 6) Failure to comply with the Motor Vehicle Inspection Program pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between January 12, 2024, and February 23, 2024, respondent Pacillas failed to comply with Health and Safety Code section 44012 by failing to properly perform tests of emission

control systems on five of the alleged vehicles in accordance with procedures prescribed by the BAR.

(Cause No. 7) Violation of regulations pursuant to the Motor Vehicle Inspection Program pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between January 12, 2024, and February 23, 2024, respondent Pacillas failed to comply with the following sections of Title 16, California Code of Regulations: section 3340.30, subdivision (a), for failing to properly test five of the subject vehicles in accordance with Health and Safety Code section 44012; section 3340.41, subdivision (c), for knowingly entering into the emissions inspection system false information for five of the subject vehicles resulting in smog inspections not properly performed; and section 3340.42 for failing to conduct the required smog tests on five of the subject vehicles in accordance with the BAR specifications.

(Cause No. 8) Dishonesty, fraud, or deceit in violation of Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that between January 12, 2024, and February 23, 2024, respondent Pacillas committed dishonest, fraudulent, or deceitful acts by issuing certificates of compliance for five of the subject vehicles without performing bona fide inspections of the emissions for those vehicles thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

The three causes for discipline numbered 9, 10, and 11 directed to respondent Astudillo's Smog Check Inspector and Smog Check Repair Technician Licenses are as follows:

(Cause No. 9) Failure to comply with the Motor Vehicle Inspection Program pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between

February 9, 2024, and May 31, 2024, respondent Astudillo failed to comply with Health and Safety Code section 44012 by failing to properly perform tests of emission control systems on five of the alleged vehicles in accordance with procedures prescribed by the BAR.

(Cause No. 10) Violation of regulations pursuant to the Motor Vehicle Inspection Program pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between February 9, 2024, and May 31, 2024, respondent Astudillo failed to comply with the following sections of Title 16, California Code of Regulations: section 3340.30, subdivision (a), for failing to properly test five of the subject vehicles in accordance with Health and Safety Code section 44012; section 3340.41, subdivision (c), for knowingly entering into the emissions inspection system false information for five of the subject vehicles resulting in smog inspections not properly performed; and section 3340.42 for failing to conduct the required smog tests on five of the subject vehicles in accordance with the BAR specifications.

(Cause No. 11) Dishonesty, fraud, or deceit in violation of Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that between February 9, 2024, and May 31, 2024, respondent Astudillo committed dishonest, fraudulent, or deceitful acts by issuing certificates of compliance for five of the subject vehicles without performing bona fide inspections of the emissions for those vehicles thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

The three causes for discipline numbered 12, 13, and 14 directed to respondent Herrera's Smog Check Inspector License are as follows:

(Cause No. 12) Failure to comply with the Motor Vehicle Inspection Program pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between January 17, 2024, and April 26, 2024, respondent Herrera failed to comply with Health and Safety Code section 44012 by failing to properly perform tests of emission control systems on five of the alleged vehicles in accordance with procedures prescribed by the BAR.

(Cause No. 13) Violation of regulations pursuant to the Motor Vehicle Inspection Program pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between January 17, 2024, and April 26, 2024, respondent Herrera failed to comply with the following sections of Title 16, California Code of Regulations: section 3340.30, subdivision (a), for failing to properly test five of the subject vehicles in accordance with Health and Safety Code section 44012; section 3340.41, subdivision (c), for knowingly entering into the emissions inspection system false information for five of the subject vehicles resulting in smog inspections not properly performed; and section 3340.42 for failing to conduct the required smog tests on five of the subject vehicles in accordance with the BAR specifications.

(Cause No. 14) Dishonesty, fraud, or deceit in violation of Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that between January 17, 2024, and April 26, 2024, respondent Herrera committed dishonest, fraudulent or deceitful acts by issuing certificates of compliance for five of the subject vehicles without performing bona fide inspections of the emissions for those vehicles thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

6. Respondents timely filed notices of defense, and this hearing followed.

California's Smog Check Program

7. The California Legislature enacted clean air legislation to reduce toxic emissions resulting from the operation of motor vehicles. California's smog check program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles. This legislation requires every motor vehicle registered in California to pass a smog check inspection upon change of ownership and to undergo an inspection every two years in areas that are subject to the biennial smog certification program. A licensed smog check station causes an electronic certificate of compliance to be issued when the vehicle being tested passes a smog check inspection. A certificate of compliance cannot be issued until a vehicle passes a properly conducted inspection. Only a licensed smog check technician working at a licensed smog check station may conduct a smog check inspection. Technicians are required to perform smog check inspections in accordance with statutes, regulations, and the Smog Check Manual.

8. On March 9, 2015, the BAR implemented a statewide regulatory change in order to keep pace with advancing vehicle technology requiring the use of the On-Board Diagnostic Inspection System (BAR-OIS) instead of the Emission Inspection System (EIS) for the smog testing of 2000 model year and newer gas-powered and hybrid vehicles.

9. The BAR-OIS smog inspection method uses a Data Acquisition Device (DAD), computer, bar code scanner, and printer. The DAD is a scan tool that retrieves data from a vehicle's On-Board Diagnostic-generation II (OBD or OBDII) computer. The DAD connects the BAR-OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the vehicle. The bar code scanner is used to input technician

information, the vehicle identification number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection Reports.

10. Data retrieved and recorded during a BAR-OIS smog inspection includes the electronic vehicle identification number (eVIN), which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the number of specific data values each PCM uses related to emissions controls.

11. As part of the BAR-OIS smog inspections, the technician also performs visual and functional tests on the vehicle being inspected. The visual inspection of the emission control components verifies the required emission control devices are present and properly connected, and a functional test is performed by using the information obtained from the malfunction indicator light (MIL). The BAR-OIS software determines whether the vehicle has passed the inspection based on the results of the OBD and visual and functional tests. If the vehicle passes the inspection, a certificate of compliance is issued. If the vehicle does not pass the smog check inspection, the vehicle must be repaired and retested. The information from the smog inspection is then transmitted to the BAR's Vehicle Information Data (VID). The BAR can access the VID to view test data on smog check inspections performed at any smog check station, or to search for, retrieve, and print a test record for a particular vehicle which has been tested.

12. The BAR has become aware of several methods used by smog check stations and smog check technicians to issue improper/fraudulent smog certificates of compliance. One method is known as "clean plugging." Clean plugging involves using another vehicle's properly functioning OBD system, or another resource, to generate

passing diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance to vehicles that are not in smog compliance and/or are not present for testing.

