

1 ROB BONTA
Attorney General of California
2 MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General
3 DIONNE MOCHON
Deputy Attorney General
4 State Bar No. 203092
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9012
7 Facsimile: (619) 645-2061
Attorneys for Complainant

9
10 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
11 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA
12
13

14 In the Matter of the Accusation Against:

Case No. 79/22-10900

15 **ADVANCED SMOG LLC,**
16 **DBA ADVANCED SMOG;**
17 **HECTOR MANUEL RIVERA, MEMBER**
13718 Old 215 Frontage Road, #B
Moreno Valley, CA 92553

ACCUSATION

18 **Automotive Repair Dealer Registration No.**
ARD 285796
19 **Smog Check, Test Only Station No. TC**
285796

20
21 **and**

22 **JOSEPH PAUL MARTINEZ**
27738 Moonridge Drive
23 **Sun City, CA 92585**

24 **Smog Check Inspector No. EO 641473**

25 Respondents.
26
27
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 (Bureau), Department of Consumer Affairs.

4 **Automotive Repair Dealer Registration**

5 2. On or about January 18, 2017, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 285796 (Registration) to Advanced Smog LLC, dba
7 Advanced Smog; Hector Manuel Rivera, Member (Respondent Advanced Smog). The
8 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
9 charges brought herein and will expire on January 31, 2023, unless renewed.

10 **Smog Check, Test Only, Station License**

11 3. On or about February 6, 2017, the Bureau of Automotive Repair issued Smog Check,
12 Test Only Station Number TC 285796 to Hector Manuel Rivera (Respondent Rivera). The Smog
13 Check, Test Only Station license was in full force and effect at all times relevant to the charges
14 brought herein and will expire on January 31, 2023, unless renewed.

15 4. On or about April 12, 2017, the Bureau issued STAR Station certification to
16 Respondent Rivera. That certification will remain active unless the Automotive Repair Dealer
17 registration and/or Smog Check Station license is revoked, canceled, become delinquent or if the
18 certification is invalidated.

19 **Smog Check Inspector License**

20 5. On or about October 19, 2018, the Bureau of Automotive Repair issued Smog Check
21 Inspector Number EO 641473 to Joseph Paul Martinez (Respondent Martinez). The Smog Check
22 Inspector license was in full force and effect at all times relevant to the charges brought herein
23 and will expire on November 30, 2024 unless renewed.

24 **JURISDICTION**

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

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1 7. Section 118, subdivision (b), of the Business and Professions Code (Code) provides
2 that the suspension, expiration, surrender, or cancellation of a license shall not deprive the
3 Director of jurisdiction to proceed with a disciplinary action during the period within which the
4 license may be renewed, restored, reissued, or reinstated.

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

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

12 10. Health and Safety Code section 44072 states:

13 Any license issued under this chapter and the regulations adopted pursuant to it
14 may be suspended or revoked by the director. The director may refuse to issue a
15 license to any applicant for the reasons set forth in Section 44072.1. The proceedings
16 under this article shall be conducted in accordance with Chapter 5 (commencing with
17 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the
18 director shall have all the powers granted therein.

19 11. Health and Safety Code section 44072.4 states:

20 The director may take disciplinary action against any licensee after a hearing as
21 provided in this article by any of the following:

22 (a) Imposing probation upon terms and conditions to be set forth by the
23 director.

24 (b) Suspending the license.

25 (c) Revoking the license.

26 12. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
27 expiration or suspension of a license by operation of law, or by order or decision of the Director
28 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 any investigation of, or action or disciplinary
proceedings against the licensee, or to render a decision suspending or revoking the license.

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STATUTORY PROVISIONS

13. Section 477 of the Code states:

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

14. Section 9884.7 of the Code states:

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

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

...

(4) Any other conduct that constitutes fraud.

...

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

...

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

...

