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8  
9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:

Case No. 79/22-2929

14 **JENNIFER RENEE FONSECA DBA 323**  
15 **SMOG**  
16 **323 W Valley Blvd Suite B**  
17 **Rialto, CA 92376**

**ACCUSATION**

18 **Automotive Repair Dealer Registration No.**  
19 **ARD 294721**  
20 **Smog Check, Test Only, Station License No.**  
21 **TC 294721,**

22 **and**

23 **EZEQUIEL MARTINEZ**  
24 **14385 Susana Ct**  
25 **Moreno Valley, CA 92553**

26 **Mailing Address:**  
27 **422 East Ralston Street #A**  
28 **Ontario, CA 91761**

**Smog Check Inspector License No. EO**  
**642048**

Respondents.

1 **PARTIES**

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

4 **Automotive Repair Dealer Registration**

5 2. On or about June 27, 2019, the Bureau of Automotive Repair (Bureau) issued  
6 Automotive Repair Dealer Registration Number ARD 294721 to Jennifer Renee Fonseca, dba  
7 323 Smog (Respondent 323 Smog). The Automotive Repair Dealer Registration was in full force  
8 and effect at all times relevant to the charges brought herein and will expire on June 30, 2024,  
9 unless renewed.

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

11 3. On or about October 11, 2019, the Bureau issued Smog Check, Test Only, Station  
12 License Number TC 294721 to Respondent 323 Smog Respondents. The Smog Check, Test  
13 Only, Station License was in full force and effect at all times relevant to the charges brought  
14 herein and will expire on June 30, 2024, unless renewed.

15 **STAR Station Certification**

16 4. On or about November 4, 2021, the Bureau issued STAR Station Certification to 323  
17 Smog. The certification will remain active unless ARD 294721 and/or TC 294721 is revoked,  
18 cancelled, becomes delinquent, or the certification is suspended.

19 **Smog Check Inspector License**

20 5. On or about June 20, 2019, the Bureau issued Smog Check Inspector License Number  
21 EO 642048 to Ezequiel Martinez (Respondent Martinez). The Smog Check Inspector License  
22 was in full force and effect at all times relevant to the charges brought herein and will expire on  
23 December 31, 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.

27 7. Business and Professions Code section 9884.7 provides that the Director may revoke  
28 an automotive repair dealer registration.

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

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

10. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director, 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.

11. 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.”

## **STATUTORY PROVISIONS**

12. Section 9884.7 of the Code provides, in pertinent part:

(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.

...

13. Section 9884.11 of the Code provides:

Each automotive repair dealer shall maintain any records that are required by regulations adopted to carry out this chapter. Those records shall be open for reasonable inspection by the chief or other law enforcement officials. All of those records shall be maintained for at least three years.

14. Section 9889.22 of the Code provides:

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.

15. Health and Safety Code section 44012 provides:

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, and on model-year 1996-99, inclusive, vehicles only, beginning no earlier than January 1, 2025. 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 (a) and (c) of Section 44013.

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

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

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

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

4 (f) A visual or functional check is made of emission control devices specified  
5 by the department, including the catalytic converter in those instances in which the  
6 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.

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

9 (h) An analysis of pass and fail rates of vehicles subject to an onboard  
10 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.

11 (i) The test procedures may authorize smog check stations to refuse the testing  
12 of a vehicle that would be unsafe to test, or that cannot physically be inspected, as  
13 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.

14 16. Health and Safety Code section 44015, subdivision (b), provides:

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

17 17. Health and Safety Code section 44032 provides:

18 No person shall perform, for compensation, tests or repairs of emission control  
19 devices or systems of motor vehicles required by this chapter unless the person  
20 performing the test or repair is a qualified smog check technician and the test or  
21 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.

22 18. Health and Safety Code section 44059 provides:

23 The willful making of any false statement or entry with regard to a material  
24 matter in any oath, affidavit, certificate of compliance or noncompliance, or  
25 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  
26 and is punishable as provided in the Penal Code.

27 19. Health and Safety Code section 44072.2 provides, in pertinent part:

28 The director may suspend, revoke, or take other disciplinary action against a  
license as provided in this article if the licensee, or any partner, officer, or director

thereof, does any of the following:

(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.

...

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

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

...