The BAR's Investigation

13. Hector Barraza is currently employed by the BAR as an Automotive Program Specialist and Program Representative III, a position he has held since 2019. He attended a training at the BAR's academy for his position, which included training related to laws and regulations related to the BAR, interview and interrogation techniques, mediator techniques, and investigatory techniques. His responsibilities in his position include performing inspections at smog check stations or automotive repair dealers, engaging with members of other agencies, reviewing data received by the BAR, interviewing members of facilities and the public, and writing reports regarding his findings. Prior to his position at the BAR, Mr. Barraza worked at an auto repair dealer where he held various positions, including general mechanic, service consultant, and licensed smog check inspection technician and repair technician. Mr. Barraza took training to obtain his license as a smog check inspection technician and repair technician, both of which he currently holds and obtained in 2017. Additionally, Mr. Barraza holds several certifications from the National Institute of Automotive Service Excellence (ASC), which require experience and testing. He currently holds six ASC certifications, including in the areas of A6 (engine electrical), A8 (engine performance), and L1 (advanced engine performance). Mr. Barraza worked for 10 years as a general automotive mechanic at an independent automotive repair facility prior to working for the BAR.

In 2025, Mr. Barraza was assigned to investigate TJ Smog, which involved his review of data received by the BAR for smog inspections conducted at TJ Smog by its

employees, as well as visiting the TJ Smog facility on three occasions. Mr. Barraza wrote a report summarizing his findings of the investigation, which was received in evidence.

14. Mr. Barraza described the two types of emissions tests used for smog checks as described above, namely the BAR97 test using a dynamometer where the vehicle is loaded onto a roller while the engine is running and a sensor is placed in the tailpipe of the vehicle to measure emissions, and use of the OBD, which relies on the vehicle's computer control module to obtain information regarding the vehicle's emissions and operations for the BAR-OIS to conduct a smog check. He explained that the BAR-OIS is used on vehicles of year model 2000 and newer, whereas the BAR97 is generally used for vehicles older than year model 2000. In this case, the BAR-OIS testing was used exclusively because all vehicles at issue in this matter are year model 2000 and newer.

15. Mr. Barraza explained that the BAR-OIS testing system consists of the DAD, computer with OIS software downloaded on it, monitor, handheld bar code scanner, and printer. The BAR-OIS system requires continuous internet connection. During a smog check technician's smog testing of a vehicle, the technician first accesses the BAR-OIS computer inputting their credentials by scanning an inspector badge or manually entering their inspector number into the computer. Thereafter, the technician will enter the vehicle information by using the bar code scanner or by entering the information manually. The technician will enter the odometer information from the vehicle and also check if the malfunction indicator lamp on the vehicle is illuminated. The next step is for the technician to perform the OBDII query portion of the test, which requires the technician to plug the DAD device into the vehicle. While the DAD device is plugged into the vehicle during the test, data is transmitted from

the vehicle to the BAR information database, also known as VID, as described above in real time because there is a continuous internet connection from the facility to the BAR VID. The technician also conducts a visual inspection of the vehicle's emission components and a functional check of those components.

The technician is also responsible for entering any passing or failing criteria into the BAR OIS, entering information on any type of after-market components on the vehicle, and answering prompted questions relevant to the smog inspection. The technician will select whether or not they want to issue a certificate of compliance for the smog check of the vehicle and also print two copies of the Vehicle Inspection Report (VIR) and sign both copies. The VIR may contain a certificate of compliance number if the vehicle passes the smog inspection. Each certificate of inspection number is unique and assigned to each vehicle that passes inspection, and those certificates of compliance and related numbers are purchased by the smog check station from the BAR in packets of 50 at a time for use on vehicles they test and pass. The technician will provide one copy of the signed VIR to the customer, and the facility will retain the other copy of the signed VIR at the facility for a minimum period of three years.

16. Mr. Barraza has access to the BAR's VID and all information transmitted during a smog inspection as stored in the VID. He explained that he is familiar with methods used to evade the requirements of the smog check program, specifically clean plugging for the BAR-OIS system. He stated that the purpose of clean plugging is to avoid or work around the requirements to properly repair a vehicle so that it would properly pass the smog check test. People try to "cheat" the BAR-OIS system by clean plugging to issue a certificate of compliance for a vehicle that would otherwise fail the smog check inspection.

17. Mr. Barraza explained that he can identify clean plugging from a facility by reviewing the data parameters sent from the facility to the BAR VID during smog checks. Mr. Barraza looks for specific data to identify fraudulent smog inspections. The data transmitted to the VID includes engine parameters such as the revolutions per minute (RPM) or engine speed, mass air flow (MAF) in grams per second, meaning the amount of air going into the engine, the degrees at which the throttle is open, the manifold absolute pressure (MAP), timing advance data, and engine cooling. Mr. Barraza compares the parameter side by side at particular times during the smog inspection. He explained that the RPMs or engine speed and the throttle position and air sensor must be synchronized in a normally operating engine. When one goes up, the other follows. When Mr. Barraza sees that data indicates that those parameters are out of range for a normally operating engine, then he considers that to be a fraudulent inspection because that data could not have been generated by a normally operating engine. Instead, clean plugging involves using a device, either alone or in conjunction with a vehicle, to transmit false data to the BAR-OIS through the DAD in order to cheat the smog check.

18. Mr. Barraza reviewed the data in the BAR VID for smog inspections conducted at TJ Smog and identified 15 vehicle smog inspections that received a smog certification using the technique of clean plugging based upon the data he reviewed. Five of those inspections were conducted by Sergio Pacillas, five were conducted by Eulises Astudillo, and five were conducted by Sergio Amador Pantoja Herrera, as indicated in the VID data. Mr. Barraza also reviewed the VIRs issued for each of those 15 vehicles showing that these individuals passed these 15 vehicles and issued a smog check certificate to those vehicles. Mr. Barraza reviewed those VIRs from the BAR VID. He also went to the TJ Smog station and was able to obtain 12 of the

signed VIRs for the 15 vehicles, but three of the VIRs were missing from TJ Smog station records.

19. For each of the 15 vehicles at issue in this matter, Mr. Barraza testified that the data he obtained from the BAR VID showing the information transmitted during the OBDII portion of the smog test shows data that is not expected for a normally operating engine in a vehicle, and the data provided would not allow for an engine to operate with those parameters. Specifically, Mr. Barraza looks at the RPMs as shown during the idling portion of the test, which is called the static portion during which time the engine is idling, and then during the dynamic portion of the test, which is when the throttle has been opened. During the idling portion of the test, the parameter identifications (PIDs) of a normal engine would have relatively steady throttle position angle and steady MAF air flow sensor reading, and steady lower RPM reading. As the RPMs increase during the dynamic portion of the test, the PIDs of the throttle position must be open, and MAF going into the engine must increase.