15. Section 9889.22 of the Code states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

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1 16. Section 17200 of the Code states:

2 As used in this chapter, unfair competition shall mean and include any
3 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
4 misleading advertising and any act prohibited by Chapter 1 (commencing with
 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

5 17. Section 17500 of the Code states:

6 It is unlawful for any person, firm, corporation or association, or any employee
7 thereof with intent directly or indirectly to dispose of real or personal property or to
8 perform services, professional or otherwise, or anything of any nature whatsoever or
9 to induce the public to enter into any obligation relating thereto, to make or
10 disseminate or cause to be made or disseminated before the public in this state, or to
11 make or disseminate or cause to be made or disseminated from this state before the
12 public in any state, in any newspaper or other publication, or any advertising device,
13 or by public outcry or proclamation, or in any other manner or means whatever,
14 including over the Internet, any statement, concerning that real or personal property
15 or those services, professional or otherwise, or concerning any circumstance or matter
16 of fact connected with the proposed performance or disposition thereof, 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, or for any person, firm, or
 corporation to so make or disseminate or cause to be so made or disseminated any
 such statement as part of a plan or scheme with the intent not to sell that personal
 property or those services, professional or otherwise, so advertised at the price stated
 therein, or as so advertised. Any violation of the provisions of this section is a
 misdemeanor punishable by imprisonment in the county jail not exceeding six
 months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by
 both that imprisonment and fine.

17 18. Section 44012 of the Health & Safety Code

18 The test at the smog check stations shall be performed in accordance with
19 procedures prescribed by the department and may require loaded mode dynamometer
20 testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard
21 diagnostic system, or other appropriate test procedures as determined by the
22 department in consultation with the state board. The department shall implement
23 testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or
24 two-speed idle testing, on model year 2000 and newer vehicles only, beginning no
25 earlier than January 1, 2013. However, the department, in consultation with the state
26 board, may prescribe alternative test procedures that include loaded mode
27 dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems
28 that the department and the state board determine exhibit operational problems. The
 department shall ensure, as appropriate to the test method, the following:

 ...

 (f) A visual or functional check is made of emission control devices specified
 by the department, including the catalytic converter in those instances in which the
 department determines it to be necessary to meet the findings of Section 44001. The
 visual or functional check shall be performed in accordance with procedures
 prescribed by the department.

1 19. Section 44015, subdivision (b), of the Health & Safety Code provides that a
2 certificate of compliance shall be issued if a vehicle meets the requirements of Health & Safety
3 Code section 40012.

4 20. Section 44032 of the Health & Safety Code provides that qualified technicians shall
5 perform tests of emissions control devices and systems in accordance with Health & Safety Code
6 section 40012.

7 21. Section 44059 of the Health and Safety Code states:

8 The willful making of any false statement or entry with regard to a material
9 matter in any oath, affidavit, certificate of compliance or noncompliance, or
10 application form which is required by this chapter or Chapter 20.3 (commencing with
Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury
and is punishable as provided in the Penal Code.

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

12

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

16 (d) Once a license has been revoked for a smog check station or technician
17 under subdivision (a) or (c), the license shall not be reinstated for any reason. A
hearing shall be held and a decision issued within 60 days after the date on which the
18 notice of the temporary suspension was provided unless the time for the hearing has
been extended, or the right to a hearing has been waived, by the licensee.

19

20 23. Section 44072.2 of the Health and Safety Code states:

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

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

25

26 (c) Violates any of the regulations adopted by the director pursuant to this
27 chapter.
28

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

24. Section 44072.8 of the Health and Safety Code states that 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.

25. Section 4463 of the Vehicle Code states:

(a) A person who, with intent to prejudice, damage, or defraud, commits any of the following acts is guilty of a felony and upon conviction thereof shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or two or three years, or by imprisonment in a county jail for not more than one year:

(1) Alters, forges, counterfeits, or falsifies a certificate of ownership, registration card, certificate, license, license plate, temporary license plate, device issued pursuant to Section 4853, special plate, or permit provided for by this code or a comparable certificate of ownership, registration card, certificate, license, license plate, temporary license plate, device comparable to that issued pursuant to Section 4853, special plate, or permit provided for by a foreign jurisdiction, or alters, forges, counterfeits, or falsifies the document, device, or plate with intent to represent it as issued by the department, or alters, forges, counterfeits, or falsifies with fraudulent intent an endorsement of transfer on a certificate of ownership or other document evidencing ownership, or with fraudulent intent displays or causes or permits to be displayed or have in his or her possession a blank, incomplete, canceled, suspended, revoked, altered, forged, counterfeit, or false certificate of ownership, registration card, certificate, license, license plate, temporary license plate, device issued pursuant to Section 4853, special plate, or permit.

