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

12 In the Matter of the Accusation Against:

Case No. 79/25-2826

13 **RAFAEL HERNANDEZ-OWNER DBA**
14 **HERNANDEZ SMOG CHECK**
15 **5651 Imperial Hwy, Unit C**
16 **South Gate, CA 90280**

ACCUSATION

17 **Automotive Repair Dealer Registration No.**
18 **ARD 300844**
19 **Smog Check, Test Only, Station License No.**
20 **TC 300844**

21 **and**

22 **MYNOR ROCAEL MORALES REYES**
23 **2430 E. 126th St.**
24 **Compton, CA 90222**

25 **Smog Check Station License No. EO 641489**

26 Respondents.

27 **PARTIES**

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

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1 **Rafael Hernandez-Owner dba Hernandez Smog Check**

2 **Automotive Repair Dealer Registration**

3 2. On or about October 7, 2021, the Bureau issued Automotive Repair Dealer
4 Registration Number ARD 300844 to Rafael Hernandez-Owner dba Hernandez Smog Check
5 (“Respondent Hernandez Smog”). The Automotive Repair Dealer Registration was in full force
6 and effect at all times relevant to the charges brought herein and will expire on October 31, 2025,
7 unless renewed.

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

9 3. On or about March 11, 2022, the Bureau issued Smog Check, Test Only, Station
10 License Number TC 300844 to Respondent Hernandez Smog. The Smog Check, Test Only,
11 Station License was in full force and effect at all times relevant to the charges brought herein and
12 will expire on October 31, 2025, unless renewed.

13 **Mynor Rocacl Morales Reyes**

14 **Smog Check Inspector License**

15 4. On or about October 24, 2018, the Bureau issued Smog Check Station License
16 Number EO 641489 to Mynor Rocacl Morales Reyes (“Respondent Reyes”). The Smog Check
17 Inspector License was in full force and effect at all times relevant to the charges brought herein
18 and will expire on May 31, 2026, unless renewed.

19 **JURISDICTION**

20 5. Business and Professions Code (“Code”) section 9884.7 provides that the Director
21 may revoke an automotive repair dealer registration.

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

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

8. 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

9. 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.

(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.

10. Section 44012 of the Health and Safety Code states:

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

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions

1 (a) and (c) of Section 44013.

2 (b) Motor vehicles are preconditioned to ensure representative and stabilized
3 operation of the vehicle's emission control system.

4 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
5 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle
6 mode or loaded mode are tested in accordance with procedures prescribed by the
7 department. In determining how loaded mode and evaporative emissions testing shall
8 be conducted, the department shall ensure that the emission reduction targets for the
9 enhanced program are met.

10 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative
11 system and crankcase ventilation system are tested to reduce any nonexhaust sources
12 of volatile organic compound emissions, in accordance with procedures prescribed by
13 the department.

14 (e) For diesel-powered vehicles, a visual inspection is made of emission
15 control devices and the vehicle's exhaust emissions are tested in accordance with
16 procedures prescribed by the department, that may include, but are not limited to,
17 onboard diagnostic testing. The test may include testing of emissions of any or all of
18 the pollutants specified in subdivision (c) and, upon the adoption of applicable
19 standards, measurement of emissions of smoke or particulates, or both.

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

25 (g) A determination as to whether the motor vehicle complies with the
26 emission standards for that vehicle's class and model-year as prescribed by the
27 department.

28 (h) An analysis of pass and fail rates of vehicles subject to an onboard
diagnostic test and a tailpipe test to assess whether any vehicles passing their onboard
diagnostic test have, or would have, failed a tailpipe test, and whether any vehicles
failing their onboard diagnostic test have or would have passed a tailpipe test.

(i) The test procedures may authorize smog check stations to refuse the testing
of a vehicle that would be unsafe to test, or that cannot physically be inspected, as
specified by the department by regulation. The refusal to test a vehicle for those
reasons shall not excuse or exempt the vehicle from compliance with all applicable
requirements of this chapter.

11. Section 44015 of the Health and Safety Code states:

....

(b) If a vehicle meets the requirements of Section 44012, a smog check station
licensed to issue certificates shall issue a certificate of compliance or a certificate of
noncompliance.

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12. Section 44032 of the Health and Safety Code states:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified smog check technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

13. Section 44059 of the Health and Safety 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 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.

14. 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.

15. Section 44072.8 of the Health and Safety Code states:

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.