For each of the 15 vehicles tested, the data shows that these parameters did not follow the expected pattern for an engine to operate. He explained that there is no reasonable explanation that will produce these parameters in the results and have a passing smog test because the engine would either not run at all, or a check engine light would illuminate. The only reasonable explanation is that clean plugging was used to plug the DAD into some device to produce those parameters. Based on his review of this data, Mr. Barraza testified and summarized in his report that based on his review of the BAR VID data, in the following 15 instances respondent TJ Smog, through the three employee respondents, employed the clean plugging method to issue fraudulent smog certificates of compliance.

CLEAN PLUG NUMBER 1 – 2003 VOLVO XC90

20. On January 12, 2024, respondent Sergio Pacillas of TJ Smog issued a certificate of compliance to a 2003 Volvo XC90. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 650 RPM, and during the same time period the throttle position fluctuated between 7.1 percent and 11.8 percent opening, and the MAF fluctuates between 2.8 grams per second and 4.5 grams per second. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1558 RPM, the data shows the throttle fluctuating between 6.3 percent and 9.0 percent opening and the MAF fluctuated between 2.86 grams per second and 4.8 grams per second. These data points show that at the steady idle portion and the elevated engine RPMs portion of the tests have improbable characteristics for normal engine operation. In this case the throttle and MAF data was lower during the dynamic phase of the test when the RPMs were higher than those values were during the idling portion of the test. The throttle data points never showed opening during the dynamic phase higher than the highest data point during idling, which is not possible. Accordingly, clean plugging was used for this test to issue a fraudulent smog check certificate of compliance.

CLEAN PLUG NUMBER 2 – 2005 NISSAN PATHFINDER LE

21. On January 17, 2024, respondent Sergio Amador Pantoja Herrera of TJ Smog issued a certificate of compliance to a 2005 Nissan Pathfinder LE. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 570 RPM, and during the same time period the throttle position fluctuated between 0 percent and 4.7 percent opening, and the MAF fluctuates between 3.51 grams per second and 4.47 grams per second. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1836 RPM, the data

shows the throttle fluctuating between 2.0 percent and 5.5 percent opening and the MAF fluctuated between 2.72 grams per second and 5.09 grams per second. This steady idle and elevated engine RPM data for the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation. The throttle and MAF had lower data points during the elevated RPM portion of the test than data points at the idle portion of the test, which shows that the DAD was not connected to the engine as required causing the issuance of a fraudulent smog check certificate of compliance.

CLEAN PLUG NUMBER 3 – 2004 TOYOTA TACOMA DOUBLE CAB PRERUNNER TRUCK

22. On January 20, 2024, respondent Sergio Amador Pantoja Herrera of TJ Smog issued a certificate of compliance to a 2004 Toyota Tacoma Double Cab PreRunner. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 655 RPM, and during the same time period the throttle position fluctuated between 12.9 percent and 18.0 percent opening, and the MAF fluctuates between 4.03 grams per second and 4.78 grams per second. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1546 RPM, the data shows the throttle fluctuating between 12.5 percent and 15.7 percent opening and the MAF fluctuated between 2.74 grams per second and 4.92 grams per second. This steady idle and elevated engine RPM data for the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation. The throttle position during the elevated RPM portion of the test never increased past the highest point it was at the idle portion of the test. These discrepancies show that the DAD was not connected to the 2004 Toyota Tacoma being certified causing a fraudulent smog check certificate of compliance to be issued.

CLEAN PLUG NUMBER 4 – 2004 HONDA CR-V LX

23. On January 24, 2024, respondent Sergio Pacillas of TJ Smog issued a certificate of compliance to a 2004 Honda CR-V LX. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 640 RPM, and during the same time period the throttle position fluctuated between 6.3 percent and 10.6 percent opening, and the MAP, which is the absolute pressure of the air inside an engine's intake manifold in kiloPascals (kPa) and indicates the air pressure in the intake system, fluctuates between 16 kPa and 28 kPa. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1890 RPM, the data shows the throttle fluctuating between 6.3 percent and 10.6 percent opening and the MAP fluctuated between 17 kPa and 30 kPa. This steady idle and elevated engine RPM data for the improbable throttle positions and MAP readings are not characteristic or expected for normal engine operation. The throttle positions and MAP readings are expected to be stable during the steady idle, and the throttle position is expected to rise during the elevated RPM portion of the test. However, the throttle position was exactly the same during the idle portion of the test as it was during the elevated RPM portion of the test. These discrepancies show that the DAD was not connected to the 2004 Honda CR-V LX as required and the issuance of a fraudulent smog check certificate of compliance resulted from clean plugging.

CLEAN PLUG NUMBER 5 – 2000 LEXUS RX 300

24. On January 26, 2024, respondent Sergio Pacillas of TJ Smog issued a certificate of compliance to a 2000 Lexus RX 300. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 685 RPM, and during the same time period the throttle position fluctuated between 6.7 percent and 11.4 percent opening, and the MAF fluctuates between 2.95 grams per second and

5.02 grams per second. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1355 RPM, the data shows the throttle fluctuating between 6.7 percent and 11.8 percent opening and the MAF fluctuated between 3.21 grams per second and 3.89 grams per second. This steady idle and elevated engine RPM data for the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation. During the elevated RPM portion of the test the MAF readings were lower than the highest data point at idle, which is not possible. Also, the throttle opening data points were almost the same at the idle portion of the test as compared to the elevated RPM portion of the test, which is also not possible in a normal operating engine. These discrepancies show that the DAD was not connected as required to the 2000 Lexus RX 300, causing a fraudulent smog check certificate of compliance to be issued through clean plugging.

CLEAN PLUG NUMBER 6 – 2004 JEEP GRAND CHEROKEE LAREDO

25. On February 9, 2024, respondent Sergio Amador Pantoja Herrera of TJ Smog issued a certificate of compliance to a 2004 Jeep Grand Cherokee Laredo. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 650 RPM, and during the same time period the throttle position fluctuated between 6.7 percent and 11.8 percent opening, and the MAP fluctuates between 33 kPa and 46 kPa. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1604 RPM, the data shows the throttle fluctuating between 6.7 percent and 10.6 percent opening and the MAP fluctuated between 33 kPa and 44 kPa. This steady idle and elevated engine RPM data for the improbable throttle positions and MAP readings are not characteristic or expected for normal engine operation. The throttle data points during the elevated RPM portion of the testing never increased past the highest data point at the idle portion of the

testing, and the MAP data remained in the same range during both portions of the test. These discrepancies show that the DAD was not connected to the 2004 Jeep Grand Cherokee Laredo as required and the issuance of a fraudulent smog check certificate of compliance resulted from clean plugging.