(2) Utters, publishes, passes, or attempts to pass, as true and genuine, a false, altered, forged, or counterfeited matter listed in paragraph (1) knowing it to be false, altered, forged, or counterfeited.

...

REGULATORY PROVISIONS

26. California Code of Regulations, title 16, section 3340.30 subdivision (a), 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.

...

1 27. California Code of Regulations, title 16, section 3340.35, states:

2 . . .

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

8 (1) Customers shall be charged the same price for certificates as that paid by
9 the licensed station; and

10 (2) Sales tax shall not be assessed on the price of certificates.

11 . . .

12 28. California Code of Regulations, title 16, section 3340.41 states:

13 . . .

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

18 29. California Code of Regulations, title 16, section 3373, states:

19 No automotive repair dealer or individual in charge shall, in filling out an
20 estimate, invoice, or work order, or record required to be maintained by section
21 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
22 information which will cause any such document to be false or misleading, or where
23 the tendency or effect thereby would be to mislead or deceive customers, prospective
24 customers, or the public.

25 **COST RECOVERY**

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

29 **DEFINITIONS**

30 31. On-Board Diagnostic Inspection System (BAR-OIS) is the Smog Check equipment

1 required in all areas of the State when inspecting most model-year 2000 and newer gasoline and
2 hybrid vehicles and 1998 and newer diesel vehicles subject to the program. The system consists
3 of a certified Data Acquisition Device (DAD), computer, bar code scanner, and printer. The
4 DAD is an On-Board Diagnostic (OBD) scan tool that, when requested by the California BAR-
5 OIS software, retrieves OBD data from the vehicle.

6 32. The On-Board Diagnostics – Generation II (OBD II) communication protocol
7 describes the specified communication “language” used by the OBD II system electronic control
8 unit to communicate to scan tools and other devices such as the On-Board Diagnostic Inspection
9 System (OIS). The communication protocol is programmed into the OBD II system electronic
10 control unit during manufacture and does not change.

11 33. Parameter Identifications (PID) are data points reported by the vehicle on-board
12 computer to a scan tool or BAR-OIS. Examples of PIDs are engine speed, vehicle speed, engine
13 temperature, and other input and output values utilized by the vehicle’s on-board computer. The
14 PID count is the number of data points reported by the vehicle’s on-board computer and is
15 programmed during manufacture.

16 34. The Vehicle Identification Number (VIN) that is physically present on all vehicles is
17 also required to be programmed into the vehicle’s OBD II on 2005 and newer vehicles, and on
18 many occasions was programmed into the OBD II system electronic control unit in earlier model-
19 years. This electronically programmed VIN, also known as the “eVIN,” is captured by BAR
20 during a Smog Check, and should match the physical VIN on the vehicle.

21 35. Clean Plugging is a method by which another vehicle’s properly functioning OBD II
22 system, or another source, is used to generate passing data readings or diagnostic information for
23 the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance
24 and or not present for testing.

25 **FACTUAL ALLEGATIONS**

26 36. On or around July 27, 2022, a Bureau representative conducted a review of the
27 Vehicle Information Database data for Smog Check inspections performed at Advanced Smog.
28 The review showed a pattern of vehicles being certified with missing or unexpected eVINs,

incorrect communication protocols, and/or incorrect PID values. This information confirms the vehicles receiving smog certificates were not tested during the OBD II functional test, which constitutes clean plugging.

37. At all times alleged herein, Respondent Martinez was acting as a technician, employee, partner, officer, or member of Respondent Advanced Smog.

