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

12
13 In the Matter of the Accusation Against:

Case No. 79/24-6492

14 **HUNG PHI QUACH; DBA EVOLUTION**
SMOG
15 **13718 Old Frontage Rd.**
Moreno Valley, CA 92553

ACCUSATION

16 **And**

17 **HUNG PHI QUACH**
18 **15446 Arlington Way**
Fontana, CA 92336

19 **Automotive Repair Dealer Registration No.**
20 **ARD 304529, Smog Check, Test-Only**
21 **Station License No. TC 304529, Smog Check**
Inspector License Number EO 640877

22
23 Respondent.

24
25 **PARTIES**

26 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
27 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.
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1 2. On or about December 14, 2022, the Bureau of Automotive Repair issued
2 Automotive Repair Dealer Registration Number ARD 304529 to Hung Phi Quach; dba Evolution
3 Smog (Respondent Evolution Smog). The Automotive Repair Dealer Registration was in full
4 force and effect at all times relevant to the charges brought herein and will expire on December
5 31, 2024, unless renewed.

6 3. On or about June 30, 2023, the Bureau of Automotive Repair issued Smog Check,
7 Test-Only Station License Number TC 304529 to Hung Phi Quach; dba Evolution Smog. The
8 Smog Check, Test-Only station license was in full force and effect at all times relevant to the
9 charges brought herein and will expire on December 31, 2024, unless renewed.

10 4. On or about January 24, 2018, the Bureau issued Smog Check Inspector License
11 Number EO 640877 to Hung Phi Quach (Respondent Evolution Smog). The Smog Check
12 Inspector License was in full force and effect at all times relevant to the charges brought herein
13 and will expire on December 31, 2025, unless renewed.

14 **RELATED PARTIES**

15 5. On or about September 20, 2016, the Bureau of Automotive Repair issued Smog
16 Check Inspector License Number EO 639699 to Alex Urzua¹ (Respondent Urzua). The Smog
17 Check Inspector License was revoked on June 21, 2024.

18 6. On or about September 19, 2016, the Bureau of Automotive Repair issued Smog
19 Check Repair Technician License Number EI 639699 to Alex Urzua. The Smog Check Repair
20 Technician License was revoked on June 21, 2024.

21 **JURISDICTION**

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

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27 ¹ At all times alleged herein, Respondent Alex Urzua was acting as an employee of
28 Respondent Evolution Smog and committed the acts alleged herein in the course and scope of his
employment at Respondent Evolution Smog.

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

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

10. Section 44002 of the Health and Safety Code 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. Section 44072.6 of the Health and Safety Code 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. Section 9884.7 of the Code states:

(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 which constitutes fraud.

• • •

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

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

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

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 [the Motor Vehicle Inspection Program (Health and Saf. Code, ' 44000, et seq.)) 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. . . .

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

. . .

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

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

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

REGULATORY PROVISIONS

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

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

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

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

(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article. . . .”

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

. . . .

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

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

3 **COST RECOVERY**

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

10 **VID DATA REVIEW**

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

26 21. During an OIS inspection, engine operating parameters are retrieved from the
27 vehicle's OBD II system and recorded to the VID. This is accomplished during the functional
28

1 portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when
2 prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- 3 • Engine speed in revolutions per minute (RPM)
- 4 • Throttle position as measured by a throttle position sensor (TPS) mounted onto
5 the throttle shaft. Measured in a percentage of opening from 0% at idle and near
6 or up to 100% at full throttle.
- 7 • Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
8 connected to an intake manifold source, measured in kilo pascals (kpa). Typical
9 readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum,
10 25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at
11 sea level.
- 12 • Mass air flow as measured by a mass air flow sensor (MAF) mounted in the
13 engine's air intake tract. Measured in grams per second (gps).³
- 14 • Ignition timing is set by the vehicle PCM based on engine speed and load, and is
15 measured in degrees Before Top Dead Center (BTDC).

16 22. During normal engine operation at idle, engine speed is relatively steady around its
17 target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or
18 MAF readings are also steady. For the engine speed to increase, the throttle would have to be
19 opened to increase airflow through the engine. The engine's management systems supply fuel and
20 spark timing appropriate to any changes in throttle position and engine speed. An increase in
21 throttle, measured by the TPS, which increases engine RPM, would result in corresponding
22 increases in MAF as well as a change in MAP. Stated another way, any movement in the throttle
23 from the idle position will result in an increase of airflow through the engine with corresponding
24 increases RPM and/or MAF along with changes in MAP.