CLEAN PLUG NUMBER 7 – 2000 TOYOTA CAMRY SOLARA

26. On February 9, 2024, respondent Eulises Astudillo of TJ Smog issued a certificate of compliance to a 2000 Toyota Camry Solara. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 655 RPM, and during the same time period the throttle position fluctuated between 8.2 percent and 10.2 percent opening, and the MAF fluctuates between 3.78 grams per second and 4.77 grams per second. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1687 RPM, the data shows the throttle fluctuating between 6.7 percent and 10.6 percent opening and the MAF fluctuated between 3.12 grams per second and 4.82 grams per second. This steady idle and elevated engine RPM data for the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation. The throttle and MAF data points had lower data points during the elevated RPM portion of the test than during the idle portion of the test, which a normal engine could not have. These discrepancies show that the DAD was not connected as required to the 2000 Toyota Camry Solara, causing a fraudulent smog check certificate of compliance to be issued through clean plugging.

CLEAN PLUG NUMBER 8 – 2001 CHEVROLET SILVERADO C 1500

27. On February 16, 2024, respondent Sergio Pacillas of TJ Smog issued a certificate of compliance to a 2001 Chevrolet Silverado C 1500. The VID data shows

that the PIDs during the idling portion of the test when the engine RPMs are steady at 555 RPM, and during the same time period the throttle position fluctuated between 3.9 percent and 5.5 percent opening, the MAF fluctuates between 5.46 grams per second and 7.07 grams per second, and the MAP fluctuated between 33 kPa and 44 kPa. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1650 RPM, the data shows the throttle fluctuating between 0 percent and 5.1 percent opening, the MAF fluctuated between 5.4 grams per second and 7.58 grams per second, and the MAP fluctuated between 34 kPa and 46 kPa. This steady idle and elevated engine RPM data for the improbable throttle positions, MAF readings, and MAP readings are not characteristic or expected for normal engine operation. The throttle positions, MAF and MAP readings are expected to be stable during steady idle and to rise during the elevated RPM portion of the test. Instead, the throttle and MAF data points were lower during the elevated RPM portion of the test than at idle. The throttle data points at the elevated RPM portion of the test never increased past the highest data point at idle. The MAP data points essentially remained the same during both portions of the test. These discrepancies show that the DAD was not connected as required to the 2001 Chevrolet Silverado C 1500, causing a fraudulent smog check certificate of compliance to be issued through clean plugging.

CLEAN PLUG NUMBER 9 – 2002 BMW 330CI

28. On February 23, 2024, respondent Sergio Pacillas of TJ Smog issued a certificate of compliance to a 2002 BMW 330 CI. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 655 RPM, and during the same time period the throttle position fluctuated between 0.8 percent and 5.5 percent opening, and the MAF fluctuates between 2.87 grams per second and 4.94 grams per second. By comparison, during the dynamic portion of the test when

the RPMs were increased and steady at 1592 RPM, the data shows the throttle fluctuating between 0 percent and 3.9 percent opening and the MAF fluctuated between 2.97 grams per second and 4.56 grams per second. This steady idle and elevated engine RPM data for the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation. The throttle and MAF data points had lower data points during the elevated RPM portion of the test than during the idle portion of the test, which a normal engine could not have. These discrepancies show that the DAD was not connected as required to the 2002 BMW 330 CI, causing a fraudulent smog check certificate of compliance to be issued through clean plugging.

CLEAN PLUG NUMBER 10 – 2004 NISSAN ARMADA SE

29. On March 1, 2024, respondent Eulises Astudillo of TJ Smog issued a certificate of compliance to a 2004 Nissan Armada SE. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 770 RPM, and during the same time period the throttle position fluctuated between 0 percent and 5.5 percent opening, and the MAF fluctuates between 5.7 grams per second and 7.59 grams per second. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1718 RPM, the data shows the throttle fluctuating between 0 percent and 5.1 percent opening and the MAF fluctuated between 5.37 grams per second and 7.24 grams per second. This steady idle and elevated engine RPM data for the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation. The throttle and MAF data points had lower data points during the elevated RPM portion of the test than during the idle portion of the test, which a normal engine could not have. These discrepancies show that the DAD was not connected as required to the 2004 Nissan

Armada SE, causing a fraudulent smog check certificate of compliance to be issued through clean plugging.

CLEAN PLUG NUMBER 11 – 2005 NISSAN FRONTIER CREW CAB LE

30. On March 9, 2024, respondent Sergio Amador Pantoja Herrera of TJ Smog issued a certificate of compliance to a 2005 Nissan Frontier Crew Cab LE. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 580 RPM, and during the same time period the throttle position fluctuated between 0.4 percent and 3.9 percent opening, and the MAF fluctuates between 2.86 grams per second and 4.97 grams per second. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1516 RPM, the data shows the throttle fluctuating between 0.8 percent and 3.5 percent opening and the MAF fluctuated between 3.26 grams per second and 5.08 grams per second. This steady idle and elevated engine RPM data for the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation. The throttle and MAF data points had lower data points during the elevated RPM portion of the test than during the idle portion of the test, which a normal engine could not have. These discrepancies show that the DAD was not connected as required to the 2005 Nissan Frontier Crew Cab LE, causing a fraudulent smog check certificate of compliance to be issued through clean plugging.

CLEAN PLUG NUMBER 12 – 2000 TOYOTA 4RUNNER LIMITED

31. On March 22, 2024, respondent Eulises Astudillo of TJ Smog issued a certificate of compliance to a 2000 Toyota 4Runner Limited. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 720 RPM, and during the same time period the throttle position fluctuated between 9.4

percent and 11.8 percent opening, and the MAF fluctuates between 2.82 grams per second and 4.59 grams per second. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1552 RPM, the data shows the throttle fluctuating between 9 percent and 11.8 percent opening and the MAF fluctuated between 2.84 grams per second and 4.21 grams per second. This steady idle and elevated engine RPM data for the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation. The throttle and MAF data points had lower data points during the elevated RPM portion of the test than during the idle portion of the test, which a normal engine could not have. These discrepancies show that the DAD was not connected as required to the 2000 Toyota 4Runner Limited, causing a fraudulent smog check certificate of compliance to be issued through clean plugging.

CLEAN PLUG NUMBER 13 – 2005 HONDA ODYSSEY EXL

32. On April 26, 2024, respondent Sergio Amador Pantoja Herrera of TJ Smog issued a certificate of compliance to a 2005 Honda Odyssey EXL. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 640 RPM, and during the same time period the throttle position fluctuated between 15.3 percent and 18.0 percent opening, and the MAP fluctuates between 16 kPa and 27 kPa. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1142 RPM, the data shows the throttle fluctuating between 12.9 percent and 18.0 percent opening and the MAP fluctuated between 16 kPa and 27 kPa. This steady idle and elevated engine RPM data for the improbable throttle positions and MAP readings are not characteristic or expected for normal engine operation. The throttle data points during the elevated RPM portion of the testing never increased past the highest data point at the idle portion of the testing,

and the MAP data remained in the same range during both portions of the test. These discrepancies show that the DAD was not connected to the 2005 Honda Odyssey EXL as required and the issuance of a fraudulent smog check certificate of compliance resulted from clean plugging.