20. Health and Safety Code section 44072.10, subdivision (c), provides:

(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, clean plugging, clean glassing, clean tanking, or any other fraudulent inspection practice, as defined by the department.

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

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

### **REGULATORY PROVISIONS**

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

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

22. California Code of Regulations, title 16, section 3340.30 provides, in pertinent part:

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

(a) Inspect, test and repair vehicles, as applicable, 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.

...

23. California Code of Regulations, title 16, section 3340.35 provides, subdivision (c), provides, in pertinent part:

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

5  
6 24. California Code of Regulations, title 16, section 3340.41 provides, in pertinent part:

7 . . .

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

12 . . .

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

15 26. California Code of Regulations, title 16, section 3358, states:

16 Pursuant to Section 9884.11 of the Business and Professions Code, each  
17 automotive repair dealer shall maintain, in either written or electronic form, legible  
18 copies of the following records for at least three years:

19 (a) All invoices relating to automotive repair including invoices received from  
20 other sources for parts and/or labor.

21 (b) All estimates pertaining to work performed, including all records created to  
22 obtain the authorization from the customer for the initial estimate.

23 (c) All work orders and/or contracts for repairs, parts and labor, including all  
24 records supplementing the work order and created to obtain additional authorization  
25 from the customer for any additional repairs estimated.

26 (d) All such records shall be open for reasonable inspection and/or reproduction  
27 by the Bureau or other law enforcement officials during normal business hours.

28 (e) All records as specified in this section associated with an individual  
transaction shall have a unique identifier linking the records to that specific  
transaction.

29 27. California Code of Regulations, title 16, section 3373, provides:

30 No automotive repair dealer or individual in charge shall, in filling out an  
31 estimate, invoice, or work order, or record required to be maintained by section  
32 3340.15(e) of this chapter, withhold therefrom or insert therein any statement or  
33 information which will cause any such document to be false or misleading, or where  
34 the tendency or effect thereby would be to mislead or deceive customers, prospective  
35 customers, or the public.

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31. During an OIS inspection, engine operating parameters are retrieved from the vehicle's OBD system and recorded to the VID. This is accomplished during the functional portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when prompted by the OIS analyzer screen prompt. Some of the parameters recorded are: (1) engine speed in revolutions per minute (RPM); (2) throttle position as measured by a throttle position sensor (TPS) mounted onto the throttle shaft, measured in a percentage of opening from 0% at idle and near or up to 100% at full throttle; (3) manifold absolute pressure as measured by a manifold absolute pressure sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a normally aspirated vehicle are 0 kpa being absolute vacuum, 25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at sea level; and (4) mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air intake tract, measured in grams per second (gps).

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

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

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1           34. If the vehicle passes the visual, functional and tailpipe tests, it passes the overall  
2 inspection and a Certificate of Compliance is issued and transmitted electronically to the VID.  
3 Each Certificate of Compliance has a unique control number so that it can be tracked to determine  
4 which Smog Check Station purchased the Certificate of Compliance and to which vehicle it was  
5 issued.

6           35. The VID contains registration data from DMV, plus emission standards, vehicle smog  
7 check inspections, smog check stations and technicians, and Certificates of Compliance. The  
8 VID receives the passing smog check results immediately following the inspection. During the  
9 vehicle registration process, the DMV accesses the VID to verify that the vehicle has been tested  
10 and certified. The Bureau can also access the VID to view test data on smog check inspections  
11 performed at any Smog Check Station, or search for, retrieve, and print a test record for a  
12 particular vehicle which has been tested. The EIS or OIS, depending on the test type, also prints a  
13 VIR, which is a physical record of the test results and shows the Certificate of Compliance  
14 number that was issued if the vehicle passed the smog inspection.