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

1 23. During an OIS Smog Check inspection, along with other visual and functional
2 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
3 with the engine idling and, when requested by the OIS analyzer, and an elevated or increased
4 engine speed.

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

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

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

27 27. The smog check technician must sign the VIR under penalty of perjury to indicate
28 that the inspection was done within Bureau guidelines. Smog Check Stations are required by law

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

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

20 **Fraudulent Inspection #1:**

21 29. Bureau Program representative Steve Koch (Koch) reviewed the OIS Test Data for
22 Evolution Smog. The review indicates on March 27, 2024, a 2004 Nissan Armada SE, CA license
23 7KAW891, VIN 5N1AA08A14N708616 (2004 Armada), was tested and smog certificate #
24 TU698156C was issued under licensed Smog Check Technician #EO639699, Urzua.

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

1 30. The Dynamic PID Chart for the 2004 Armada shows between time stamp 170 and
2 16843 engine speed is steady at approximately 550 RPM. During this time the throttle is fixed at
3 0% opening, the MAF is fixed at 1.39 gps, and the ignition timing advance for #1 cylinder is
4 fixed at 60 degrees BTDC. After time stamp 16843 the engine speed instantly accelerates to
5 approximately 1775 RPM. From the time the engine RPM increases off idle to the higher RPMs,
6 the throttle is fixed at the same 0% opening, the MAF is fixed at the same 1.39 gps, and the
7 ignition timing advance for #1 cylinder is also still fixed at the same 60 degrees BTDC.

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

14 **Fraudulent Inspection #2:**

15 32. Koch reviewed the OIS Test Data for Evolution Smog. The review indicates on
16 March 27, 2024, a 2001 Chevrolet Suburban C1500, CA license 4TTL514, VIN
17 3GNEC16T11G182302 (2001 Suburban), was tested and smog certificate # TU698158C was
18 issued under licensed Smog Check Technician #EO639699, Urzua.

19 33. The Dynamic PID Chart for the 2001 Suburban shows between time stamp 27 and
20 27280 engine speed is steady at approximately 600 RPM. During this time the throttle is fixed at
21 4.3% opening, the MAF is fixed at 4.42 gps, the MAP is fixed at 34 kPa, and the ignition timing
22 advance for #1 cylinder is fixed at 17 degrees BTDC. After time stamp 27280 the engine speed
23 instantly accelerates to approximately 1775 RPM. From the time the engine RPM increases off
24 idle to the higher RPMs, the throttle is fixed at the same 4.3% opening, the MAF is fixed at the
25 same 4.42 gps, the MAP is fixed at the same 34 kPa, and the ignition timing advance for #1
26 cylinder is also still fixed at the same 17 degrees BTDC.

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

7 **Fraudulent Inspection #3:**

8 35. Koch reviewed the OIS Test Data for Evolution Smog. The review indicates on
9 March 31, 2024, a 2006 Toyota Scion TC, CA license 8VUD175, VIN JTKDE177660106854
10 (2006 Scion), was tested and smog certificate # TU698192C was issued under licensed Smog
11 Check Technician #EO639699, Urzua.

12 36. The Dynamic PID Chart for the 2006 Scion shows between time stamp 138 and
13 17735 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at
14 17.3% opening, the MAF is fixed at 1.98 gps, and the ignition timing advance for #1 cylinder is
15 fixed at 15 degrees BTDC. After time stamp 17735 the engine speed accelerates to approximately
16 1600 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is
17 fixed at the same 17.3% opening, the MAF is fixed at the same 1.98 gps, and the ignition timing
18 advance for #1 cylinder is also still fixed at the same 15 degrees BTDC.

19 37. During the entire period the dynamic data was collected, the only parameter that
20 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
21 remained unchanged even though the engine speed was increased. These readings are not
22 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
23 prove the DAD was not connected to the 2006 Scion being certified, causing the issuance of a
24 fraudulent Smog Check Certificate of Compliance.

25 **Fraudulent Inspection #4:**

26 38. Koch reviewed the OIS Test Data for Evolution Smog. The review indicates on April
27 2, 2024, a 2001 Nissan Frontier XE, CA license 04901Z1, VIN 1N6DD21S31C324803 (2001
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Frontier), was tested and smog certificate # TU833107C was issued under licensed Smog Check Technician #EO639699, Urzua.