CLEAN PLUG NUMBER 14 – 2006 NISSAN TITAN XE

33. On May 17, 2024, respondent Eulises Astudillo of TJ Smog issued a certificate of compliance to a 2006 Nissan Titan XE. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 710 RPM, and during the same time period the throttle position fluctuated between 2 percent and 5.5 percent opening, and the MAF fluctuates between 5.38 grams per second and 7.34 grams per second. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1264 RPM, the data shows the throttle fluctuating between 0.8 percent and 5.5 percent opening and the MAF fluctuated between 5.8 grams per second and 7.24 grams per second. This steady idle and elevated engine RPM data for the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation. The throttle and MAF data points had lower data points during the elevated RPM portion of the test than during the idle portion of the test, which a normal engine could not have. The throttle and MAF data points during the elevated RPM portion of the test never increased past the highest data point at idle. These discrepancies show that the DAD was not connected as required to the 2006 Nissan Titan XE, causing a fraudulent smog check certificate of compliance to be issued through clean plugging.

34. With regard to the 2006 Nissan Titan XE at issue for Clean Plug Number 14, Mr. Barraza obtained from the BAR-OIS VID a previous smog check inspection report performed on that vehicle on January 4, 2023, at a different unrelated smog

check station. For this previous smog test the VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 750 RPM, and during the same time period the throttle position was fixed at 4.7 percent opening, and the MAF fluctuated between 5.98 grams per second and 6.01 grams per second. By comparison, during the dynamic portion of the test, the RPMs were increased and steady at 2500 RPM before decreasing to 1400 RPM, and during that time the data shows the throttle decreases from 5.5 percent opening to 4.7 percent opening and the MAF decreases from 15.3 grams per second to 10.35 grams per second. These steady idle and elevated engine RPM data along with the associated throttle positions and MAF readings are characteristic and expected for normal engine operation.

CLEAN PLUG NUMBER 15 – 2001 NISSAN FRONTIER KING CAB XE

35. On May 31, 2024, respondent Eulises Astudillo of TJ Smog issued a certificate of compliance to a 2001 Nissan Frontier King Cab XE. The VID data shows that the PIDs during the idling portion of the test when the engine RPMs are steady at 685 RPM, and during the same time period the throttle position fluctuated between 1.6 percent and 5.5 percent opening, and the MAF fluctuates between 5.39 grams per second and 7.64 grams per second. By comparison, during the dynamic portion of the test when the RPMs were increased and steady at 1296 RPM, the data shows the throttle fluctuating between 2.7 percent and 5.5 percent opening and the MAF fluctuated between 5.43 grams per second and 7.07 grams per second. This steady idle and elevated engine RPM data for the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation. The throttle and MAF data points had lower data points during the elevated RPM portion of the test than during the idle portion of the test, which a normal engine could not have. The throttle and MAF data points during the elevated RPM portion of the test never increased past

the highest data point at idle. These discrepancies show that the DAD was not connected as required to the 2001 Nissan Frontier King Cab XE, causing a fraudulent smog check certificate of compliance to be issued through clean plugging.

STATION VISITS DURING INVESTIGATION

36. During his investigation Mr. Barraza visited the TJ Smog station on three occasions, namely on March 6, 2025, March 12, 2025, and March 18, 2025. On March 6, 2025, he visited the TJ Smog station and took photos of the station, which was received in evidence. He wrote a station inspection report regarding that visit. On March 6, 2025, Mr. Barraza met with one of the owners of TJ Smog, Enrique Sardinas Raya, as well as with respondent Sergio Pacillas. Mr. Barraza requested documents from respondent Raya regarding the 15 smog checks at issue in this matter. Mr. Barraza spoke with respondent Pacillas, who told him that no one other than the smog inspectors at TJ Smog have access to the BAR-OIS system at the facility, and while they had recently had problems with the BAR97 testing equipment, they had no problems with the BAR-OIS testing equipment.

37. On March 12, 2025, Mr. Barraza visited the facility again. On that visit, he met with respondent Pacillas and respondent Astudillo. During this visit Mr. Barraza made copies of 12 of the Vehicle Inspection Reports at issue in this matter, as well as related invoices. On this visit, both respondent Pacillas and respondent Astudillo informed him that they were not aware of any reason why abnormal smog check test data would have been transmitted from TJ Smog to the BAR's VID.

38. On March 18, 2025, Mr. Barraza again visited TJ Smog and met with co-owner Enrique Sardinas Raya. Mr. Barraza discussed the documents he obtained during the March 12, 2025, visit with respondent Raya. Mr. Barraza asked respondent

Raya if there would be any reason why abnormal smog check test data would have been transmitted by TJ Smog to the BAR's VID. In response, respondent Raya stated there was a previous DAD device at the facility that was not reading correctly, but it was replaced. Respondent Raya was unable to account for activities at the facility on Wednesdays and Fridays when he is not there. He was not aware of anyone engaging in illegal activities at TJ Smog. Respondent Raya also informed Mr. Barraza that respondent Herrera was no longer employed by TJ Smog because he left for a different job.

Respondent Astudillo's Testimony

39. Eulises Astudillo is currently employed as a smog check inspection technician and mechanic. He has held his smog check inspection technician license since December 2018 and worked in the field for seven years. He received his smog repair technician license in 2020. He has never received any license discipline from any agency. Respondent Astudillo attended a trade school at Los Angeles Trade Tech, which has a two-year program for automotive repair. The program teaches basic automotive diagnosis and repair regarding brakes, suspensions, transmissions, engine rebuilding and performance, and a smog course. Respondent Astudillo never took the smog course at Los Angeles Trade Tech. He attended Los Angeles Trade Tech for two years beginning in early 2014. Thereafter, he took a job as automotive mechanic at Clutch Masters, which had a smog check facility located next door. Respondent Astudillo learned to do smog checks at that facility and thereafter received his smog check inspector technician license. After becoming licensed, he worked at AA Smog in East Los Angeles as a smog check inspection technician. Respondent Astudillo's girlfriend lives in Tijuana, Mexico, and he wanted to move closer to her, so he took the position with TJ Smog, where he worked from June 2023 to July 2025.