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

23           37. The Bureau has become aware of methods some Smog Check stations and Smog  
24 Check inspectors use to fraudulently issue smog certificates to vehicles that will not pass a Smog  
25 Check test on their own, or in some instances, are not even present during the time the test is  
26 performed. One method is known as "clean plugging." "Clean plugging" is a method by which  
27 another vehicle's properly functioning OBD system, or another source such as defeat devices, are  
28 used to generate passing data readings or diagnostic information for the purpose of fraudulently

1 issuing smog certificates to vehicles that are not in smog compliance and or not present for  
2 testing. Another method is known as “clean piping,” which is the act of using the emission  
3 sample of a known clean vehicle to substitute for the emissions of a vehicle that will not pass a  
4 smog inspection or is not present at the time of the test. Defeat devices attempt to simulate  
5 engine operation during a Smog Check inspection by transmitting OBD data to the VID which  
6 has been modified or replaced entirely for the purportedly inspected vehicle during the functional  
7 portion of the OIS inspection. The use of a defeat device during a Smog Check inspection is clean  
8 plugging and is strictly prohibited.

9 38. Between February 2022 and January 2023, a Bureau representative observed,  
10 investigated, and reviewed smog check activities and OIS test data for the smog check inspections  
11 performed at Respondent 323 Smog. The investigation found that Respondent Martinez’s license  
12 was used to enter false information into the state-owned computer database through the EIS and  
13 OIS to issue six (6) fraudulent Smog Certificates of Compliance. The vehicles were certified by  
14 using methods knows as “clean piping” and “clean plugging.”

#### 15 **FEBRUARY 2, 2022 SURVEILLANCE**

16 39. On February 2, 2022, a Bureau representative conducted video surveillance of the  
17 smog check activities at 323 Smog. The Bureau representative compared the Bureau’s test data  
18 summary to the video recording and his observations. The summary shows that during the period  
19 of surveillance on February 2, 2022, five (5) inspections were performed on five (5) different  
20 vehicles and five (5) electronic Smog Check Certificates of Compliance were issued. The test  
21 data summary shows that the inspector license of Respondent Martinez was used to perform all  
22 the inspections. The Bureau representative observed the following discrepancies:

#### 23 **Fraudulent Inspection 1**

24 40. According to the Bureau’s database, on February 2, 2022, a 1999 Jambo motor home,  
25 without a license plate, VIN 1FDXE40S6XHB55930, was tested and issued Certificate of  
26 Compliance #SM630317C issued by Respondent 323 Smog under the license of Smog Check  
27 Inspector EO642048, Respondent Martinez. During the time the 1999 Jambo motor home was  
28 certified, it was not present at the station. A 2008 Chevrolet Silverado C1500 pickup, CA license

LABAEO8, was driven into the test bay and driven out of the test bay by Respondent Martinez while the test was in progress.

**FEBRUARY 17, 2022 SURVEILLANCE AND STATION INSPECTION**

41. On February 17, 2022, a Bureau representative conducted video surveillance of the smog check activities at 323 Smog. The Bureau Representative contemporaneously monitored the station's testing activities from the Bureau's computer database. The Bureau representative verified an inspection was initiated by Respondent 323 Smog on a 1978 Chevrolet LUV (Chevrolet LUV) truck, VIN CLN1438269335, using the BAR97 analyzer. The Bureau representative observed an older, silver Honda Civic without a license plate in the testing bay during the test time but never observed a Chevrolet LUV truck at the station. The Bureau representative verified that the Chevrolet LUV truck was certified by Respondent 323 Smog, then immediately arrived at the station and observed the Honda Civic parked in the test bay with the engine running. The only other vehicle in the test bay was an older, inoperable Chevrolet Caprice raised on a service lift. The Bureau representative asked Respondent Martinez about the Chevrolet LUV Truck that he just certified and Respondent Martinez admitted the truck was not at the station.

42. On February 17, 2022, the Bureau representative conducted a station inspection of 323 Smog. Respondent Martinez refused to answer any questions about the test he had just completed on the Chevrolet LUV truck. The Bureau representative collected station testing records for review, which Respondent Martinez stated were the records for the tests performed during the month of February 2022. The records did not include an estimate or invoice for the inspection on the 1978 Chevrolet LUV truck, only an unsigned copy of the VIR. The records also did not include records for the inspection of the 1999 Jambo motor home, VIN 1FDXE40S6XHB55930, certified on February 2, 2022. The Bureau representative completed an electronic station inspection report, which Respondent Martinez refused to sign.