16. Section 44072.10 of the Health and Safety Code, subdivision (c) states:

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

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

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

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

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

5 **REGULATORY PROVISIONS**

6 17. California Code of Regulations, title 16, section 3340.24, states:

7

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

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

11 A licensed smog check inspector and/or repair technician shall comply with the
12 following requirements at all times while licensed:.

13 (a) Inspect, test and repair vehicles, as applicable, in accordance with section
14 44012 of the Health and Safety Code, section 44035 of the Health and
Safety Code, and section 3340.42 of this article..

15 19. California Code of Regulations, title 16, section 3340.35 states:

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

19 20. California Code of Regulations, title 16, section 3340.41 states:

20

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

24 21. California Code of Regulations, title 16, section 3340.42, states:

25 Smog check inspection methods are prescribed in the Smog Check Manual,
26 referenced by section 3340.45.

27 (a) All vehicles subject to a smog check inspection, shall receive one of the
following test methods:

28 (1) A loaded-mode test shall be the test method used to inspect 1976 - 1999

1 model-year vehicle, except diesel-powered, registered in the enhanced program areas
2 of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide,
3 carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's
4 specifications referenced in subsection (a) of Section 3340.17 of this article. The
5 loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment,
6 including a chassis dynamometer, certified by the bureau.

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

16 (2) A two-speed idle mode test shall be the test method used to inspect 1976 -
17 1999 model-year vehicles, except diesel-powered, registered in all program areas of
18 the state, except in those areas of the state where the enhanced program has been
19 implemented. The two-speed idle mode test shall measure hydrocarbon, carbon
20 monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as
21 contained in the bureau's specifications referenced in subsection (a) of Section
22 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection
23 shall be measured and compared to the emission standards set forth in this section and
24 as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its
25 measured emissions are less than or equal to the applicable emissions standards
26 specified in Table III.

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

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

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

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

(c) The bureau may require any combination of the inspection methods in
sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and Safety
Code section 44014.7 as a means of identifying potential operational problems with
vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically
incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle included in the tables described in subsection (a), as applicable. However, the provisions described in section 44017 of the Health and Safety Code may apply.

(4) This subsection applies in all program areas statewide to vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

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

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

COST RECOVERY

23. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate 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.

FACTUAL ALLEGATIONS

24. During the course of a Bureau Representative's regular duties, the Bureau Representative accessed the Vehicle Information Database ("VID"), and reviewed Smog Check data transmitted from Respondent Hernandez Smog. Additionally, the Bureau Representative accessed the VID to produce copies of Smog Check Vehicle Inspection Reports, OIS Test

1 Details, and Certificate Sales relating to the vehicles mentioned in the Bureau Representative's
2 report.

3 25. During an OIS inspection, engine operating parameters are retrieved from the
4 vehicle's On-Board Diagnostics ("OBD II") system and recorded to the VID. This is
5 accomplished during the functional portion of the OIS Smog Check inspection by plugging the
6 Data Acquisition Device ("DAD") into the vehicle's Diagnostic Link Connector ("DLC") when
7 prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

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

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

29 27. During an OIS Smog Check inspection, along with other visual and functional
30 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
31 with the engine idling and, when requested by the OIS analyzer, an elevated or increased engine
32 speed. The increase in engine speed is performed by the inspector by stepping on the throttle

pedal or manually opening the throttle resulting in a corresponding increase in engine RPMs by allowing an increase in airflow into the engine.

28. The Bureau Representative conducted a detailed review of the VID data for the Smog Check inspections performed at Respondent Hernandez Smog's facility. The review showed a pattern of vehicles being certified with improbable engine operating parameters not corresponding to normal engine operation. The data collected by the DAD during the OBDII functional test confirmed an OBD defeat device was used instead of the actual vehicle being tested, which constitutes clean plugging. The Bureau Representative included ten (10) vehicles in his report as examples of fraudulent inspections using clean plugging¹.

Fraudulent Inspection No. 1-2003 Chevrolet S Truck S10

29. A Bureau Representative reviewed the OIS Test Data for Respondent Hernandez Smog. The review indicated that on or about August 6, 2024, a 2003 Chevrolet S Truck S10 was tested and Certificate of Compliance Number UC030994C was issued by Respondent Reyes.