40. Respondent Astudillo testified that he does not understand how the allegations in the accusation against him came about. He insisted that he has been smog checking vehicles only according to the smog check manual from the BAR and has not performed any illegal smog checks. He has been performing smog check inspections regularly since 2018, as well as doing repairs. When he worked at TJ Smog he only performed smog check inspections. Respondent Astudillo testified that he has never used a defeat device to smog check a vehicle, and he does not know how "to alter those machines." He simply performs the smog check by following the prompts on the screen of the BAR-OIS computer and plugs the DAD into the vehicle. He did not recall there ever being any problems with the DAD devices at TJ Smog. However, he stated, "sometimes there would be something weird, but that is when some cars would come in and they have something connected to them – like I don't know how to explain it." He stated, "some vehicles come in where they add some type of GPS thing on them and there is an OBDII connector coming out of it." He stated, "I notice some things weird with that, so I always make sure I disconnect that beforehand and hook up to the OBD of the car."

41. Respondent Astudillo denied ever taking additional money from a customer to do an improper smog check on a vehicle. He stated that if he knew a customer was cheating on a smog check inspection, he would "not do it and tell them to take it to a referee" from BAR.

42. Respondent Astudillo's only source of income is his job performing smog check inspections, but he is currently looking to start his own automotive repair facility where he would perform smog check inspections and repairs. He would need his current licenses to do that.

43. Respondent Astudillo testified that he was not sure what clean plugging is or how it is done, but he stated, "I want to say it is connecting to another car, but I am not sure." He stated he is not aware of clean plugging occurring in the industry.

Cost Recovery

44. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case." (Bus. & Prof. Code, § 125.3, subd. (c).)

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

46. A certification of costs was signed by Deputy Attorney General Michael M. Karimi who prosecuted this disciplinary action. A schedule was attached to his declaration that described the legal services provided, the dates legal services were

performed, who provided the services, the amount of work that was performed on specific dates, and the professionals' hourly rates. The schedule established that $4,883.25 has been incurred for work up to April 7, 2026. The declaration and schedule with regard to the $4,883.25 met the requirements of California Code of Regulations, title 1, section 1042. Enforcement costs in the amount of $4,883.25 were established and are reasonable.

47. Complainant seeks costs related to the investigation of this matter in the amount of $5,212.35. BAR produced a declaration signed by Mr. Barraza, dated April 14, 2025, to which there was a three-page attachment that stated the dates for hours of service, the hours spent on each date, and the activity performed for each date at a rate of $115.83 per hour, for a total of $5,212.35. The declaration and attached documents met the requirements of California Code of Regulations, title 1, section 1042. Investigation costs in the amount of $5,212.35 were established and are reasonable.

48. The total reasonable costs of enforcement and investigation in this matter are $10,095.60.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In determining the standard of proof in license revocation proceedings, courts have drawn a distinction between professional licenses such as those held by doctors, lawyers, and real estate brokers on the one hand, and nonprofessional or occupational licenses such as those held by food processors and vehicle salespersons on the other hand. In proceedings to revoke professional licenses, the clear and

convincing evidence standard of proof applies, while in proceedings to revoke nonprofessional or occupational licenses, the preponderance of the evidence standard of proof applies. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) Although an applicant for smog check inspector and repair technician licenses must complete certain coursework (Cal. Code Regs., tit. 16, § 3340.28, subd. (b)(3)) and pass an examination (Cal. Code Regs., tit. 16, § 3340.29), such requirements are not similar to the extensive educational, training and testing requirements necessary to obtain a professional license. Smog check inspection licenses, smog check repair technician licenses, smog check station licenses, and automotive repair dealer registrations are nonprofessional or occupational licenses, and proceedings to revoke such licenses are governed by the preponderance of evidence standard of proof. (*Imports Performance*, *supra*, 201 Cal.App.4th at pp. 916-917.)

Statutory Authority

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

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

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

[¶] . . . [¶]

(4) Any other conduct that constitutes fraud.

[¶] . . . [¶]

(6) 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. . . .

3. Health and Safety Code section 44012 requires that smog checks be performed in accordance with the BAR's regulations.

4. Health and Safety Code section 44015, subdivision (b), provides that "if a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

5. Health and Safety Code section 44032, in pertinent part, requires that smog check technicians perform smog inspections in accordance with the provisions contained in Health and Safety Code section 44012.

6. Health and Safety Code section 44035 authorizes, among other things, the revocation of a smog check station or smog check technician's license "after a hearing" for failing to meet prescribed standards of performance.

7. Health and Safety Code section 44072.2 provides, in part, as follows:

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.
>
> [¶] . . . [¶]
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.

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

8. Health and Safety Codes section 44072.10 provides in part:

(a) Notwithstanding Sections 44072 and 44072.4, the director, or the director's designee, pending a hearing conducted pursuant to subdivision (e), may temporarily suspend any smog check station or technician's license issued under this chapter, for a period not to exceed 60 days, if the department determines that the licensee's conduct would endanger the public health, safety, or welfare before the matter could be heard pursuant to subdivision (e), based upon reasonable evidence of any of the following:

(1) Fraud.

[¶] [¶]

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

(4) A pattern or regular practice of violating this chapter or any regulation, standard, or procedure of the department implementing this chapter.

[¶] . . . [¶]

> (c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:
>
> [¶] . . . [¶]
>
> (4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

9. Business and Professions Code section 9889.9 provides, "[w]hen any license has been revoked or suspended following a hearing under the provisions of this article, any additional license issued under Articles 5 and 6 of this chapter [Automotive Repair] in the name of the licensee may be likewise revoked or suspended by the director."

10. Health and Safety Code section 44072.8 provides:

> When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

Regulatory Authority

11. California Code of Regulations, title 16, section 3340.24, subdivision (c), provides, "The bureau may suspend or revoke the license of or pursue other legal

action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance."

12. California Code of Regulations, title 16, section 3340.30, subdivision (a), requires a smog check inspector to inspect vehicles in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

13. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides as follows:

> No person shall enter any vehicle identification information or emission control system identification data for any vehicle other than the one being tested into the EIS or OIS. Nor shall any person enter into the EIS or OIS any false information about the vehicle being tested.

14. California Code of Regulations, title 16, section 3340.42 provides, in part, as follows:

> Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.
>
> (a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:
>
> (1) A loaded-mode test shall be the test method used to inspect 1976-1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon,

carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

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

(2) A two-speed idle mode test shall be the test method used to inspect 1976-1999 model-year vehicles, except diesel-powered, registered in all program areas of the state, except in those areas of the state where the enhanced program has been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle

RPM, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emission standards set forth in this section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or equal to the applicable emissions standards specified in Table III.

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

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

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

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

15. California Code of Regulations, title 16, section 3340.35, subdivision (c), requires a smog station to issue a certificate of compliance or non-compliance when a

vehicle has been inspected according to California Code of Regulations, title 16, section 3340.42, and has all of the required emission control equipment and devices installed and functioning correctly.