**Fraudulent Inspection 2**

43. According to the Bureau's database, on or about February 17, 2022, a 1978 Chevrolet LUV without a license plate, VIN CLN1438269335, was tested and issued Certificate of

1 Compliance #SM835719 by Respondent 323 Smog under the license of Smog Check Inspector  
2 #EO642048, Respondent Martinez. During the time the 1978 Chevrolet LUV was certified, it  
3 was not present at the station. The only vehicles present inside of the station were the Honda  
4 Civic, and a Chevrolet Caprice raised on a service lift.

#### 5 **APRIL 27, 2022 STATION INSPECTION**

6 44. On April 27, 2022, the Bureau representative returned to 323 Smog to obtain copies  
7 of the documents for the inspection of the 1999 Jambo motor home, VIN  
8 1FDXE40S6XHB55930. Respondent Martinez could not locate the records. While at the station,  
9 the Bureau representative identified station invoices in a trash can, including at least fourteen (14)  
10 testing invoices with the estimate copies still attached, for inspections performed at 323 Smog  
11 from April 26, 2022 to April 27, 2022.

#### 12 **STATION DATA REVIEW**

13 45. The Bureau representative conducted a detailed review of the VID data for the Smog  
14 Check inspections performed at 323 Smog. The review showed a pattern of over five hundred  
15 (500) vehicles being certified with improbable engine operating parameters not corresponding to  
16 normal engine operation. The data collected by the DAD during the OBDII functional test  
17 confirmed an OBD defeat device was used instead of the actual vehicle being tested, which  
18 constitutes clean plugging.

#### 19 **Fraudulent Inspection 3**

20 46. On August 6, 2022, a 2004 GMC Yukon XL C1500 (2004 Yukon), CA License  
21 5JAT465, was tested and smog certificate #SU674226C was issued under licensed Smog Check  
22 Inspector #EO642048 issued to Respondent Martinez.

23 47. The Dynamic PID Chart for the 2004 Yukon shows between time stamp 88 and  
24 20632 engine speed is steady at approximately 550 RPM. During this time the throttle is fixed at  
25 9% opening, the MAP is fixed at 38kPa, the MAF is fixed at 6.09 gps, and the ignition timing  
26 advance for #1 cylinder is fixed at 16.5 degrees BTDC. After time stamp 20632 the engine speed  
27 begins to accelerate. Between time stamp 21326 and 37807 the engine speed is held at an  
28 increased level of approximately 1700 RPM. From the time the engine RPM increases off idle to

1 the higher RPMs, the throttle is fixed at the same 9% opening, the MAP is fixed at 38kPa, the  
2 MAF is fixed at the same 6.09 gps, and the ignition timing advance for #1 cylinder is also still  
3 fixed at the same 16.5 degrees BTDC.

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

10 49. A failing test was performed on the 2004 Yukon on August 4, 2022, at 323 Smog  
11 under the license of Respondent Martinez. The 2004 Yukon failed the inspection for an  
12 illuminated MIL and confirmed diagnostic trouble codes P0327, P0322, P0420, and P0430.

13 50. The Dynamic PID Chart for the data collected during the August 4, 2022, inspection  
14 on the 2004 Yukon shows the vehicle idled at approximately 550 RPMs before engine speed was  
15 raised to approximately 1800 RPMs by opening the throttle. There was the expected change in  
16 the throttle, MAP, MAF, and ignition timing advance parameters as characteristic or expected for  
17 normal engine operation.

#### 18 **Fraudulent Inspection 4**

19 51. On August 10, 2022, a 2004 Mercedes-Benz C 230K Sport Coupe (2004 C230K), CA  
20 License 7FAH060, was tested and smog certificate #SU674245C was issued under licensed Smog  
21 Check Inspector #EO642048 issued to Respondent Martinez.

22 52. The Dynamic PID Chart for the 2004 C230K shows between time stamp 324 and  
23 28719 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at  
24 2.4% opening, the MAP is fixed at 39kPa, the MAF is fixed at 0 gps, and the ignition timing  
25 advance for #1 cylinder is fixed at 9 degrees BTDC. After time stamp 28719 the engine speed  
26 begins to accelerate. Between time stamp 29929 and 45900 the engine speed is held at an  
27 increased level of approximately 1950 RPM. From the time the engine RPM increases off idle to  
28 the higher RPMs, the throttle is fixed at the same 2.4% opening, the MAP is fixed at 39kPa, the

MAF is fixed at the same 0 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 9 degrees BTDC.

53. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAP, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2004 C230K being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

54. A failing test was performed on the 2004 C230K on August 6, 2022, at 323 Smog under the license of Respondent Martinez. The 2004 C230K failed the inspection for an illuminated MIL, confirmed diagnostic trouble codes P0102, P0130, and P0171, and incomplete OBD readiness monitors.

55. The Dynamic PID Chart for the data collected during the August 6, 2022, inspection on the 2004 C230K shows the vehicle idled at approximately 550 RPMs before engine speed was raised to approximately 2200 RPMs before dropping to 1900 RPMs by opening the throttle. There was the expected change in the throttle, MAP, and ignition timing advance parameters as characteristic or expected for normal engine operation. The vehicle still exhibited the same output of 0 gps for the MAF, which would be consistent with a vehicle with stored DTC P0102 (Mass Airflow Circuit Low).

#### **Fraudulent Inspection 5**

56. On November 5, 2022, a 2004 Toyota Tacoma Xtracab (2004 Tacoma), CA License 39699U2, was tested and smog certificate #IR643690C was issued under licensed Smog Check Inspector #EO642048 issued to Respondent Martinez.

57. The Dynamic PID Chart for the 2004 Tacoma shows between time stamp 280 and 33033 engine speed is steady at approximately 700 RPM. During this time the throttle is fixed at 11.8% opening, the MAF is fixed at 4.03 gps, and the ignition timing advance for #1 cylinder is fixed at 8 degrees BTDC. After time stamp 33033 the engine speed begins to accelerate. Between time stamp 35485 and 50514 the engine speed is held at an increased level of approximately 1700

1 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at  
2 the same 11.8% opening, the MAF is fixed at the same 4.03 gps, and the ignition timing advance  
3 for #1 cylinder is also still fixed at the same 8 degrees BTDC.

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

10 59. A failing test was performed on the 2004 Tacoma on November 4, 2022, at 323 Smog  
11 under the license of Respondent Martinez. The 2004 Tacoma failed the inspection for an  
12 illuminated MIL, and confirmed diagnostic trouble codes P0136, P0302.

13 60. The Dynamic PID Chart for the data collected during the November 4, 2022,  
14 inspection on the 2004 Tacoma shows the vehicle idled at approximately 800 RPMs before  
15 engine speed was raised to approximately 2450 RPMs before dropping to approximately 2200  
16 RPMs by opening the throttle. There was the expected change in the throttle, MAF, and ignition  
17 timing advance parameters as characteristic or expected for normal engine operation.

#### 18 **Fraudulent Inspection 6**

19 61. On January 27, 2023, a 2005 Toyota Highlander Limited (2005 Highlander), CA  
20 License 5MLU460 was tested and smog certificate #IR809209C was issued under licensed Smog  
21 Check Inspector #EO642048 issued to Respondent Martinez.

22 62. The Dynamic PID Chart for the 2005 Highlander shows between time stamp 250 and  
23 20799 engine speed is steady at approximately 675 RPM. During this time the throttle is fixed at  
24 15.7% opening, the MAF is fixed at 2.39 gps, and the ignition timing advance for #1 cylinder is  
25 fixed at 20 degrees BTDC. After time stamp 20799 the engine speed begins to accelerate.  
26 Between time stamp 21495 and 38139 the engine speed is held at an increased level of  
27 approximately 1500 RPM. From the time the engine RPM increases off idle to the higher RPMs,  
28



1 the throttle is fixed at the same 15.7% opening, the MAF is fixed at the same 2.39 gps, and the  
2 ignition timing advance for #1 cylinder is also still fixed at the same 20 degrees BTDC.

3 63. During the entire period the dynamic data was collected, the only parameter that  
4 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings  
5 remained unchanged even though the engine speed was increased. These readings are not  
6 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data  
7 prove the OIS DAD was not connected to the 2005 Highlander being certified, causing the  
8 issuance of a fraudulent Smog Certificate of Compliance.

9 64. A failing test was performed on the 2005 Highlander on January 23, 2023, at 323  
10 Smog under the license of Respondent Martinez. The 2005 Highlander failed the inspection for  
11 an illuminated MIL, and confirmed diagnostic trouble codes P0420, P0430.