Clean Plug Number 1

38. OIS Test Data for Advanced Smog indicates that on May 25, 2021, a 2007 Mercedes Benz E550, VIN WDBUF72X47B041831, was tested and Smog Certificate Number RK414379C was issued under licensed Smog Check Technician Number EO 641473, Respondent Martinez. The OIS Test Data for the 2007 Mercedes Benz E550 shows the eVIN was transmitted as 3GYFK66N16G225990, the communication protocol was transmitted as JVPW, and the PID count was 22. Similar Vehicle OIS Test Data for 2007 Mercedes Benz E550 vehicles show they transmit the correct eVIN, they had the expected communication protocol ICAN11bt5, and they transmit a PID count of 44 or 44/12.

39. The discrepancies in the OIS Test Data show the OIS Data Acquisition Device was not connected to the 2007 Mercedes Benz E550 being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

40. The following chart illustrates the clean plugging activity of Respondents Rivera and Martinez on May 25, 2021:

Certificate # RK414379C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (May 25, 2021)	3GYFK66N16G225990	JVPW	22
Expected OBD II Value	WDBUF72X47B041831	ICAN11bt5	44, or 44/12

Clean Plug Number 2

41. OIS Test Data for Advanced Smog indicates that on May 29, 2021, a 2005 Toyota Corolla CE, VIN 1NXBR32E35Z386353, was tested and Smog Certificate Number SC278587C was issued under licensed Smog Check Technician Number EO 641473, Respondent Martinez. The OIS Test Data for the 2005 Toyota Corolla CE shows the eVIN was transmitted as

3N1CN7AP3EL817625, the communication protocol was transmitted as ICAN11bt5, and the PID count was 39/16. Similar Vehicle OIS Test Data for 2005 Toyota Corolla CE vehicles show they transmit the correct eVIN, they had the expected communication protocol I914, and they transmit a PID count of 18.

42. The discrepancies in the OIS Test Data show the OIS Data Acquisition Device was not connected to the 2005 Toyota Corolla CE being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

43. The following chart illustrates the clean plugging activity of Respondents Rivera and Martinez on May 29, 2021:

Certificate # SC278587C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (May 29, 2021)	3N1CN7AP3EL817625	ICAN11bt5	39/16
Expected OBD II Value	1NXBR32E35Z386353	I914	18

Clean Plug Number 3

44. OIS Test Data for Advanced Smog indicates that on June 16, 2021, a 2001 Chevrolet S Truck S10, VIN 1GCCS14521K119385, was tested and Smog Certificate Number IL423673C was issued under licensed Smog Check Technician Number EO 641473, Respondent Martinez. The OIS Test Data for the 2001 Chevrolet S Truck S10 shows the eVIN was transmitted as 1GNEC13T03R109476, the communication protocol was transmitted as JVPW, and the PID count was 22. Similar Vehicle OIS Test Data for 2001 Chevrolet S Truck S10 vehicles show they transmit the correct eVIN, they had the expected communication protocol JVPW, and they transmit a PID count of 17.

45. The discrepancies in the OIS Test Data show the OIS Data Acquisition Device was not connected to the 2001 Chevrolet S Truck S10 being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

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46. The following chart illustrates the clean plugging activity of Respondents Rivera and Martinez on June 16, 2021:

Certificate # IL423673C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (June 16, 2021)	1GNEC13T03R109476	JVPW	22
Expected OBD II Value	1GCCS14521K119385	JVPW	17

Clean Plug Number 4

47. OIS Test Data for Respondent Shop indicates that on October 13, 2021, a 2006 Ford Ranger, VIN 1FTYR10DX6PA75404, was tested and Smog Certificate Number SI193475C was issued under licensed Smog Check Technician Number EO 641473, Respondent Martinez. The OIS Test Data for the 2006 Ford Ranger shows the eVIN was transmitted as 1FTYR10DX6PA75404, the communication protocol was transmitted as ICAN11bt5, and the PID count was 35. Similar Vehicle OIS Test Data for 2006 Ford Ranger vehicles show they transmit the correct eVIN, they had the expected communication protocol JPWM, and they transmit a PID count of 19.

48. The discrepancies in the OIS Test Data show the OIS Data Acquisition Device was not connected to the 2006 Ford Ranger being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

49. The following chart illustrates the clean plugging activity of Respondents Rivera and Martinez on October 13, 2021:

Certificate # SI193475C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (October 13, 2021)	1FTYR10DX6PA75404	ICAN11bt5	35
Expected OBD II Value	1FTYR10DX6PA75404	JPWM	19

Clean Plug Number 5

50. OIS Test Data for Respondent Shop indicates that on November 4, 2021, a 2008 Nissan Pathfinder S, VIN 5N1AR18U58C635633, was tested and Smog Certificate Number SI672958C was issued under licensed Smog Check Technician Number EO 641473, Respondent

Martinez. The OIS Test Data for the 2008 Nissan Pathfinder S shows the eVIN was transmitted as 5N1AR18U58C635633, the communication protocol was transmitted as I914, and the PID count was 22. Similar Vehicle OIS Test Data for 2008 Nissan Pathfinder S vehicles show they transmit the correct eVIN, they had the expected communication protocol ICAN11bt5, and they transmit a PID count of 43.

51. The discrepancies in the OIS Test Data show the OIS Data Acquisition Device was not connected to the 2008 Nissan Pathfinder S being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

52. The following chart illustrates the clean plugging activity of Respondents Rivera and Martinez on November 4, 2021:

Certificate # SI672958C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (November 04, 2021)	5N1AR18U58C63563 3	I914	22
Expected OBD II Value	5N1AR18U58C63563 3	ICAN11bt 5	43

Clean Plug Number 6

53. OIS Test Data for Respondent Shop indicates that on February 19, 2022, a 2001 Chevrolet Tahoe C1500, VIN 1GNEC13T91J289570, was tested and Smog Certificate Number SM807273C was issued under licensed Smog Check Technician Number EO 641473, Respondent Martinez. The OIS Test Data for the 2001 Chevrolet Tahoe C1500 shows the eVIN was transmitted as 3N1BC13E68L394294, the communication protocol was transmitted as ICAN11bt5 and the PID count was 38. Similar Vehicle OIS Test Data for 2001 Chevrolet Tahoe C1500 vehicles show they transmit the correct eVIN, they had the expected communication protocol JVPW, and they transmit a PID count of 22 or 23.

54. The discrepancies in the OIS Test Data show the OIS Data Acquisition Device was not connected to the 2001 Chevrolet Tahoe C1500 being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

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55. The following chart illustrates the clean plugging activity of Respondents Rivera and Martinez on February 19, 2022:

Certificate # SM807273C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (February 19, 2022)	3N1BC13E68L394294	ICAN11bt5	38
Expected OBD II Value	1GNEC13T91J289570	JVPW	22 or 23

Improper Inspection Number 7

56. OIS Test Data for Respondent Shop indicates that on February 25, 2022, a 2015 Toyota Prius, VIN JTDKN3DUXF1921833, was tested and Smog Certificate Number SM583550C was issued under licensed Smog Check Technician Number EO 641473, Respondent Martinez. The OIS Test Data for the 2015 Toyota Prius shows the eVIN was transmitted as JTMKF4DV9A5024144, the communication protocol was transmitted as ICAN11bt5 and the PID count was 40. Similar Vehicle OIS Test Data for 2015 Toyota Prius vehicles show they transmit the correct eVIN, they had the expected communication protocol ICAN11bt5, and they transmit a PID count of 38/27 or 39/27.

57. The discrepancies in the OIS Test Data show the OIS Data Acquisition Device was not connected to the 2015 Toyota Prius being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

58. The following chart illustrates the clean plugging activity of Respondents Rivera and Martinez on February 25, 2022:

Certificate # SM583550C	eVIN	Protocol	PID Count
Improper Passing Inspection (February 25, 2022)	JTMKF4DV9A5024144	ICAN11bt5	40
Expected OBD II Value	JTDKN3DUXF1921833	ICAN11bt5	38/27, or 39/27

Clean Plug Number 8

59. OIS Test Data for Respondent Shop indicates that on May 31, 2022, a 2006 Honda Element EX, VIN 5J6YH28706L004978, was tested and Smog Certificate Number SQ725374C was issued under licensed Smog Check Technician Number EO 641473, Respondent Martinez.

The OIS Test Data for the 2006 Honda Element EX shows the eVIN was transmitted as 5J6YH28706L004978, the communication protocol was transmitted as ICAN29bt5 and the PID count was 37. Similar Vehicle OIS Test Data for 2006 Honda Element EX vehicles show they transmit the correct eVIN, they had the expected communication protocol I914, and they transmit a PID count of 20.

60. The discrepancies in the OIS Test Data show the OIS Data Acquisition Device was not connected to the 2006 Honda Element EX being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

61. The following chart illustrates the clean plugging activity of Respondents Rivera and Martinez on May 31, 2022:

Certificate # SQ725374C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (May 31, 2022)	5J6H28706L004978	ICAN29bt5	37
Expected OBD II Value	5J6H28706L004978	I914	20

FIRST CAUSE FOR DISCIPLINE

(Improper Emission Control Systems Inspection)

62. Respondents Advanced Smog and Martinez subjected their Automotive Repair Dealer Registration, Smog Check Test Only Station License, and Smog Check Repair Technician license to discipline in that, by conducting smog tests and issuing fraudulent smog certificates of compliance as fully described in paragraphs 36 through 61 above, Respondents failed to comply with the smog test procedures prescribed by the Department of Consumer Affairs and as set forth in the Smog Check Manual. (Code section 9884.7, subdivision (a)(6); Health and Safety Code sections 44012 and 44072.2, subdivision (a); and California Code of Regulations., title 16, sections 3340.30, subdivision (a).)

SECOND CAUSE FOR DISCIPLINE

(Failure to Perform a Visual and/or Functional Check of Emission Control Devices)

63. Respondents Advanced Smog and Martinez subjected their Automotive Repair Dealer Registration, Smog Check Test Only Station License, and Smog Check Repair Technician

1 license to discipline in that, in conducting the smog tests and issuing the fraudulent smog
2 certificates of compliance described in paragraphs 36 through 61 above, Respondents failed to
3 conduct a visual or functional check of emission control devices in accordance with procedures
4 prescribed by the Department of Consumer Affairs. (Business and Professions Code section
5 9884.7, subdivision (a)(6); Health and Safety Code sections 44012, subdivision (f), 44032,
6 44072.2, subdivision (a); 44072.10 subdivision (c), and 44072.2 subdivision (d), California Code
7 of Regulations., title 16, section 3340.30, subdivision (a)).

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Issuance of a Certificate of Compliance for Vehicle Not Properly Tested)**

10 64. Respondent Advanced Smog subjected its Automotive Repair Dealer Registration
11 and Smog Check Test Only Station License to discipline in that, in conducting the smog tests and
12 issuing the fraudulent smog certificates of compliance described in paragraphs 36 through 61,
13 above, Respondent Advanced Smog issued certificates of compliance to the owners or operators
14 of vehicles without complying with the procedures specified in California Code of Regulations,
15 title 16, section 3340.42 and without all the required emission control equipment and devices
16 installed and functioning correctly. (Business and Professions Code section 9884.7, subdivision
17 (a)(6); Health and Safety Code section 44072.2, subdivision. (a), Vehicle Code section 4463,
18 subdivision (a)(2)).

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 65. Respondents Advanced Smog and Martinez subjected their Automotive Repair
22 Dealer Registration, Smog Check Test Only Station License, and Smog Check Repair Technician
23 license to discipline in that, in conducting the smog tests and issuing the fraudulent smog
24 certificates of compliance described in paragraphs 36 through 61, above, Respondents made or
25 authorized a written or oral statement which was untrue or misleading and which was known, or
26 which by the exercise of reasonable care should have been known, to be untrue or misleading.
27 (Business and Professions Code section 9884.7, subdivision (a)(1) and 17500, and Health and
28

1 Safety Code sections 44012, subdivision (f), 44032, 44059, and 44072.2, subdivisions (a), (c),
2 and (d).

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Conduct Constituting Fraud)**

5 66. Respondents Advanced Smog and Martinez subjected their Automotive Repair
6 Dealer Registration, Smog Check Test Only Station License, and Smog Check Repair Technician
7 license to discipline in that, in conducting the smog tests and issuing the fraudulent smog
8 certificates of compliance described in paragraphs 36 through 61, above, Respondents committed
9 fraud. (Business and Professions Code section 9884.7, subdivision (a)(4); and Health and Safety
10 Code section 44072.2, subdivision (d)).

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(False Statement or Entry on a Certificate of Compliance)**

13 67. Respondents Advanced Smog and Martinez subjected their Automotive Repair
14 Dealer Registration, Smog Check Test Only Station License, and Smog Check Repair Technician
15 license to discipline in that, in conducting the smog tests and issuing the fraudulent smog
16 certificates of compliance described in paragraphs 36 through 61, above, Respondents made false
17 statements or entries with regard to material matters in oaths, affidavits, certificates of compliance
18 or noncompliance, and/or application forms required by the Automotive Repair Act (Business and
19 Professions Code sections 9884.7, subdivision (a)(6) and 9889.22; Health and Safety Code
20 sections 44015, subdivision (b), 44059, and 44072.2, subdivisions (a) and (d); and Vehicle Code
21 sections 4463, subdivision (a)(1); and 4463, subdivision (a)(2)).

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations Pursuant**
24 **to the Motor Vehicle Inspection Program)**

25 68. Respondent Martinez subjected his Smog Technician License to disciplinary action
26 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that he failed to comply
27 with provisions of California Code of Regulations, title 16, as follows:
28

a. **Section 3340.30, subdivision (a)**: Respondent Martinez failed to inspect and test 8 vehicles in accordance with Health & Safety Code section 44012, and California Code of Regulations, title 16, section 3340.42 as fully described in paragraphs 35 through 60 above, and incorporated herein as reference.

b. **Section 3340.41, subdivision (c)**: Respondent Martinez knowingly entered false information into the emissions inspection system for eight vehicles as fully described in paragraphs 36 through 61 above, and incorporated herein as reference.

OTHER MATTERS

69. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Hector Manual Rivera, upon a finding that Respondent Hector Manual Rivera dba Respondent Advanced Smog has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

70. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License Number TC285796, issued to Hector Manual Rivera dba Respondent Advanced Smog, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

71. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License Number EO 641473 issued to Respondent Martinez, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

PRAAYER

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 285796, issued to Advanced Smog LLC, dba Advanced Smog; Hector Manuel Rivera, Member;

- 1 2. Revoking or suspending Smog Check, Test Only Station Number TC 285796, issued
2 to Advanced Smog LLC, dba Advanced Smog; Hector Manuel Rivera, Member;
- 3 3. Revoking or suspending any other Automotive Repair Dealer Registration issued to
4 Hector Manuel Rivera;
- 5 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
6 Division 26 of the Health and Safety Code in the name of Advanced Smog or Hector Manuel
7 Rievera;
- 8 5. Revoking or suspending Smog Check Inspector Number EO 641473, issued to Joseph
9 Paul Martinez;
- 10 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
11 Division 26 of the Health and Safety Code to Joseph Paul Martinez;
- 12 7. Ordering Hector Manuel Rivera, individually and as owner of Advanced Smog, and
13 Joseph Paul Martinez to pay the Bureau of Automotive Repair the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3; and,
- 16 8. Taking such other and further action as deemed necessary and proper.

17
18 DATED: As of digital signature date

19 PATRICK DORAIS
20 Chief
21 Bureau of Automotive Repair
22 Department of Consumer Affairs
23 State of California
24 *Complainant*

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