Disciplinary Guidelines

16. The BAR's "Guidelines for Disciplinary Orders and Conditions of Probation" (Revised March 2016) (Guidelines) provide criteria to consider in determining the appropriate level of discipline, including: prior warnings from the BAR, prior office conference(s) with the BAR, prior history of citations, prior history of formal disciplinary action, failure to permit BAR inspection of records, evidence of abuse of mechanic's lien, evidence of attempts to intimidate consumer, evidence of negligent or willful improper repair work that endangers consumers, evidence that the unlawful act was a part of a pattern or practice, failure to comply with BAR request for corrective action/retraining, currently on probation for improper acts, failure to successfully complete prior probation, failure to pay court judgment to victim, violation of previous court order, evidence of any other conduct which constitutes fraud or gross negligence.

The Guidelines also provide further criteria of evidence of mitigation and rehabilitation to consider in determining the appropriate level of discipline such as: evidence that respondent implemented BAR's suggested resolution to a consumer complaint, evidence of restitution to the consumer and/or correct repair of the consumer's vehicle, evidence of voluntary participation in retraining for self or employees, evidence of voluntary purchase of proper diagnostic equipment and manuals, evidence of a medical condition that temporarily prevented respondent from exercising supervision and control over employees or others at the time of the violation, absence of prior disciplinary action, evidence that the violation was not part

of a pattern or practice, evidence of no loss to consumer and no damage to consumer's property (undercover vehicles are viewed the same as consumer property), evidence of retraining and has initiated steps to minimize recurrence, evidence of resolution of all consumer complaints with subsequent change in business practice, evidence of substantial measures to correct its business practices and/or business operations so as to minimize the likelihood of recurrence of the violation, and evidence of any other conduct which would constitute a factor in mitigation.

17. Under the Guidelines, the recommended discipline for violation of Health and Safety Code section 44012, failure to comply with procedures for required testing at a Smog Check station, is revocation, stayed, five years' probation with standard terms and conditions plus optional terms 1, 2, 3a, 3c, 4, 5a, 6 and 7. The recommendation for a violation of Health and Safety Code section 44072.2, subdivision (d), committing any act involving dishonesty, fraud, or deceit, is revocation, stayed, five years' probation with standard terms and conditions plus optional terms 1, 2, 3a, 3c, and 7. The only recommended discipline for a violation of Health and Safety Code section 44072.10, subdivision (c), is revocation.

Evaluation

18. The BAR plays a vital role in safeguarding the public and the environment by mandating that vehicles are thoroughly inspected to ensure that they do not pose safety risks, and that their emissions do not exceed safety standards.

19. A preponderance of the evidence established that there were significant differences between the BAR-OIS data reported to the BAR for five smog inspections performed by respondent Pacillas on behalf of respondent TJ Smog and the expected data for normal engine operation. The data transmitted for those five vehicles was

uncharacteristic and improbable for normal engine operation, which demonstrates that fraudulent inspections occurred through the use of the clean plugging method. Mr. Barraza's testimony in this regard was credible and convincing. The use of respondent Pacillas's credentials for the performance of these fraudulent inspections shows he knowingly entered false information into the BAR-OIS for these five fraudulent inspections.

20. A preponderance of the evidence established that there were significant differences between the BAR-OIS data reported to the BAR for five smog inspections performed by respondent Astudillo on behalf of respondent TJ Smog and the expected data for normal engine operation. The data transmitted for those five vehicles was uncharacteristic and improbable for normal engine operation, which demonstrates that fraudulent inspections occurred through the use of the clean plugging method. Mr. Barraza's testimony in this regard was credible and convincing. The use of respondent Astudillo's credentials for the performance of these fraudulent inspections shows he knowingly entered false information into the BAR-OIS for these five fraudulent inspections. Respondent Astudillo's testimony that he has never used the clean plugging method or a device to perform an illegal smog inspection and was not aware of how that could be done or that it was happening in the industry lacked credibility and was internally inconsistent, given that he testified about having knowledge of vehicles coming in with something connected to them "with an OBDII connector coming out of it."

21. A preponderance of the evidence established that there were significant differences between the BAR-OIS data reported to the BAR for five smog inspections performed by respondent Herrera on behalf of respondent TJ Smog and the expected data for normal engine operation. The data transmitted for those five vehicles was

uncharacteristic and improbable for normal engine operation, which demonstrates that fraudulent inspections occurred through the use of the clean plugging method. Mr. Barraza's testimony in this regard was credible and convincing. The use of respondent Herrera's credentials for the performance of these fraudulent inspections shows he knowingly entered false information into the BAR-OIS for these five fraudulent inspections.

22. With regard to respondents Pacillas, Astudillo, Herrera, and TJ Smog, upon consideration of the totality of the evidence presented, as well as the disciplinary guidelines, the public can only be properly protected by the revocation of their licenses. The reasons for this include that these respondents performed multiple fraudulent smog inspections, specifically five for each of the three individual respondents and 15 total for TJ Smog, over the course of five months indicating a pattern or practice.

Cause Exists to Discipline the Licenses and Registrations

23. A preponderance of the evidence demonstrated that respondent TJ Smog's automotive repair dealer registration is subject to disciplinary action under Health and Safety Code section 9884.7, subdivision (a)(1), in that respondents Pacillas, Astudillo, and Herrera, on behalf of respondent TJ Smog, made statements that they knew were untrue or misleading when they certified that the 15 subject vehicles passed smog inspection when in fact they utilized the clean plugging method to issue fraudulent certificates of compliance for the 15 subject vehicles.

24. A preponderance of the evidence demonstrated that respondent TJ Smog's automotive repair dealer registration is subject to disciplinary action under Health and Safety Code section 9884.7, subdivision (a)(4), in that respondents Pacillas,

Astudillo, and Herrera, on behalf of respondent TJ Smog, committed fraud when they certified that the 15 subject vehicles passed smog inspection when in fact they utilized the clean plugging method to issue fraudulent certificates of compliance for the 15 subject vehicles.

25. A preponderance of the evidence demonstrated that respondent TJ Smog's smog check station license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that respondent TJ Smog failed to comply with the following sections of the Health and Safety Code: section 44012 for failing to perform tests of the emission control systems for the 15 subject vehicles in compliance with procedures prescribed by the BAR; and section 44015, subdivisions (a) and (b), for issuing certificates of compliance for the 15 subject vehicles without properly testing and inspecting them.

26. A preponderance of the evidence demonstrated that respondent TJ Smog's smog check station license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that respondent TJ Smog failed to comply with the following sections of title 16, California Code of Regulations: section 3340.35, subdivision (c), in that respondent TJ Smog failed to inspect and test the 15 subject vehicles in accordance with the procedures specified in section 3340.42 of the regulations; and section 334042 in that respondent TJ Smog failed to conduct the required smog tests and inspections on those vehicles in accordance with the BAR specifications.