12 65. The Dynamic PID Chart for the data collected during the January 23, 2023,  
13 inspection on the 2005 Highlander shows the vehicle idled at approximately 700 RPMs before  
14 engine speed was raised to approximately 2100 RPMs by opening the throttle. There was the  
15 expected change in the throttle, MAF, and ignition timing advance parameters as characteristic or  
16 expected for normal engine operation.

### 17 **FIRST CAUSE FOR DISCIPLINE**

#### 18 **(Untrue or Misleading Statements – Respondent 323 Smog)**

19 66. Respondent 323 Smog's Automotive Repair Dealer Registration is subject to  
20 disciplinary action under Code section 9884.7, subdivision (a)(1), in that, with respect to the  
21 vehicles identified above, Respondent 323 Smog made or authorized statements which they  
22 knew, or in the exercise of reasonable care should have known to be untrue or misleading, as  
23 follows: Respondent 323 Smog certified that these vehicles had passed inspection and were in  
24 compliance with applicable laws and regulations, when in fact, Respondent 323 Smog conducted  
25 the inspections on the vehicles using the clean plugging and clean piping methods in order to  
26 issue smog certificates of compliance for the vehicles. Complainant refers to, and by this  
27 reference incorporates, the allegations set forth above in paragraphs 39 through 65, as though  
28 fully set forth herein.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud – Respondent 323 Smog)**

3 67. Respondent 323 Smog's Automotive Repair Dealer Registration is subject to  
4 disciplinary action under Code section 9884.7, subdivision (a)(4), in that, with respect to the  
5 vehicles identified above, Respondent 323 Smog committed acts which constitute fraud by  
6 issuing electronic smog certificates of compliance for these vehicles without performing bona  
7 fide inspections of the emissions control devices and systems on those vehicles, thereby depriving  
8 the People of the State of California of the protection afforded by the Motor Vehicle Inspection  
9 Program. Complainant refers to, and by this reference incorporates, the allegations set forth  
10 above in paragraphs 39 through 65, as though fully set forth herein.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Material Violation of Automotive Repair Act – Respondent 323 Smog)**

13 68. Respondent 323 Smog's Automotive Repair Dealer Registration is subject to  
14 disciplinary action under Code section 9884.7, subdivision (a)(6), in that, with respect to the  
15 vehicles identified above, Respondent 323 Smog failed in a material respect to comply with the  
16 provisions of this chapter or regulations adopted pursuant to it by issuing electronic smog  
17 certificates of compliance for these vehicles without performing bona fide inspections of the  
18 emissions control devices and systems on those vehicles, thereby depriving the People of the  
19 State of California of the protection afforded by the Motor Vehicle Inspection Program.  
20 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
21 paragraphs 39 through 65, as though fully set forth herein.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Violations of the Motor Vehicle Inspection Program – Respondent 323 Smog)**

24 69. Respondent 323 Smog's Smog Check Test Only Station License is subject to  
25 disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that, with  
26 respect to the vehicles identified above, Respondent 323 Smog failed to comply with the  
27 following sections of the Health and Safety Code:

28 ///

1 a. **Section 44012:** Respondent 323 Smog failed to ensure that the emission control tests  
2 were performed on the vehicles in accordance with procedures prescribed by the Bureau.

3 b. **Section 44015, subdivision (b):** Respondent 323 Smog issued electronic smog  
4 certificates of compliance for the vehicles without ensuring that the vehicles were properly tested  
5 and inspected to determine if they were in compliance with Health and Safety Code section  
6 44012.

7 c. **Section 44059:** Respondent 323 Smog willfully made false entries for the electronic  
8 smog certificates of compliance for the vehicles by certifying that the vehicles had been inspected  
9 as required when, in fact, they had not.

10 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
11 paragraphs 39 through 65, as though fully set forth herein.

#### 12 **FIFTH CAUSE FOR DISCIPLINE**

#### 13 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection**

#### 14 **Program – Respondent 323 Smog)**

15 70. Respondent 323 Smog's Smog Check Test Only Station License is subject to  
16 disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that, with  
17 respect to the vehicles identified above, Respondent 323 Smog failed to comply with provisions  
18 of the California Code of Regulations, title 16, as follows:

19 a. **Section 3340.24, subdivision (c):** Respondent 323 Smog issued false or fraudulent  
20 certificates of compliance for the vehicles.

21 b. **Section 3340.35, subdivision (c):** Respondent 323 Smog issued electronic smog  
22 certificates of compliance for the vehicles even though the vehicles had not been inspected in  
23 accordance with section 3340.42 of the California Code of Regulations, title 16.

24 c. **Section 3340.41, subdivision (c):** Respondent 323 Smog knowingly entered false  
25 information into the emissions inspection system for the vehicles.

26 d. **Section 3340.42:** Respondent 323 Smog failed to ensure that the required smog tests  
27 were conducted on the vehicles in accordance with the Bureau's specifications.

28 ///

1 e. **Section 3358:** Respondent 323 Smog failed to maintain records of testing and  
2 inspection of vehicles.

3 f. **Section 3373:** Respondent 323 Smog withheld or inserted statements or information  
4 in an estimate, invoice, work order, or record required to be maintained by California Code of  
5 Regulations, title 16, section 3340.15, subdivision (e), which caused the document to be false or  
6 misleading for the vehicles.

7 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
8 paragraphs 39 through 65, as though fully set forth herein.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Dishonesty, Fraud, or Deceit – Respondent 323 Smog)**

11 71. Respondent 323 Smog's Smog Check Test Only Station License is subject to  
12 disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in conjunction  
13 with Health and Safety Code section 44072.10, subdivision (c), in that, with respect to the  
14 vehicles identified above, Respondent 323 Smog committed dishonest, fraudulent, or deceitful  
15 acts whereby another was injured by issuing electronic smog certificates of compliance for the  
16 vehicles without performing bona fide inspections of the emission control devices and systems on  
17 those vehicles, thereby depriving the People of the State of California of the protection afforded  
18 by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference  
19 incorporates, the allegations set forth above in paragraphs 39 through 65, as though fully set forth  
20 herein.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Unlawful Software or Simulation Device – Respondent 323 Smog)**

23 72. Respondent 323 Smog Check Test Only Station License is subject to disciplinary  
24 action under Health and Safety Code section 44072.2, subdivision (c), in conjunction with  
25 California Code of Regulations, title 16, section 3340.41, subdivision (h), in that Respondent 323  
26 Smog had an electric device or software capable of simulating the OBD data stream from a  
27 vehicle or manipulating OBD information in the station's testing area. Complainant refers to, and  
28

1 by this reference incorporates, the allegations set forth above in paragraphs 39 through 65, as  
2 though fully set forth herein.

3 **EIGHTH CAUSE FOR DISCIPLINE**

4 **(Maintenance of Records – Respondent 323 Smog)**

5 73. Respondent 323 Smog's Automotive Repair Dealer Registration is subject to  
6 disciplinary action under Code section 9884.11, in conjunction with California Code of  
7 Regulations, title 16, section 3358, in that Respondent 323 Smog failed to maintain all records  
8 associated with the testing and inspection of vehicles. Complainant refers to, and by this  
9 reference incorporates, the allegations set forth above in paragraphs 39 through 65, as though  
10 fully set forth herein.

11 **NINTH CAUSE FOR DISCIPLINE**

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

13 74. Respondent Martinez's Smog Check Inspector License is subject to disciplinary  
14 action under Health and Safety Code section 44072.2, subdivision (a), in that, with respect to the  
15 vehicles identified above, Respondent Martinez violated the following Health and Safety Code  
16 sections:

17 a. **Section 44012, subdivision (a):** Respondent Martinez failed to determine that all  
18 emission control devices and systems required by law were installed and functioning correctly on  
19 the vehicles in accordance with test procedures prescribed by the Bureau.

20 b. **Section 44012, subdivision (f):** Respondent Martinez failed to perform emission  
21 control tests on the vehicles in accordance with procedures prescribed by the Bureau.

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

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

28 ///

1 e. **Section 44072.10, subdivision (c):** Respondent Martinez used the clean piping and  
2 clean plugging methods in order to issue fraudulent smog certificates of compliance.

3 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
4 paragraphs 39 through 65, as though fully set forth herein.

5 **TENTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection**  
7 **Program – Respondent Martinez)**

8 75. Respondent Martinez’s Smog Check Inspector License is subject to disciplinary  
9 action under Health and Safety Code section 44072.2, subdivision (c), in that, with respect to the  
10 vehicles identified above, Respondent Martinez failed to comply with provisions of the California  
11 Code of Regulations, title 16, as follows:

12 a. **Section 3340.24, subdivision (c):** Respondent Martinez issued false or fraudulent  
13 electronic smog certificates of compliance for the vehicles.

14 b. **Section 3340.30, subdivision (a):** Respondent Martinez failed to inspect and test the  
15 vehicles in accordance with Health and Safety Code sections 44012 and 44035 and California  
16 Code of Regulations, title 16, section 3340.42.

17 c. **Section 3340.41, subdivision (c):** Respondent Martinez knowingly entered false  
18 information into the emissions inspection system for the vehicles.

19 d. **Section 3340.42:** Respondent Martinez failed to ensure that the required smog tests  
20 were conducted on the vehicles identified above in accordance with the Bureau’s specifications.

21 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
22 paragraphs 39 through 65, as though fully set forth herein.

23 **ELEVENTH CAUSE FOR DISCIPLINE**

24 **(Dishonesty, Fraud, or Deceit – Respondent Martinez)**

25 76. Respondent Martinez’s Smog Check Inspector License is subject to disciplinary  
26 action under Health and Safety Code section 44072.2, subdivision (d), in conjunction with  
27 Health and Safety Code section 44072.10, subdivision (c), in that, with respect to the vehicles  
28 identified above, Respondent Martinez committed acts involving dishonesty, fraud, or deceit

1 when he issued electronic smog certificates of compliance for the vehicles without performing  
2 bona fide inspections of the emission control devices and systems on those vehicles, thereby  
3 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
4 Inspection Program. Complainant refers to, and by this reference incorporates, the allegations  
5 set forth above in paragraphs 39 through 65, as though fully set forth herein.

6 **OTHER MATTERS**

7 77. Pursuant to Code section 9884.7, subdivision (c), the Bureau may refuse to validate,  
8 or may invalidate temporarily or permanently, the registrations for all places of business operated  
9 in this state by Jennifer Renee Fonseca upon a finding that she has, or is, engaged in a course of  
10 repeated and willful violations of the laws and regulations pertaining to an automotive repair  
11 dealer.

12 78. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only,  
13 Station License Number TC 294721, issued to Jennifer Renee Fonseca, dba 323 Smog, is revoked  
14 or suspended pursuant to a hearing, any additional license issued under Chapter 5 of Part 5 of  
15 Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked  
16 or suspended by the director.

17 79. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License  
18 No. EO 642048 issued to Ezequiel Martinez is revoked or suspended pursuant to a hearing, any  
19 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code  
20 in the name of said licensee may be likewise revoked or suspended by the director.

21 **PRAYER**

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

25 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
26 294721, issued to Jennifer Renee Fonseca, dba 323 Smog;

27 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to  
28 Jennifer Renee Fonseca;

1           3.     Revoking or suspending Smog Check, Test Only, Station License Number TC  
2 294721, issued to Jennifer Renee Fonseca, dba 323 Smog;

3           4.     Revoking or suspending any other license issued pursuant to Chapter 5, Part 5, of  
4 Division 26 of the Health and Safety Code in the name of Jennifer Renee Fonseca;

5           5.     Revoking or suspending Smog Check Inspector License Number EO 642048, issued  
6 to Ezequiel Martinez;

7           6.     Revoking or suspending any other license issued pursuant to Chapter 5, Part 5, of  
8 Division 26 of the Health and Safety Code in the name of Ezequiel Martinez;

9           7.     Ordering Jennifer Renee Fonseca and Ezequiel Martinez to pay the Bureau of  
10 Automotive Repair the reasonable costs of the investigation and enforcement of this case,  
11 pursuant to Business and Professions Code section 125.3; and, if placed on probation, the costs of  
12 probation monitoring; and,

13           8.     Taking such other and further action as deemed necessary and proper.  
14  
15

16 DATED: As of digital signature date

17 \_\_\_\_\_  
18 PATRICK DORAIS  
19 Chief  
20 Bureau of Automotive Repair  
21 Department of Consumer Affairs  
22 State of California  
23 *Complainant*  
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