30. The Dynamic Data Charts for the 2003 Chevrolet S Truck S10 showed that between timestamp .342 and 19.531, the engine RPM was between 592 RPM and 654 RPM. During this time, the data showed that the throttle was fixed at 0.0% opening, the MAP was fixed at 45 kPa, the MAF was fixed at 6.67 gps, and the ignition timing advance for the number 1 cylinder was fixed at 16 degrees BTDC. After timestamp 19.531, the engine RPM ultimately increased to between 1736 RPM and 1919 RPM. From the time the engine RPM increased off idle to the higher RPMs, the data showed that the throttle continued to stay fixed at the same 0.0% opening, the MAP continued to stay fixed at the same 45 kPa, the MAF continued to stay fixed at the same 6.67 gps, and the ignition timing advance for the number 1 cylinder continued to stay fixed at the same 16 degrees BTDC.

31. During the entire period the dynamic data was collected, the only parameter that changed was the engine RPM. The throttle position, the MAP, the MAF, and the ignition timing

¹ Clean Plugging" refers to the use of another vehicle's properly functioning On Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog compliance and/or not present for testing.

1 advance readings remained unchanged even though the engine RPM was increased. These
2 readings were not characteristic or expected for normal engine operation. The discrepancies in
3 the OIS Test Data proved the DAD was not connected as required to the 2003 Chevrolet S Truck
4 S10 being certified, which caused the issuance of a fraudulent Smog Check Certificate of
5 Compliance.

6 **Fraudulent Inspection No. 2-2004 Volvo C70 HPT**

7 32. A Bureau Representative reviewed the OIS Test Data for Respondent Hernandez
8 Smog. The review showed that on or about October 1, 2024, a 2004 Volvo C70 HPT was tested
9 and Certificate of Compliance Number JB287460C was issued by Respondent Reyes.

10 33. The Dynamic Data Charts for the 2004 Volvo C70 HPT showed that between
11 timestamp .954 and 21.491, the engine RPM was between 689 RPM and 743 RPM. During this
12 time, the data showed that the throttle was fixed at 14.9% opening, the MAF was fixed at 5.25
13 gps, and the ignition timing advance for the number 1 cylinder was fixed at 5 degrees BTDC.
14 After timestamp 21.491, the data showed that the engine RPM ultimately increased to between
15 1574 RPM and 1620 RPM. From the time the engine RPM increased from off idle to the higher
16 RPMs, the data showed that the throttle continued to stay fixed at the same 14.9% opening, the
17 MAF continued to stay fixed at the same 5.25 gps, and the ignition timing advance for the number
18 1 cylinder continued to stay fixed at the same 5 degrees BTDC.

19 34. During the entire period the dynamic data was collected, the only parameter that
20 changed was the engine RPM. The throttle position, MAF, and the ignition timing advance
21 readings remained unchanged even though the engine RPM was increased. These readings were
22 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
23 Data proved the DAD was not connected as required to the 2004 Volvo C70 HPT being certified,
24 which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

25 **Prior Passing Test-2004 Volvo C70 HPT**

26 35. On or about March 3, 2022, a Smog Check inspection was performed on the 2004
27 Volvo C70 HPT at another, unrelated Smog Check station. The review showed that the vehicle
28 was tested and Smog Certificate Number IP357176C was issued. The Dynamic data collected

1 during the test showed the expected change in the throttle, MAF, and ignition timing advance
2 parameters. The readings were consistent with normal engine operation.

3 **Fraudulent Inspection No. 3-2000 Toyota Sienna LE**

4 36. A Bureau Representative reviewed the OIS Test Data for Respondent Hernandez
5 Smog. The review showed that on or about November 23, 2024, a 2000 Toyota Sienna LE was
6 tested and Certificate of Compliance Number UG618612C was issued by Respondent Reyes.

7 37. The Dynamic Data Charts for the 2000 Toyota Sienna LE showed that between
8 timestamp .835 and 20.597, engine RPM was between 678 RPM and 743 RPM. During this time,
9 the data showed that the throttle was fixed at 11% opening, the MAF was fixed at 4.13 gps, and
10 the ignition timing advance for the number 1 cylinder was fixed at 14.5 degrees BTDC. After
11 timestamp 20.597, the engine RPM ultimately increased to between 1904 RPM and 1962 RPM.
12 From the time the engine RPM increased from off idle to the higher RPMs, the data showed that
13 the throttle continued to stay fixed at the same 11% opening, the MAF continued to stay fixed at
14 the same 4.13 gps, and the ignition timing advance for the number 1 cylinder continued to stay
15 fixed at the same 14.5 degrees BTDC.

16 38. During the entire period the dynamic data was collected, the only parameter that
17 changed was the engine RPM. The throttle position, the MAF, and the ignition timing advance
18 readings remained unchanged even though the engine RPM was increased. These readings were
19 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
20 Data proved the DAD was not connected as required to the 2000 Toyota Sienna LE being
21 certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

22 **Prior Failing Test-2000 Toyota Sienna LE**

23 39. On or about November 5, 2022, a Smog Check inspection was performed on the 2000
24 Toyota Sienna LE at another, unrelated Smog Check station. The review showed that the vehicle
25 was tested and that it had failed the Smog Check inspection due to the fact that the vehicle's on-
26 board computer system had not completed the emission system's self-checks. The Dynamic data
27 collected during the test showed the expected change in the throttle, MAF, and ignition timing
28 advance parameters. The readings were consistent with normal engine operation.

1 **Fraudulent Inspection No. 4-2000 Toyota Tacoma Xtracab**

2 40. A Bureau Representative reviewed the OIS Test Data for Respondent Cuates Smog.
3 The review showed that on or about November 23, 2024, a 2000 Toyota Tacoma Xtracab was
4 tested and Certificate of Compliance Number UG618614C was issued by Respondent Reyes.

5 41. The Dynamic Data Charts for the 2000 Toyota Tacoma Xtracab showed that between
6 timestamp .849 and 21.509, the engine RPM was between 643 RPM and 702 RPM. During this
7 time, the data showed that the throttle was fixed at 11% opening, the MAF was fixed at 3.21 gps,
8 and the ignition timing advance for the number 1 cylinder was fixed at 13 degrees BTDC. After
9 timestamp 21.509, the engine RPM ultimately increased to between 1860 RPM and 1902 RPM.
10 From the time the engine RPM increased from off idle to the higher RPMs, the data showed that
11 the throttle continued to stay fixed at the same 11% opening, the MAF continued to stay fixed at
12 the same 3.21 gps, and the ignition timing advance for the number 1 cylinder continued to stay
13 fixed at the same 13 degrees BTDC.

14 42. During the entire period the dynamic data was collected, the only parameter that
15 changed was the engine RPM. The throttle position, MAF, and the ignition timing advance
16 readings remained unchanged even though the engine RPM was increased. These readings were
17 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
18 Data proved the DAD was not connected as required to the 2000 Toyota Tacoma Xtracab being
19 certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

20 **Fraudulent Inspection No. 5-2002 Chevrolet Blazer**

21 43. A Bureau Representative reviewed the OIS Test Data for Respondent Hernandez
22 Smog. The review showed that on or about December 21, 2024, a 2002 Chevrolet Blazer was
23 tested and Certificate of Compliance Number JB638138C was issued by Respondent Reyes.

24 44. The Dynamic Data Charts for the 2002 Chevrolet Blazer showed that between
25 timestamp .343 and 21.069, the engine RPM was between 678 RPM and 744 RPM. During this
26 time, the data showed that the throttle was fixed at 0.0% opening, the MAP was fixed at 36 kPa,
27 the MAF was fixed at 4.58 gps, and the ignition timing advance for the number 1 cylinder was
28 fixed at 16.5 degrees BTDC. After timestamp 21.069, the engine RPM ultimately increased to

1 between 1736 RPM and 1794 RPM. From the time the engine RPM increased from off idle to the
2 higher RPMs, the data showed that the throttle continued to stay fixed at the same 0.0% opening,
3 the MAP continued to stay fixed at the same 36 kPa, the MAF continued to stay fixed at the same
4 4.58 gps, and the ignition timing advance for the number 1 cylinder continued to stay fixed at the
5 same 16.5 degrees BTDC.

6 45. During the entire period the dynamic data was collected, the only parameter that
7 changed was the engine RPM. The throttle position, the MAP, the MAF, and the ignition timing
8 advance readings remained unchanged even though the engine RPM was increased. These
9 readings were not characteristic or expected for normal engine operation. The discrepancies in
10 the OIS Test Data proved the DAD was not connected as required to the 2002 Chevrolet Blazer
11 being certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

12 **Fraudulent Inspection No. 6-2001 Ford Mustang**

13 46. A Bureau Representative reviewed the OIS Test Data for Respondent Hernandez
14 Smog. The review showed that on or about December 28, 2024, a 2001 Ford Mustang was tested
15 and Certificate of Compliance Number UI245634C was issued by Respondent Reyes.

16 47. The Dynamic Data Charts for the 2001 Ford Mustang showed that between
17 timestamp .351 and 18.382, the engine RPM was between 683 RPM and 746 RPM. During this
18 time, the data showed that the throttle was at 18% opening, the MAF was fixed at 3.7 gps, and the
19 ignition timing advance for the number 1 cylinder was fixed at 14.5 degrees BTDC. After
20 timestamp 18.382, the engine RPM ultimately increased to between 1663 RPM and 1716 RPM.
21 From the time the engine RPM increased from off idle to the higher RPMs, the data showed that
22 the throttle continued to stay fixed at the same 18% opening, the MAF continued to stay fixed at
23 the same 3.7 gps, and the ignition timing advance for the number 1 cylinder continued to stay
24 fixed at the same 14.5 degrees BTDC.

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

1 Data proved the DAD was not connected as required to the 2001 Ford Mustang being certified,
2 which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

3 **Fraudulent Inspection No. 7-2001 GMC Safari XT**

4 49. A Bureau Representative reviewed the OIS Test Data for Respondent Hernandez
5 Smog. The review showed that on or about December 31, 2024, a 2001 GMC Safari XT was
6 tested and Certificate of Compliance Number UI396560C was issued by Respondent Reyes.

7 50. The Dynamic Data Charts for the 2001 GMC Safari XT showed that between
8 timestamp .341 and 20.079, the engine RPM was between 666 RPM and 724 RPM. During this
9 time, the data showed that the throttle was at 0.0% opening, the MAP was fixed at 35 kPa, the
10 MAF was fixed at 3.96 gps, and the ignition timing advance for the number 1 cylinder was fixed
11 at 18 degrees BTDC. After timestamp 20.079, the engine RPM ultimately increased to between
12 1788 RPM and 1854 RPM. From the time the engine RPM increased from off idle to the higher
13 RPMs, the data showed that the throttle continued to stay at the same 0.0% opening, the MAP
14 continued to stay fixed at the same 35 kPa, the MAF continued to stay fixed at the same 3.96 gps,
15 and the ignition timing advance for the number 1 cylinder continued to stay fixed at the same 18
16 degrees BTDC.

17 51. During the entire period the dynamic data was collected, the only parameter that
18 changed was the engine RPM. The throttle position, the MAP, the MAF, and the ignition timing
19 advance readings remained unchanged even though the engine RPM was increased. These
20 readings were not characteristic or expected for normal engine operation. The discrepancies in
21 the OIS Test Data proved the DAD was not connected as required to the 2001 GMC Safari XT
22 being certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

23 **Fraudulent Inspection No. 8-2003 Ford Econoline E150 Van**

24 52. A Bureau Representative reviewed the OIS Test Data for Respondent Hernandez
25 Smog. The review showed that on or about January 8, 2025, a 2003 Ford Econoline E150 Van
26 was tested and Certificate of Compliance Number JB819019C was issued by Respondent Reyes.

27 53. The Dynamic Data Charts for the 2003 Ford Econoline E150 Van showed that
28 between timestamp .335 and 23.377, the engine RPM was between approximately 660 RPM and

1 714 RPM. During this time, the data showed that the throttle was at 17.6% opening, the MAF
2 was fixed at 4.37 gps, and the ignition timing advance for the number 1 cylinder was fixed at 19
3 degrees BTDC. After timestamp 23.377, the engine RPM ultimately increased to between 1764
4 RPM and 1829 RPM. From the time the engine RPM increased from off idle to the higher RPMs,
5 the data showed that the throttle continued to stay at the same 17.6% opening, the MAF continued
6 to stay fixed at the same 4.37 gps, and the ignition timing advance for the number 1 cylinder
7 continued to stay fixed at the same 19 degrees BTDC.

8 54. During the entire period the dynamic data was collected, the only parameter that
9 changed was the engine RPM. The throttle position, the MAF, and the ignition timing advance
10 readings remained unchanged even though the engine RPM was increased. These readings were
11 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
12 Data proved the DAD was not connected as required to the 2003 Ford Econoline E150 Van being
13 certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

14 **Prior Passing Test-2003 Ford Econoline E150 Van**

15 55. On or about January 15, 2024, a Smog Check inspection was performed on the 2003
16 Ford Econoline E150 Van at another, unrelated Smog Check station. The review showed that the
17 vehicle was tested and Smog Certificate Number IZ004467C was issued. The Dynamic data
18 collected during the test showed the expected change in the throttle, MAF, and ignition timing
19 advance parameters. The readings were consistent with normal engine operation.

20 **Fraudulent Inspection No. 9-2001 Ford Econoline E150 Van**

21 56. A Bureau Representative reviewed the OIS Test Data for Respondent Hernandez
22 Smog. The review showed that on or about January 11, 2025, a 2001 Ford Econoline E150 Van
23 was tested and Certificate of Compliance Number JB819046C was issued by Respondent Reyes.

24 57. The Dynamic Data Charts for the 2001 Ford Econoline E150 Van showed that
25 between timestamp .351 and 20.538, the engine RPM was between 695 RPM and 753 RPM.
26 During this time, the data showed that the throttle was at 20% opening, the MAF was fixed at
27 4.33 gps, and the ignition timing advance for the number 1 cylinder was fixed at 16 degrees
28 BTDC. After timestamp, 20.538, the engine RPM ultimately increased to between 1598 RPM

1 and 1701 RPM. From the time the engine RPM increased from off idle to the higher RPMs, the
2 data showed that the throttle continued to stay at the same 20% opening, the MAF continued to
3 stay fixed at the same 4.33 gps, and the ignition timing advance for the number 1 cylinder
4 continued to stay fixed at the same 16 degrees BTDC.

5 58. During the entire period the dynamic data was collected, the only parameter that
6 changed was the engine RPM. The throttle position, the MAF, and the ignition timing advance
7 readings remained unchanged even though the engine RPM was increased. These readings were
8 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
9 Data proved the DAD was not connected as intended, to the 2001 Ford Econoline E150 Van
10 being certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

11 **Fraudulent Inspection No. 10-2003 Chevrolet Tahoe C1500**

12 59. A Bureau Representative reviewed the OIS Test Data for Respondent Hernandez
13 Smog. The review showed that on or about January 15, 2025, a 2003 Chevrolet Tahoe C1500 was
14 tested and Certificate of Compliance Number UI746884C was issued by Respondent Reyes.

15 60. The Dynamic Data Charts for the 2003 Chevrolet Tahoe C1500 showed that between
16 timestamp .348 and 18.888, the engine RPM was between 578 RPM and 644 RPM. During this
17 time, the data showed that the throttle was at 9.4% opening, the MAP was fixed at 37 kPa, the
18 MAF was fixed at 4.99 gps, and the ignition timing advance for the number 1 cylinder was fixed
19 at 19 degrees BTDC. After timestamp, 18.888, the engine RPM ultimately increased to between
20 1991 RPM and 2212 RPM. From the time the engine RPM increased from off idle to the higher
21 RPMs, the data showed that the throttle continued to stay at the same 9.4% opening, the MAP
22 continued to stay fixed at the same 37 kPa, the MAF continued to stay fixed at the same 4.99 gps,
23 and the ignition timing advance for the number 1 cylinder continued to stay fixed at the same 19
24 degrees BTDC.

25 61. During the entire period the dynamic data was collected, the only parameter that
26 changed was the engine RPM. The throttle position, the MAP, the MAF, and the ignition timing
27 advance readings remained unchanged even though the engine RPM was increased. These
28 readings were not characteristic or expected for normal engine operation. The discrepancies in

1 the OIS Test Data proved the DAD was not connected as required to the 2003 Chevrolet Tahoe
2 C1500 being certified, which caused the issuance of a fraudulent Smog Check Certificate of
3 Compliance.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 62. Respondent Hernandez Smog's Automotive Repair Registration is subject to
7 discipline pursuant to Code section 9884.7, subdivision (a)(1) and California Code of
8 Regulations, title 16, section 3373, in that between August 6, 2024, through January 15, 2025,
9 Respondent Hernandez Smog made or authorized statements which he knew or in the exercise of
10 reasonable care should have known to be untrue or misleading, as follows: Respondent
11 Hernandez Smog certified that vehicles 1 through 10, set forth above, had passed inspection and
12 were in compliance with applicable laws and regulations. Respondent Hernandez Smog
13 conducted the inspections on the vehicles using the clean plugging method by substituting or
14 using different vehicles or another source during the OBD II functional tests to issue smog
15 certificates of compliance for the ten (10) vehicles and did not test or inspect the ten (10) vehicles
16 as required by Health and Safety Code section 44012. Complainant refers to, and by this
17 reference incorporates, the allegations set forth above in paragraphs 24 through 61, as though
18 fully set forth.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 63. Respondent Hernandez Smog's Automotive Repair Registration is subject to
22 discipline pursuant to Code section 9884.7, subdivision (a)(4), in that between August 6, 2024,
23 through January 15, 2025, Respondent Hernandez Smog committed acts that constitute fraud by
24 issuing electronic smog certificates of compliance for vehicles 1 through 10, set forth above,
25 without performing bona fide inspections of the emission control devices and systems on those
26 vehicles, thereby depriving the People of the State of California of the protection afforded by the
27 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
28 allegations set forth above in paragraphs 24 through 61, as though fully set forth.

1 **THIRD CAUSE FOR DISCIPLINE**

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

3 64. Respondent Hernandez Smog's Automotive Repair Registration is subject to
4 disciplinary action under Code section 9884.7, subdivision (a)(6), in that between August 6, 2024,
5 through January 15, 2025, regarding vehicles 1 through 10, set forth above, Respondent
6 Hernandez Smog failed in a material respect to comply with the provisions of this chapter or
7 regulations adopted pursuant to it by issuing electronic smog certificates of compliance for the ten
8 (10) vehicles without performing bona fide inspections of the emissions control devices and
9 systems on those vehicles, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
11 reference incorporates, the allegations set forth above in paragraphs 24 through 61, as though
12 fully set forth.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with the Motor Vehicle Inspection Program)**

15 65. Respondent Hernandez Smog's Smog Check, Test Only Station License is subject to
16 discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between
17 August 6, 2024, through January 15, 2025, regarding vehicles 1 through 10, set forth above,
18 Respondent Hernandez Smog failed to comply with the following sections of that Code:

19 a. **Section 44012:** Respondent Hernandez Smog failed to ensure that the emission control
20 tests were performed on vehicles 1 through 10, in accordance with procedures prescribed by the
21 department.

22 b. **Section 44015, subdivision (b):** Respondent Hernandez Smog issued electronic smog
23 certificates of compliance for vehicles 1 through 10, without ensuring that the vehicles were
24 properly tested and inspected to determine if they were in compliance with Health and Safety
25 Code section 44012.

26 c. **Section 44059:** Respondent Hernandez Smog willfully made false entries for the
27 electronic smog certificates of compliance by certifying that those vehicles had been inspected as
28 required when, in fact, they had not.

1 Complainant refers to, and by this reference incorporates, the allegations set forth above in
2 paragraphs 24 through 61, as though fully set forth.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations Pursuant to the**
5 **Motor Vehicle Inspection Program)**

6 66. Respondent Hernandez Smog's Smog Check, Test Only Station License is subject to
7 discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between
8 August 6, 2024, through January 15, 2025, regarding vehicles 1 through 10, set forth above,
9 Respondent Hernandez Smog failed to comply with provisions of California Code of Regulations,
10 title 16, as follows:

11 a. **Section 3340.24, subdivision (c):** Respondent Hernandez Smog falsely or fraudulently
12 issued electronic smog certificates of compliance for those vehicles without performing bona fide
13 inspections of the emission control devices and systems on the vehicles as required by Health and
14 Safety Code section 44012.

15 b. **Section 3340.35, subdivision (c):** Respondent Hernandez Smog issued electronic smog
16 certificates of compliance even though those vehicles had not been inspected in accordance with
17 section 3340.42 of that Code.

18 c. **Section 3340.41, subdivision (c):** Respondent Hernandez Smog knowingly entered
19 false information into the emissions inspection system for the ten (10) vehicles identified above.

20 d. **Section 3340.42:** Respondent Hernandez Smog failed to conduct the required smog
21 tests and inspections on those vehicles in accordance with the Bureau's specifications.

22 Complainant refers to, and by this reference incorporates, the allegations set forth above in
23 paragraphs 24 through 61, as though fully set forth.

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 67. Respondent Hernandez Smog's Smog Check, Test Only Station License is subject to
27 discipline pursuant to Health and Safety Code sections 44072.2, subdivision (d) in conjunction
28 with 44072.10, subdivision (c), in that between August 6, 2024, through January 15, 2025,

1 regarding vehicles 1 through 10, set forth above, Respondent Hernandez Smog committed acts
2 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic smog
3 certificates of compliance for those vehicles without performing bona fide inspections of the
4 emission control devices and systems on the vehicles, thereby depriving the People of the State of
5 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
6 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 24
7 through 61, as though fully set forth.

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 **(Violations of the Motor Vehicle Inspection Program – Respondent Reyes)**

10 68. Respondent Reyes’s Smog Check Inspector License is subject to disciplinary action
11 under Health and Safety Code section 44072.2, subdivision (a), in that between August 6, 2024,
12 through January 15, 2025, regarding vehicles 1 through 10, set forth above, Respondent Reyes
13 violated the following Health and Safety Code sections:

14 a. **Section 44012, subdivision (a):** Respondent Reyes failed to determine that all
15 emission control devices and systems required by law were installed and functioning correctly on
16 the vehicles identified above in accordance with test procedures prescribed by the Bureau.

17 b. **Section 44012, subdivision (f):** Respondent Reyes failed to perform emission
18 control tests on the vehicles identified above in accordance with procedures prescribed by the
19 Bureau.

20 c. **Section 44032:** Respondent Reyes failed to perform tests of the emission control
21 devices and systems on the vehicles identified above in accordance with section 44012 of the
22 Health and Safety Code, in that the vehicles had been clean plugged.

23 d. **Section 44059:** Respondent Reyes willfully made false entries for the electronic
24 certificates of compliance by certifying that the vehicles identified above had been inspected as
25 required when, in fact, they had not.

26 Complainant refers to, and by this reference incorporates, the allegations set forth above in
27 paragraphs 24 through 61, as though fully set forth.

28 ///

1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant to the**
3 **Motor Vehicle Inspection Program)**

4 69. Respondent Reyes's Smog Check Inspector License is subject to discipline pursuant
5 to Health and Safety Code section 44072.2, subdivision (c), in that August 6, 2024, through
6 January 15, 2025, regarding vehicles 1 through 10, set forth above, he failed to comply with
7 provisions of California Code of Regulations, title 16, as follows:

8 a. **Section 3340.24, subdivision (c)**: Respondent Reyes falsely or fraudulently issued
9 electronic smog certificates of compliance without performing bona fide inspections of the
10 emission control devices and systems on those vehicles as required by Health and Safety Code
11 section 44012.

12 b. **Section 3340.30 subdivision (a)**: Respondent Reyes failed to inspect and test those
13 vehicles in accordance with Health and Safety Code sections 44012.

14 c. **Section 3340.41, subdivision (c)**: Respondent Reyes knowingly entered false
15 information into the emissions inspection system for the ten (10) vehicles identified above.

16 d. **Section 3340.42**: Respondent Reyes failed to conduct the required smog tests and
17 inspections on those vehicles in accordance with the Bureau's specifications.

18 Complainant refers to, and by this reference incorporates, the allegations set forth above in
19 paragraphs 24 through 61, as though fully set forth.

20 **NINTH CAUSE FOR DISCIPLINE**

21 **(Dishonesty, Fraud, or Deceit – Respondent Reyes)**

22 70. Respondent Reyes's Smog Check Inspector License is subject to disciplinary action
23 under Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and
24 Safety Code section 44072.10, subdivision (c), in that August 6, 2024, through January 15, 2025,
25 regarding vehicles 1 through 10, set forth above, Respondent Reyes committed acts involving
26 dishonesty, fraud, or deceit when he issued electronic smog certificates of compliance for the
27 vehicles without performing bona fide inspections of the emission control devices and systems on
28 those vehicles, thereby depriving the People of the State of California of the protection afforded

1 by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference
2 incorporates, the allegations set forth above in paragraphs 24 through 61, as though fully set forth.

3 **OTHER MATTERS**

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

8 72. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only
9 Station License No. TC 300844, issued to Rafael Hernandez-Owner dba Hernandez Smog Check,
10 is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Div 26 of the
11 Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the
12 director.

13 73. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
14 License No. EO 641489, issued to Mynor Rocaél Morales Reyes, is revoked or suspended, any
15 additional license issued under Chapter 5 of Part 5 of Div 26 of the Health and Safety Code in the
16 name of said licensee may be likewise revoked or suspended by the director.

17 **PRAYER**

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

21 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
22 300844, issued to Rafael Hernandez-Owner dba Hernandez Smog Check;

23 2. Revoking, suspending, or placing on probation any other automotive repair dealer
24 registration issued to Rafael Hernandez;

25 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
26 300844, issued to Rafael Hernandez-Owner dba Hernandez Smog Check;

27 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
28 Division 26 of the Health and Safety Code in the name of Rafael Hernandez;

1 5. Revoking or suspending Smog Check Station License Number EO 641489, issued to
2 Mynor Rocael Morales Reyes;

3 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
4 Division 26 of the Health and Safety Code in the name of Mynor Rocael Morales Reyes;

5 7. Ordering Rafael Hernandez and Mynor Rocael Morales Reyes 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 8. 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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