39. The Dynamic PID Chart for the 2001 Frontier shows between time stamp 172 and 19277 engine speed is steady at approximately 800 RPM. During this time the throttle is fixed at 0% opening, the MAF is fixed at .78 gps, and the ignition timing advance for #1 cylinder is fixed at 63.5 degrees BTDC. After time stamp 19277 the engine speed accelerates to approximately 1850 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0% opening, the MAF is fixed at the same .78 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 63.5 degrees BTDC.

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

Fraudulent Inspection #5:

41. Koch reviewed the OIS Test Data for Evolution Smog. The review indicates on April 4, 2024, a 2004 Lexus RX 330, CA license 5EGG311, VIN JTJHA31U040027818 (2004 RX 330), was tested and smog certificate # TU833125C was issued under licensed Smog Check Technician #EO639699, Urzua.

42. The Dynamic PID Chart for the 2004 RX 330 shows between time stamp 150 and 19551 engine speed is steady at approximately 700 RPM. During this time the throttle is fixed at 14.9% opening, the MAF is fixed at 3.76 gps, and the ignition timing advance for #1 cylinder is fixed at 19.5 degrees BTDC. After time stamp 19551 the engine speed accelerates to approximately 1675 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 14.9% opening, the MAF is fixed at the same 3.76 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 19.5 degrees BTDC.

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43. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the DAD was not connected to the 2004 RX 330 being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Previous Failing Test: 2004 RX 330:

44. A failing test was performed on the 2004 RX 330 at another station on March 15, 2024. The 2004 RX 330 failed the inspection for incomplete OBDII readiness monitors. The vehicle had no confirmed OBDII codes, but had pending OBDII codes P0136, P0171, P0174, and P2196. No dynamic data was collected during the inspection.

Fraudulent Inspection #6:

45. Koch reviewed the OIS Test Data for Evolution Smog. The review indicates on April 5, 2024, a 2005 Honda CR-V SE, CA license 5LCV156, VIN JHLRD78965C038106 (2005 CR-V), was tested and smog certificate # TU833128C was issued under licensed Smog Check Technician #EO639699, Urzua.

46. The Dynamic PID Chart for the 2005 CR-V shows between time stamp 137 and 19343 engine speed is steady at approximately 1650 RPM. During this time the throttle is fixed at 14.5% opening, the MAP is fixed at 25 kPa, and the ignition timing advance for #1 cylinder is fixed at 9.5 degrees BTDC. After time stamp 19343 the engine speed instantly accelerates to approximately 1650 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 14.5% opening, the MAP is fixed at the same 25 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 9.5 degrees BTDC.

47. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAP, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data

1 prove the DAD was not connected to the 2005 CR-V being certified, causing the issuance of a
2 fraudulent Smog Check Certificate of Compliance.

3 **Fraudulent Inspection #7:**

4 48. Koch reviewed the OIS Test Data for Evolution Smog. The review indicates on April
5 5, 2024, a 2004 Lexus IS 300, CA license 9DGY765, VIN JTHBD192340084715 (2004 IS 300),
6 was tested and smog certificate # TU833132C was issued under licensed Smog Check Technician
7 #EO639699, Urzua.

8 49. The Dynamic PID Chart for the 2004 IS 300 shows between time stamp 153 and
9 17061 engine speed is steady at approximately 675 RPM. During this time the throttle is fixed at
10 14.5% opening, the MAF is fixed at 3.4 gps, and the ignition timing advance for #1 cylinder is
11 fixed at 11.5 degrees BTDC. After time stamp 17061 the engine speed accelerates to
12 approximately 1775 RPM. From the time the engine RPM increases off idle to the higher RPMs,
13 the throttle is fixed at the same 14.5% opening, the MAF is fixed at the same 3.4 gps, and the
14 ignition timing advance for #1 cylinder is also still fixed at the same 11.5 degrees BTDC.

15 50. During the entire period the dynamic data was collected, the only parameter that
16 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
17 remained unchanged even though the engine speed was increased. These readings are not
18 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
19 prove the DAD was not connected to the 2004 IS 300 being certified, causing the issuance of a
20 fraudulent Smog Check Certificate of Compliance.

21 **Fraudulent Inspection #8:**

22 51. Koch reviewed the OIS Test Data for Evolution Smog. The review indicates on April
23 5, 2024, a 2001 Audi S4 2.7 Quattro, CA license 8PWX899, VIN WAURD68D71A135295 (2001
24 S4), was tested and smog certificate # TU833133C was issued under licensed Smog Check
25 Technician #EO639699, Urzua.

26 52. The Dynamic PID Chart for the 2001 S4 shows between time stamp 296 and 18329
27 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at 1.6%
28 opening, the MAF is fixed at 0 gps, and the ignition timing advance for #1 cylinder is fixed at 8

degrees BTDC. After time stamp 18329 the engine speed accelerates to approximately 1800 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 1.6% opening, the MAF is fixed at the same 0 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 8 degrees BTDC.

53. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the DAD was not connected to the 2001 S4 being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #9:

54. Koch reviewed the OIS Test Data for Evolution Smog. The review indicates on April 9, 2024, a 2000 Mercedes Benz E320, CA license 4MAP236, VIN WDBJF65J3YB113284 (2000 E320), was tested and smog certificate # TU833149C was issued under licensed Smog Check Technician #EO639699, Urzua.

55. The Dynamic PID Chart for the 2000 E320 shows between time stamp 169 and 17360 engine speed is steady at approximately 800 RPM. During this time the throttle is fixed at 2.4% opening, the MAF is fixed at 3.47 gps, the MAP is fixed at 32 kPa, and the ignition timing advance for #1 cylinder is fixed at -18 degrees BTDC. After time stamp 17360 the engine speed instantly accelerates to approximately 1700 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 2.4% opening, the MAF is fixed at the same 3.47 gps, the MAP is fixed at the same 32 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same -18 degrees BTDC.

56. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, MAP, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test

1 Data prove the DAD was not connected to the 2000 E320 being certified, causing the issuance of
2 a fraudulent Smog Check Certificate of Compliance.

3 **Previous Failing Test: 2000 E320:**

4 57. A failing test was performed on the 2000 E320 at another station on July 8, 2023. The
5 2000 E320 failed the inspection for an incomplete OBDII catalyst readiness monitor. No dynamic
6 data was collected during the inspection.

7 **Fraudulent Inspection #10:**

8 58. Koch reviewed the OIS Test Data for Evolution Smog. The review indicates on April
9 9, 2024, a 2000 Toyota Sienna LE, CA license 5YJL906, VIN 4T3ZF13C8YU251745 (2000
10 Sienna), was tested and smog certificate # TW099502C was issued under licensed Smog Check
11 Technician #EO639699, Urzua.

12 59. The Dynamic PID Chart for the 2000 Sienna shows between time stamp 141 and
13 16559 engine speed is steady at approximately 850 RPM. During this time the throttle is fixed at
14 11.4% opening, the MAF is fixed at 4.06 gps, and the ignition timing advance for #1 cylinder is
15 fixed at 20 degrees BTDC. After time stamp 16559 the engine speed accelerates to approximately
16 1800 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is
17 fixed at the same 11.4% opening, the MAF is fixed at the same 4.06 gps, and the ignition timing
18 advance for #1 cylinder is also still fixed at the same 20 degrees BTDC.

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

25 **Previous Failing Test: 2000 Sienna:**

26 61. A failing test was performed on the 2000 Sienna at another station on March 1, 2024.
27 The 2000 Sienna failed the inspection for an incomplete OBDII catalyst readiness monitor. No
28 dynamic data was collected during the inspection.

Surveillance/Station Visit: April 10, 2024:

62. On April 10, 2024, Koch conducted a surveillance of Evolution Smog. The station consists of a single testing bay with one door for vehicles to enter or exit the station. There is room for two vehicles in the testing bay. Koch arrived in the vicinity of the station at approximately 1620 hours and monitored testing activity from the Bureau's database while periodically driving by the station to observe testing activity and vehicles present.

63. Using the Bureau's database, Koch verified a test on a 2000 Ford Expedition was initiated at 1630 hours on the OIS analyzer. Koch drove by the station at approximately 1635 hours and 1640 hours and observed a white Nissan Altima parked in the front part of the testing bay each time. The test on the Ford Expedition concluded at 1643 hours.

64. Using the Bureau's database, Koch verified a test on a 2014 Nissan Altima was initiated at 1648 hours. The White Nissan Altima Koch observed in the testing bay matched the vehicle being tested. The test on the 2014 Altima concluded at 1702 hours.

65. Using the Bureau's database, Koch verified a test on a 1994 Ford Ranger was initiated at 1704 hours on the BAR97 analyzer. Koch drove by the station at approximately 1713 and 1719 hours and observed a white Ford Ranger parked in the testing bay each time Koch drove by. The test on the 1994 Ford Ranger concluded at 1728 hours.

66. At approximately 1730 hours, Koch was assisted by Bureau Program Representative Raul Garcia (Garcia), who assisted Koch in another vehicle by periodically observing station testing as he drove past the station. During the surveillance, Garcia and Koch communicated by cell phone.

67. Using the Bureau's database, Koch verified a test on a 2014 Ford Econoline van was initiated at 1736 hours. Garcia drove past the station at approximately 1741 hours and verified the Econoline van was at the station. The test on the Econoline van concluded at 1744 hours.

68. Using the Bureau's database, Koch verified a test on a 1977 Chevrolet C10 pickup (1977 C10) was initiated at 1750 hours. At approximately 1757 Koch drove past the station and the test bay was empty. Koch did not see a 1977 Chevrolet C10 anywhere near the station. At 1801 hours, Garcia drove past the station and informed Koch that he observed a Toyota Camry in

1 the testing bay. At approximately 1802 hours, Koch drove past the station and observed a Toyota
2 Camry in the testing bay with the analyzer probe in the tailpipe.

3 69. Koch parked his vehicle and got in the vehicle Garcia was driving while Koch
4 continued to monitor station testing activity on his computer. Garcia and Koch were parked at the
5 street corner just south of the station. From the location, they could see any vehicles entering or
6 exiting the property to access Evolution Smog. Koch verified the test on the 1977 Chevrolet C10
7 was completed at 1810 hours and issued a Certificate of Compliance. The test results were
8 transmitted to the VID at 1815 hours. Garcia and Koch immediately drove to the station, parking
9 behind a 2003 Toyota Camry, CA license 6BTA598, which was parked in front of the testing bay.
10 There were no vehicles in the testing bay and the 1977 Chevrolet C10 was not present at the
11 station or surrounding area.

12 70. When Garcia and Koch entered the station, Koch recognized Respondent Urzua in the
13 testing bay sitting on a chair. Another unidentified male was in the testing bay standing in front of
14 the BAR97 analyzer. The unidentified male was standing in front of the BAR97 analyzer and
15 initially attempted to exit through a rear door, setting off an alarm. The unidentified male then left
16 the property through the front of the station.

17 71. Koch questioned Urzua about the 1977 Chevrolet C10 that he had just certified.
18 Urzua admitted that the vehicle wasn't at the station and stated to Koch that he used his 2003
19 Camry to clean pipe it. Koch later verified that the 2003 Camry was registered to Respondent
20 Urzua. There were no documents for the smog test on the 1977 C10.

21 72. Koch also questioned Urzua about the 2000 Ford Expedition that he had certified
22 earlier that Koch didn't see at the station at the time. Urzua stated the Expedition was at the
23 station, in the testing bay, and was parked in front of the Nissan Altima. Koch requested the
24 paperwork for the inspection on the Expedition. Urzua stated that he didn't have any paperwork
25 and must have given all the copies of the documents to the customer.

26 ⁵ Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t),
27 "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to
28 cause the EIS to issue a certificate of compliance for another vehicle.

1 **Fraudulent Inspection #11: Clean pipe #1**

2 73. The BAR97 Test Detail shows on April 10, 2024, between 1750 and 1810 hours, a
3 1977 Chevrolet C10 pickup, CA license 1D74947, was tested and issued Certificate of
4 Compliance #TU804090C under licensed Smog Check Inspector #EO639699, Urzua. During the
5 time the 1977 Chevrolet C10 pickup was certified, it was not present at the station. Urzua's 2003
6 Toyota Camry was used to clean pipe the 1977 Chevrolet C10.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements - Respondent Evolution Smog)**

9 74. Respondent Evolution Smog's registration is subject to disciplinary action pursuant to
10 section 9884.7, subdivision (a)(1), in that Respondent Evolution Smog's employee Respondent
11 Urzua made or authorized statements which he knew or in the exercise of reasonable care should
12 have known to be untrue or misleading, as follows: Respondent Urzua certified that the vehicles
13 set forth above in paragraphs 28-73, had passed inspection and were in compliance with
14 applicable laws and regulations. In fact, Respondent Urzua conducted the inspections on those
15 vehicles using the clean plugging and/or clean piping method in order to issue smog certificates of
16 compliance and did not test or inspect the vehicles as required by Health and Safety Code section
17 44012.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Fraud - Respondent Evolution Smog)**

20 75. Respondent Evolution Smog's registration is subject to disciplinary action pursuant to
21 section 9884.7, subdivision (a)(4), in that Respondent Evolution Smog's employee Respondent
22 Urzua committed acts which constitute fraud by issuing electronic certificates of compliance for
23 the vehicles set forth above in paragraphs 28-73, without performing bona fide inspections of the
24 emission control devices and systems on those vehicles, thereby depriving the People of the State
25 of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Motor Vehicle Inspection Program –**
3 **Respondent Evolution Smog)**

4 76. Respondent Evolution Smog's smog station license is subject to disciplinary action
5 pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health
6 and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
7 paragraphs 28-73, Respondent Evolution Smog failed to comply with the following sections of the
8 Health and Safety Code:

9 (a) **Section 44012**: Respondent Evolution Smog's employee Respondent Urzua failed to
10 ensure that the emission control tests were performed on the vehicles, in accordance with
11 procedures prescribed by the department.

12 (b) **Section 44015**: Respondent Evolution Smog's employee Respondent Urzua issued
13 electronic certificates of compliance for the vehicles, without ensuring that the vehicles were
14 properly tested and inspected to determine if they were in compliance with Health and Safety
15 Code section 44012.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program -**
18 **Respondent Evolution Smog)**

19 77. Respondent Evolution Smog's smog station license is subject to disciplinary action
20 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles
21 set forth above in paragraphs 28-73, Respondent Evolution Smog's employee Respondent Urzua
22 failed to comply with the following provisions of the California Code of Regulations, Title 16, as
23 follows:

24 (a) **Section 3340.35, subdivision (c)**: Respondent Evolution Smog's employee
25 Respondent Urzua issued electronic certificates of compliance even though those vehicles had not
26 been inspected in accordance with section 3340.42, Title 16, of the California Code of
27 Regulations.

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1 (b) **Section 3340.42**: Respondent Evolution Smog's employee Respondent Urzua failed
2 to conduct the required smog tests and inspections on those vehicles in accordance with the
3 Bureau's specifications.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Dishonesty, Fraud or Deceit - Respondent Evolution Smog)**

6 78. Respondent Evolution Smog's smog station 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 regarding the vehicles set forth above in
9 paragraphs 28-73, Respondent Evolution Smog's employee Respondent Urzua committed acts
10 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
11 certificates of compliance for those vehicles without performing bona fide inspections of the
12 emission control devices and systems on the vehicles, thereby depriving the People of the State of
13 California of the protection afforded by the Motor Vehicle Inspection Program.

14 **OTHER MATTERS**

15 79. Pursuant to Business & Professions Code section 9884.7, subdivision (c), the Director
16 may suspend, revoke, or place on probation the registration for all places of business operated in
17 this State by Hung Phi Quach upon a finding that Hung Phi Quach has, or is, engaged in a course
18 of repeated and willful violations of the laws and regulations pertaining to an automotive repair
19 dealer.

20 80. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station Test Only
21 License Number TC 304529 issued to Hung Phi Quach is revoked or suspended following a
22 hearing under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the
23 name of said licensee may be likewise revoked or suspended by the Director.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Director of the Department of Consumer Affairs issue a
27 decision:
28

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 304529, issued to Hung Phi Quach; dba Evolution Smog;
2. Revoking or suspending any other Automotive Repair Dealer Registration issued to Respondent Hung Phi Quach;
3. Revoking or suspending Smog Check, Test-Only Station License Number TC 304529, issued to Hung Phi Quach; dba Evolution Smog;
4. Revoking or suspending Smog Check Inspector License Number EO 640877, issued to Hung Phi Quach;
5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent Hung Phi Quach;
6. Ordering Hung Phi Quach to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and, if placed on probation, the costs of probation monitoring; and,
7. 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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