27. A preponderance of the evidence demonstrated that respondent TJ Smog's smog check station license is subject to disciplinary action under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that respondents Pacillas, Astudillo, and Herrera, on behalf of respondent TJ Smog,

committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog certificates of compliance for the 15 subject vehicles without performing bona fide inspections of those vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

28. A preponderance of the evidence demonstrated that respondent Pacillas's smog check inspector license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that respondent Pacillas failed to comply with Health and Safety Code section 44012 by failing to perform tests of the emission control systems for five subject vehicles in compliance with procedures prescribed by the BAR.

29. A preponderance of the evidence demonstrated that respondent Pacillas's smog check inspector license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that respondent Pacillas failed to comply with the following sections of title 16, California Code of Regulations: section 3340.30, subdivision (a), in that respondent Pacillas failed to inspect and test five subject vehicles in accordance with sections 44012 of the Health and Safety Code and section 3340.42 of the regulations; section 3340.41, subdivision (c), in that respondent Pacillas knowingly entered false information into the EIS for five subject vehicles providing results for smog inspections that were not properly performed; and section 3340.42 in that respondent Pacillas failed to conduct the required smog tests for five subject vehicles in accordance with the BAR's specifications.

30. A preponderance of the evidence demonstrated that respondent Pacillas's smog check inspector license is subject to disciplinary action under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that respondent Pacillas committed dishonest, fraudulent, or deceitful acts whereby

another is injured by issuing smog certificates of compliance for five subject vehicles without performing bona fide inspections on those vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

31. A preponderance of the evidence demonstrated that respondent Astudillo's smog check inspector license and smog check repair technician license are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that respondent Astudillo failed to comply with Health and Safety Code section 44012 by failing to perform tests of the emission control systems for five subject vehicles in compliance with procedures prescribed by the BAR.

32. A preponderance of the evidence demonstrated that respondent Astudillo's smog check inspector license and smog check repair technician license are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that respondent Astudillo failed to comply with the following sections of title 16, California Code of Regulations: section 3340.30, subdivision (a), in that respondent Astudillo failed to inspect and test five subject vehicles in accordance with sections 44012 of the Health and Safety Code and section 3340.42 of the regulations; section 3340.41, subdivision (c), in that respondent Astudillo knowingly entered false information into the EIS for five subject vehicles providing results for smog inspections that were not properly performed; and section 3340.42 in that respondent Astudillo failed to conduct the required smog tests for five subject vehicles in accordance with the BAR's specifications.

33. A preponderance of the evidence demonstrated that respondent Astudillo's smog check inspector license and smog check repair technician license are subject to disciplinary action under Health and Safety Code sections 44072.2,

subdivision (d), and 44072.10, subdivision (c), in that respondent Astudillo committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog certificates of compliance for five subject vehicles without performing bona fide inspections on those vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

34. A preponderance of the evidence demonstrated that respondent Herrera's smog check inspector license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that respondent Herrera failed to comply with Health and Safety Code section 44012 by failing to perform tests of the emission control systems for five subject vehicles in compliance with procedures prescribed by the BAR

35. A preponderance of the evidence demonstrated that respondent Herrera's smog check inspector license is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that respondent Herrera failed to comply with the following sections of title 16, California Code of Regulations: section 3340.30, subdivision (a), in that respondent Herrera failed to inspect and test five subject vehicles in accordance with sections 44012 of the Health and Safety Code and section 3340.42 of the regulations; section 3340.41, subdivision (c), in that respondent Herrera knowingly entered false information into the EIS for five subject vehicles providing results for smog inspections that were not properly performed; and section 3340.42 in that respondent Herrera failed to conduct the required smog tests for five subject vehicles in accordance with the BAR's specifications.

36. A preponderance of the evidence demonstrated that respondent Herrera's smog check inspector license is subject to disciplinary action under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that

respondent Herrera committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog certificates of compliance for five subject vehicles without performing bona fide inspections on those vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Costs

37. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and enforcement should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct. The scope of the investigation was appropriate to the allegations. The charges were sustained, and no evidence was presented regarding respondents' ability to pay costs.

38. After consideration of the factors under *Zuckerman*, it is determined that all of the respondents in this matter must pay a total of $10,095.60 for costs of enforcement and investigation in this matter. It is noted that each of the three individual respondents was responsible for clean plugging 5 of the 15 vehicles. Respondent TJ Smog, as the employer, is responsible for the actions of its employees. Accordingly, respondent TJ Smog will be responsible for payment of half of the $10,095.60 for a total of $5,047.80, and each of the individual respondents will be

responsible for payment of their one-third portion of the remaining $5,047.80, for a total of $1,682.60 each.

ORDER

1. Automotive Repair Dealer Registration No. ARD 290272 issued to respondent Enrique Sardinas Raya, partner, and Israel Lopez, partner, d.b.a. TJ Smog is revoked.

2. Any other Automotive Repair Dealer Registration issued to respondent Enrique Sardinas Raya, or respondent Israel Lopez are revoked.

3. Smog Check, Test Only, Station License No. TC 290272 issued to respondent Enrique Sardinas Raya, partner, and Israel Lopez, partner, d.b.a. TJ Smog is revoked.

4. Any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of respondent Enrique Sardinas Raya or Israel Lopez is revoked.

5. Smog Check Inspector License No. EO 641070 issued to Sergio Pacillas is revoked.

6. Any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of respondent Sergio Pacillas is revoked.

7. Smog Check Inspector License No. EO 641584 issued to Eulises Astudillo is revoked.

8. Smog Check Repair Technician License No. EI 641584 issued to Eulises Astudillo is revoked.

9. Any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of respondent Eulises Astudillo is revoked.

10. Smog Check Inspector License No. EO 638926 issued to Sergio Amador Pantoja Herrera is revoked.

11. Any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of respondent Sergio Amador Pantoja Herrera is revoked.

12. Respondent Enrique Sardinas Raya, partner, and Israel Lopez, partner, d.b.a. TJ Smog shall pay complainant's costs of investigation and enforcement of $5,047.80, which may be paid on such terms as may be determined by the Bureau of Automotive Repair.

13. Respondent Sergio Pacillas shall pay complainant's costs of investigation and enforcement of $1,682.60, which may be paid on such terms as may be determined by the Bureau of Automotive Repair.

14. Respondent Eulises Astudillo shall pay complainant's costs of investigation and enforcement of $1,682.60, which may be paid on such terms as may be determined by the Bureau of Automotive Repair.

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15. Respondent Sergio Amador Pantoja Herrera shall pay complainant's costs of investigation and enforcement of $1,682.60, which may be paid on such terms as may be determined by the Bureau of Automotive Repair.

DATE: May 15, 2026

Signed copy on File
DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings