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

13 In the Matter of the Accusation Against:

Case No. **79/25-2443**

14 **VICTOR M. ZERMENO d.b.a. SMOG**
15 **CITY**
16 **3596 University Ave**
San Diego, CA 92104

OAH No.

ACCUSATION

17 **Automotive Repair Dealer Registration No.**
18 **ARD 306196**
Smog Check Test Only Station License No.
TC 306196,

19 **VICTOR M. ZERMENO**
20 **8666 Lake Ashere Drive Apt #136**
San Diego, CA 92119

21 **Smog Check Inspector License No. EO**
22 **641442**

23 **VICTOR MANUEL ZERMENO**
24 **1225 Coronado Ave.**
Spring Valley, CA 91977

25 **Smog Check Inspector License No. 642948**

26 Respondents.
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28

1 **PARTIES**

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

4 2. On or about June 29, 2023, the Bureau issued Automotive Repair Dealer Registration
5 Number ARD 306196 to Victor M. Zermeno; dba Smog City (Respondent Smog City). The
6 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
7 charges brought herein and will expire on June 30, 2025, unless renewed.

8 3. On or about August 4, 2023, the Bureau issued Smog Check Test Only Station
9 License Number TC 306196 to Respondent Smog City. The Smog Check Test Only Station
10 License was in full force and effect at all times relevant to the charges brought herein and will
11 expire on June 30, 2025, unless renewed.

12 4. Respondent is also certified as a STAR Station. The certification was issued on
13 January 18, 2024, and will remain active unless the ARD registration and/or Smog Check Station
14 license is revoked, canceled, licenses become delinquent, or the certification is invalidated.

15 5. On or about October 5, 2018, the Bureau issued Smog Check Inspector License
16 Number EO 641442 to Victor M. Zermeno (Respondent Zermeno). The Smog Check Inspector
17 License was in full force and effect at all times relevant to the charges brought herein. The license
18 will expire on February 28, 2027, unless renewed.

19 6. On or about March 15, 2021, the Bureau issued Smog Check Inspector License
20 Number EO 642948 to Victor Manuel Zermeno¹ (Respondent Manuel Zermeno). The Smog
21 Check Inspector License was in full force and effect at all times relevant to the charges brought
22 herein and will expire on July 31, 2025, unless renewed.

23 **JURISDICTION**

24 7. This Accusation is brought before the Director of the Department of Consumer
25 Affairs ("Director") for the Bureau, under the authority of the following laws.

26 _____
27 ¹ At all times alleged herein, Respondents Victor M. Zermeno and Victor Manuel
28 Zermeno were acting as employees of Respondent Smog City and committed the acts alleged
herein in the course and scope of their employment at Respondent Smog City.

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. . . .”

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

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

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

9 **COST RECOVERY**

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

16 **VID DATA REVIEW**

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **Clean Plug #1**

23 29. Bureau Program Representative Hector Barraza (Barraza) reviewed the OIS Test Data
24 for Smog City. The review indicates that on July 31, 2024, a 2002 Chevrolet Silverado, VIN #
25

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 2GCEC19V621410083, CA License # 23473M2 was tested and smog certificate # UA884650C
2 was issued under Victor Manuel Zermeno's Smog Check Inspector License #EO 642948.

3 30. The Dynamic PID charts and data for the 2002 Chevrolet Silverado shows that
4 between time stamp 57 and 16841, the engine RPM is steady at around 750 RPM. During this
5 time, the data shows that the throttle is fixed at 20.0% opening, the MAP is fixed at 100kPa, and
6 the MAF is fixed at 5.0gps. Between time stamp 17251 and 33416, the data shows the engine
7 RPM is increased then held steady at around 2000 RPM. During the steady elevated engine RPM,
8 the data shows that the throttle continues to stay fixed at 20.0% opening, the MAP continues to
9 stay fixed at 100kPa, and the MAF continues to stay fixed at 5.0gps.

10 31. The steady idle and steady elevated engine RPM data along with the associated fixed
11 throttle position and subsequent fixed MAP and MAF readings that never changed during the
12 entire period the dynamic data was collected, are not characteristic or expected for normal engine
13 operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD)
14 was not connected to the 2002 Chevrolet Silverado being certified, causing the issuance of a
15 fraudulent Smog Certificate of Compliance.

16 **Clean Plug #2**

17 32. Barraza reviewed the OIS Test Data for Smog City. The review indicates that on
18 August 8, 2024, a 2000 BMW Z3, VIN # 4USCH3349YLF70639, CA License # RXDRJ3 was
19 tested and smog certificate # UC225730C was issued under Victor Manuel Zermeno's Smog
20 Check Inspector License #EO 642948.

21 33. The Dynamic PID charts and data for the 2000 BMW Z3 shows that between time
22 stamp 203 and 17117, the engine RPM is steady at around 630 RPM. During this time, the data
23 shows that the throttle is fixed at 0% opening and the MAF is fixed at 0gps. Between time stamp
24 17742 and 33886, the data shows the engine RPM is increased then held steady at around 2150
25 RPM. During the steady elevated engine RPM, the data shows that throttle continues to stay fixed
26 at 0% opening and the MAF continues to stay fixed at 0gps.

27 34. The steady idle and steady elevated engine RPM data along with the associated fixed
28 throttle position and subsequent fixed MAF readings that never changed during the entire period

1 the dynamic data was collected, are not characteristic or expected for normal engine operation.
2 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not
3 connected to the 2000 BMW Z3 being certified, causing the issuance of a fraudulent Smog
4 Certificate of Compliance.

5 **Clean Plug #3**

6 35. Barraza reviewed the OIS Test Data for Smog City. The review indicates that on
7 August 8, 2024, a 2002 Mercury Sable, VIN # 1MEFM50U22G602437, CA License #
8 5NAW038 was tested and smog certificate # UC225731C was issued under Victor Manuel
9 Zermeno's Smog Check Inspector License #EO 642948.

10 36. The Dynamic PID charts and data for the 2002 Mercury Sable shows that between
11 time stamp 32 and 19750, the engine RPM is steady at around 750 RPM. During this time, the
12 data show that the throttle is fixed at 17.6% opening and the MAF is fixed at 0.11gps. Between
13 time stamp 20147 and 37032, the data shows the engine RPM is increased then held steady at
14 around 2000 RPM. During the steady elevated engine RPM, the data shows that the throttle
15 continues to stay fixed at 17.6% opening and the MAF continues to stay fixed at 0.11gps.

16 37. The steady idle and steady elevated engine RPM data along with the associated fixed
17 throttle position and subsequent fixed MAF readings that never changed during the entire period
18 the dynamic data was collected, are not characteristic or expected for normal engine operation.
19 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not
20 connected to the 2002 Mercury Sable being certified, causing the issuance of a fraudulent Smog
21 Certificate of Compliance.

22 **Clean Plug #4**

23 38. Barraza reviewed the OIS Test Data for Smog City. The review indicates that on
24 August 8, 2024, a 2000 Lincoln Town Car, VIN # 1LNHM81W8YY937373, CA License #
25 8MCW888 was tested and smog certificate # UC225734C was issued under Victor Manuel
26 Zermeno's Smog Check Inspector License #EO 642948.

27 39. The Dynamic PID charts and data for the 2000 Lincoln Town Car shows that between
28 time stamp 44 and 21559, the engine RPM is steady at around 600 RPM. During this time, the

1 data shows that the throttle is fixed at 18.4% opening and the MAF is fixed at 5.7gps. Between
2 time stamp 21948 and 38632, the data shows the engine RPM is increased then held steady at
3 around 1900 RPM. During the steady elevated engine RPM, the data shows that the throttle
4 continues to stay fixed at 18.4% opening and the MAF continues to stay fixed at 5.7gps.

5 40. The steady idle and steady elevated engine RPM data along with the associated fixed
6 throttle position and subsequent fixed MAF readings that never changed during the entire period
7 the dynamic data was collected, are not characteristic or expected for normal engine operation.
8 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not
9 connected to the 2000 Lincoln Town Car being certified, causing the issuance of a fraudulent
10 Smog Certificate of Compliance.

11 **Clean Plug #5**

12 41. Barraza reviewed the OIS Test Data for Smog City. The review indicates that on
13 August 8, 2024, a 2000 Ford Expedition, VIN # 1FMRU1563YLC17904, CA License #
14 4NIM276 was tested and smog certificate # UC225735C was issued under Victor Manuel
15 Zermeno's Smog Check Inspector License #EO 642948.

16 42. The Dynamic PID charts and data for the 2000 Ford Expedition shows that between
17 time stamp 58 and 21346, the engine RPM is steady at around 500 RPM. During this time, the
18 data shows that the throttle is fixed at 18.8% opening and the MAF is fixed at 4.38gps. Between
19 time stamp 21721 and 38624, the data shows the engine RPM in increased then held steady at
20 around 2150 RPM. During the steady elevated engine RPM, the data shows that the throttle
21 continues to stay fixed at 18.8% opening and the MAF continues to stay fixed at 4.38gps.

22 43. The steady idle and steady elevated engine RPM data along with the associated fixed
23 throttle position and subsequent fixed MAF readings that never changed during the entire period
24 the dynamic data was collected, are not characteristic or expected for normal engine operation.
25 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not
26 connected to the 2000 Ford Expedition being certified, causing the issuance of a fraudulent Smog
27 Certificate of Compliance.

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1 **Clean Plug #6**

2 44. Barraza reviewed the OIS Test Data for Smog City. The review indicates that on
3 August 22, 2024, a 2002 Chevrolet Silverado, VIN # 2GCEC19XX21365800, CA License #
4 6Y63690 was tested and smog certificate # JB113351C was issued under Victor M. Zermeno's
5 Smog Check Inspector License #EO 641442.

6 45. The Dynamic PID charts and data for the 2002 Chevrolet Silverado shows that
7 between time stamp 72 and 22774, the engine RPM is steady at around 650 RPM. During this
8 time, the data shows that the throttle is fixed at 0.4% opening, the MAP is fixed at 100kPa, and
9 the MAF is fixed at 0gps. Between time stamp 23119 and 39394, the data shows the engine RPM
10 is increased then held steady at around 2400 RPM. During the steady elevated engine RPM, the
11 data shows that the throttle continues to stay fixed at 0.4% opening, the MAP continues to stay
12 fixed at 100kPa, and the MAF continues to stay fixed at 0gps.

13 46. The steady idle and steady elevated engine RPM data along with the associated fixed
14 throttle position and subsequent fixed MAP and MAF readings that never changed during the
15 entire period the dynamic data was collected, are not characteristic or expected for normal engine
16 operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD)
17 was not connected to the 2002 Chevrolet Silverado being certified, causing the issuance of a
18 fraudulent Smog Certificate of Compliance.

19 **Clean Plug #7**

20 47. Barraza reviewed the OIS Test Data for Smog City. The review indicates on August
21 22, 2024, a 2004 Toyota Tundra, VIN # 5TBRT341X4S450429, CA License # 58721L1 was
22 tested and smog certificate # IZ933142C was issued under Victor M. Zermeno's Smog Check
23 Inspector License #EO 641442.

24 48. The Dynamic PID charts and data for the 2004 Toyota Tundra shows that between
25 time stamp 179 and 24119, the engine RPM is steady at around 650 RPM. During this time, the
26 data shows that the throttle is fixed at 15.7% opening and the MAF is fixed at 7.35gps. At time
27 stamp 24490, the engine RPM drops to 0 RPM then at time stamp 27143 suddenly increases to
28 1724 RPM. Between time stamp 27513 and 43611, the data shows the engine RPM is increased

1 then held steady at around 2000 RPM. During the steady elevated engine RPM, the data shows
2 that the throttle continues to stay fixed at 15.7% opening and the MAF continues to stay fixed at
3 7.35gps.

4 49. The steady idle and steady elevated engine RPM data along with the associated fixed
5 throttle position and subsequent fixed MAF readings that never changed during the entire period
6 the dynamic data was collected, are not characteristic or expected for normal engine operation.
7 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not
8 connected to the 2004 Toyota Tundra being certified, causing the issuance of a fraudulent Smog
9 Certificate of Compliance.

10 **Clean Plug #8**

11 50. Barraza reviewed the OIS Test Data for Smog City. The review indicates that on
12 August 22, 2024, a 2002 Mercedes-Benz SLK 230, VIN # WDBKK49F42F254018, CA License
13 # SRAGG was tested and smog certificate # IZ933143C was issued under Victor M. Zermeno's
14 Smog Check Inspector License #EO 641442.

15 51. The Dynamic PID charts and data for the 2002 Mercedes-Benz SLK 230 shows that
16 between time stamp 151 and 20793, the engine RPM is steady at around 700 RPM. During this
17 time, the data show that the throttle is fixed at 3.1% opening and the MAF is fixed at 4.41gps.
18 Between time stamp 21158 and 37567, the data shows the engine RPM is increased then held
19 steady at around 1800 RPM. During the steady elevated engine RPM, the data shows that the
20 throttle continues to stay fixed at 3.1% opening and the MAF continues to stay fixed at 4.41gps.

21 52. The steady idle and steady elevated engine RPM data along with the associated fixed
22 throttle position and subsequent fixed MAF readings that never changed during the entire period
23 the dynamic data was collected, are not characteristic or expected for normal engine operation.
24 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not
25 connected to the 2002 Mercedes-Benz SLK 230 being certified, causing the issuance of a
26 fraudulent Smog Certificate of Compliance.

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Clean Plug #9

53. Barraza reviewed the OIS Test Data for Smog City. The review indicates that on August 22, 2024, a 2002 BMW 325 I, VIN # WBAEV33412PD00423, CA License # 4YOX673 was tested and smog certificate # IZ933150C was issued under Victor M. Zermeno's Smog Check Inspector License #EO 641442.

54. The Dynamic PID charts and data for the 2002 BMW 325 I show that between time stamp 390 and 19614, the engine RPM is steady at around 650 RPM. During this time, the data shows that the throttle is fixed at 0% opening and the MAF is fixed at 4.34gps. Between time stamp 20003 and 37061, the data shows the engine RPM is increased then ultimately held steady at around 2000 RPM. During the steady elevated engine RPM, the data shows that the throttle continues to stay fixed at 0% opening and the MAF continues to stay fixed at 4.34gps.

55. The steady idle and steady elevated engine RPM data along with the associated fixed throttle position and subsequent fixed MAF readings that never changed during the entire period the dynamic data was collected, are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected to the 2002 BMW 325 I being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Clean Plug #10

56. Barraza reviewed the OIS Test Data for Smog City. The review indicates that on August 22, 2024, a 2003 Toyota Camry, VIN # 4T1BE32K23U233266, CA License # 5ESC431 was tested and smog certificate # JB113353C was issued under Victor M. Zermeno's Smog Check Inspector License #EO 641442.

57. The Dynamic PID charts and data for the 2003 Toyota Camry shows that between time stamp 118 and 27731, the engine RPM is steady at around 600 RPM before dropping to around 500 RPM. During this time, the data shows that the throttle is fixed at 16.5% opening and the MAF is fixed at 3.14gps. Between time stamp 28103 and 44899, the data shows the RPM is increased then ultimately held steady at around 2150 RPM. During the steady elevated engine

1 RPM, the data shows that the throttle continues to stay fixed at 16.5% opening and the MAF
2 continues to stay fixed at 3.14gps.

3 58. The steady idle and steady elevated engine RPM data along with the associated fixed
4 throttle position and subsequent fixed MAF readings that never changed during the entire period
5 the dynamic data was collected, are not characteristic or expected for normal engine operation.
6 The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not
7 connected to the 2003 Toyota Camry being certified, causing the issuance of a fraudulent Smog
8 Certificate of Compliance.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements - Respondent Smog City)**

11 59. Respondent Smog City's registration is subject to disciplinary action pursuant to
12 section 9884.7, subdivision (a)(1), in that Respondents made or authorized statements which they
13 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
14 follows: Respondents certified that the vehicles set forth above in paragraphs 29-58, had passed
15 inspection and were in compliance with applicable laws and regulations. In fact, Respondents
16 conducted the inspections on those vehicles using the clean plugging method in order to issue
17 smog certificates of compliance, and did not test or inspect the vehicles as required by Health and
18 Safety Code section 44012.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud - Respondent Smog City)**

21 60. Respondent Smog City's registration is subject to disciplinary action pursuant to
22 section 9884.7, subdivision (a)(4), in that Respondent Smog City's employees committed acts
23 which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth
24 above in paragraphs 29-58, without performing bona fide inspections of the emission control
25 devices and systems on those vehicles, thereby depriving the People of the State of California of
26 the protection afforded by the Motor Vehicle Inspection Program.

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1 **THIRD CAUSE FOR DISCIPLINE**

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

4 61. Respondent Smog City'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 29-58, Respondents failed to comply with the following sections of the Health and
8 Safety Code:

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

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

15 **FOURTH CAUSE FOR DISCIPLINE**

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

18 62. Respondent Smog City's smog station license is subject to disciplinary action
19 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the
20 vehicles set forth above in paragraphs 29-58, Respondents failed to comply with the following
21 provisions of the California Code of Regulations, Title 16, as follows:

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

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

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit - Respondent Smog City)**

3 63. Respondent Smog City's smog station license is subject to disciplinary action
4 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
5 and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
6 paragraphs 29-58, Respondents employees committed acts involving dishonesty, fraud or deceit
7 whereby another was injured by issuing electronic certificates of compliance for those vehicles
8 without performing bona fide inspections of the emission control devices and systems on the
9 vehicles, thereby depriving the People of the State of California of the protection afforded by the
10 Motor Vehicle Inspection Program.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Violations of the Motor Vehicle Inspection Program – Respondent Zermeno)**

13 64. Respondent Zermeno's smog check inspector license is subject to discipline pursuant
14 to Health and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth
15 above in paragraphs 44-46, 47-49, 50-52, 53-55 and 56-58, Respondent Zermeno failed to comply
16 with section 44012 of the Health and Safety Code in a material respect, as follows: Respondent
17 Zermeno failed to perform the emission control tests on those vehicles in accordance with
18 procedures prescribed by the department.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
21 **Respondent Zermeno)**

22 65. Respondent Zermeno's smog check inspector license is subject to discipline pursuant
23 to Health and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth
24 above in paragraphs 44-46, 47-49, 50-52, 53-55 and 56-58, Respondent Zermeno failed to comply
25 with provisions of the California Code of Regulations, title 16, as follows:

26 (a) **Section 3340.30, subdivision (a):** Respondent Zermeno failed to inspect and test
27 those vehicles in accordance with Health and Safety Code section 44012.
28

1 (b) **Section 3340.41, subdivision (c)**: Respondent Zermeno entered false information
2 into the EIS.

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

5 **EIGHTH CAUSE FOR DISCIPLINE**

6 **(Dishonesty, Fraud or Deceit - Respondent Zermeno)**

7 66. Respondent Zermeno's smog check inspector license is subject to discipline pursuant
8 to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and
9 Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
10 paragraphs 44-46, 47-49, 50-52, 53-55 and 56-58, Respondent Zermeno committed acts involving
11 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
12 compliance for those vehicles without performing bona fide inspections of the emission control
13 devices and systems on the vehicles., thereby depriving the People of the State of California of
14 the protection afforded by the Motor Vehicle Inspection Program.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Violations of the Motor Vehicle Inspection Program – Respondent Manuel Zermeno)**

17 67. Respondent Manuel Zermeno's smog check inspector license is subject to discipline
18 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that regarding the
19 vehicles set forth above in paragraphs 29-31, 32-34, 35-37, 38-40, and 41-43, Respondent Manuel
20 Zermeno failed to comply with section 44012 of the Health and Safety Code in a material respect,
21 as follows: Respondent Manuel Zermeno failed to perform the emission control tests on those
22 vehicles in accordance with procedures prescribed by the department.

23 **TENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
25 **Respondent Manuel Zermeno)**

26 68. Respondent Manuel Zermeno's smog check inspector license is subject to discipline
27 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the
28 vehicles set forth above in paragraphs 29-31, 32-34, 35-37, 38-40, and 41-43, Respondent Manuel

1 Zermeno failed to comply with provisions of the California Code of Regulations, title 16, as
2 follows:

3 (a) **Section 3340.30, subdivision (a)**: Respondent Manuel Zermeno failed to inspect and
4 test those vehicles in accordance with Health and Safety Code section 44012.

5 (b) **Section 3340.41, subdivision (c)**: Respondent Manuel Zermeno entered false
6 information into the EIS.

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

9 **ELEVENTH CAUSE FOR DISCIPLINE**

10 **(Dishonesty, Fraud or Deceit - Respondent Manuel Zermeno)**

11 69. Respondent Manuel Zermeno's smog check inspector license is subject to discipline
12 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
13 and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
14 paragraphs 29-31, 32-34, 35-37, 38-40, and 41-43, Respondent Manuel Zermeno committed acts
15 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
16 certificates of compliance for those vehicles without performing bona fide inspections of the
17 emission control devices and systems on the vehicles., thereby depriving the People of the State
18 of California of the protection afforded by the Motor Vehicle Inspection Program.

19 **DISCIPLINARY CONSIDERATIONS**

20 70. By way of aggravation, Complainant alleges that on May 3, 2024, the Bureau filed
21 Accusation Case No. 79/23-13828 for discipline against the Smog Check Inspector License of
22 Victor M. Zermeno, EO 641442. The Accusation alleges that fraudulent Smog Check inspections
23 were performed utilizing the license of Victor M. Zermeno, via the clean plugging method.

24 **OTHER MATTERS**

25 71. Pursuant to Business & Professions Code section 9884.7, subdivision (c), the Director
26 may suspend, revoke, or place on probation the registration for all places of business operated in
27 this State by Respondent Smog City upon a finding that Respondent Smog City has, or is,
28

engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

72. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station License Number TC 306196 issued to Respondent Smog City is revoked or suspended following a hearing under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

73. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License Number EO 641442, issued to Respondent Zermeno, is revoked or suspended following a hearing under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

74. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License Number EO 642948, issued to Respondent Manuel Zermeno, is revoked or suspended following a hearing under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending automotive repair dealer registration number ARD 306196, issued to Victor M. Zermeno; dba Smog City;

2. Revoking or suspending any other automotive repair dealer registration issued to Victor M. Zermeno;

3. Revoking or suspending Smog Check Test-Only Station License Number TC 306196, issued to Victor M. Zermeno; dba Smog City;

4. Revoking or suspending Smog Check Inspector License Number EO 641442, issued to Victor M. Zermeno;

5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of Victor M. Zermeno;

1 6. Revoking or suspending Smog Check Inspector License Number EO 642948, issued
2 to Victor Manuel Zermeno;

3 7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
4 Division 26 of the Health & Saf. Code in the name of Victor Manuel Zermeno;

5 8. Ordering Victor M. Zermeno and Victor Manuel Zermeno to pay the Bureau of
6 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
7 pursuant to Business and Professions Code section 125.3 and if placed on probation, the costs of
8 probation monitoring; and,

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

10
11 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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