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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. 79/24-17475

14 **JOSE OMAR ESCUTIA GOMEZ –**
15 **OWNER DBA NICKS SMOG CHECK**
16 **291 E Highland Ave**
San Bernardino, CA 92404

ACCUSATION

17 **Mailing Address:**
18 **4091 Bresee Ave**
Baldwin Park, CA 91706

19 Automotive Repair Dealer Registration
No. ARD 295270
20 Smog Check Test Only Station License
No. TC 295270,

21 and

22 **ADRIAN LEE BARELA**
23 **571 Julie St**
Colton, CA 92324

24 Smog Check Inspector License No. EO 644603

25 Respondents.
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PARTIES

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.

2. On or about August 29, 2019, the Bureau issued Automotive Repair Dealer Registration Number ARD 295270 to Jose Omar Escutia Gomez – Owner dba Nicks Smog Check (Respondent Gomez). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in this Accusation. The Automotive Repair Dealer Registration was cancelled on July 3, 2024.

3. On or about September 3, 2019, the Bureau issued Smog Check, Test Only, Station License Number TC 295270 to Respondent Gomez. The Smog Check, Test Only, Station License was in full force and effect at all times relevant to the charges brought in this Accusation. The Smog Check, Test Only, Station License was cancelled on July 3, 2024.

4. Nicks Smog Check was also certified as a STAR station. The certification was issued on October 23, 2024, and was terminated on July 3, 2024.

5. On or about October 4, 2023, the Bureau issued Smog Check Inspector License Number EO 644603 to Adrian Lee Barela (Respondent Barela). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought in this Accusation, and will expire on July 31, 2025, unless renewed.

JURISDICTION

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

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

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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 temporarily or permanently invalidating (suspending or revoking) a registration.

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 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

11. Business and Professions Code section 9884.7 states, 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.

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

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(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.

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1 12. Business and Professions Code section 477 provides, in pertinent part, that “Board”
2 includes “bureau,” “commission,” “committee,” “department,” “division,” “examining
3 committee,” “program,” and “agency.” “License” includes certificate, registration or other means
4 to engage in a business or profession regulated by the Business and Professions Code.

5 13. Health and Safety Code section 44012 states:

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

18 ...

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

24 ...

25 14. Health and Safety Code section 44014, subdivision (a), provides the testing and repair
26 portion of the program shall be conducted by smog check stations licensed by the department, and
27 by smog check technicians who have qualified pursuant to this chapter.

28 15. Health and Safety Code section 44015, subdivision (b), provides that a certificate of
compliance shall be issued if a vehicle meets the requirements of Health and Safety Code section
40012.

 16. Health and Safety Code section 44032 provides that qualified technicians shall
perform tests of emissions control devices and systems in accordance with Health and Safety
Code section 40012.

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17. Health and Safety Code section 44072.2 states, in pertinent part:

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 Safety 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.

...

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

18. Health and Safety Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

19. Health and Safety Code section 44072.10, 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.

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

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

REGULATORY PROVISIONS

20. 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.

1 21. California Code of Regulations, title 16, section 3340.30, subdivision (a), states that a
2 licensed smog technician shall at all times “[i]nspect, test and repair vehicles, as applicable, in
3 accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and
4 Safety Code, and section 3340.42 of this article.”

5 22. California Code of Regulations, title 16, section 3340.35, subdivision (c), states that a
6 licensed smog check station “shall issue a certificate of compliance or noncompliance to the
7 owner or operator of any vehicle that has been inspected in accordance with the procedures
8 specified in section 3340.42 of this article and has all the required emission control equipment
9 and devices installed and functioning correctly.”

10 23. California Code of Regulations, title 16, section 3340.41 states, in pertinent part:

11

12 (c) No person shall enter into the emissions inspection system any vehicle
13 identification information or emission control system identification data for any
14 vehicle other than the one being tested. Nor shall any person knowingly enter into the
emissions inspection system any false information about the vehicle being tested

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

17 25. California Code of Regulations, title 16, section 3340.45, states:

18 All Smog Check inspections shall be performed in accordance with
19 requirements and procedures prescribed in the Smog Check Manual, dated January
2021, which is hereby incorporated by reference.

20 **COST RECOVERY**

21 26. Business and Professions Code section 125.3 provides, in pertinent part, that the
22 Bureau may request the administrative law judge to direct a licensee found to have committed a
23 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
24 investigation and enforcement of the case, with failure of the licensee to comply subjecting the
25 license to not being renewed or reinstated. If a case settles, recovery of investigation and
26 enforcement costs may be included in a stipulated settlement.

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CALIFORNIA'S SMOG CHECK PROGRAM

27. California's Smog Check Program requires most vehicles in the State to undergo a smog check inspection every two years or when the vehicle's title is transferred.

28. A smog check inspection in certain Enhanced areas of the State is an Acceleration Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons (HC), Carbon Monoxide (CO), Oxides of Nitrogen (NO_x), Carbon Dioxide (CO₂) and Oxygen (O₂). The first part of the test is a loaded mode test of the vehicle's tailpipe emissions on a dynamometer. The vehicle's drive wheels are placed on rollers, and the vehicle is driven to simulate driving conditions while the emissions are sampled by the EIS.

29. In Basic areas of the State, or depending on a vehicle's configuration, a similar test called a Two Speed Idle test is performed, but instead of applying a load to the vehicle's drive wheels with a dynamometer, the EIS measures the emissions of HC, CO, O₂, and CO₂ at idle as well as 2500 revolutions per minute (RPM).

30. In the visual portion of a smog check, the technician inspects the emission control components to verify that the required emission control devices are present and properly connected.

31. An On-Board Diagnostics (OBD II) functional test is also performed on most 1996 to 1999 model year vehicles. The EIS retrieves information through the Diagnostic Link Connector (DLC) from the vehicle's on-board computer about its ability to communicate, the status of the I/M readiness monitors and the MIL (malfunction indicator lamp) light command. The I/M readiness monitors tell whether or not the OBD II system has run a sufficient number of self-tests on the vehicle's emission and engine control systems. A failure of one or more of the OBD II functional criteria, depending on model year, will result in the vehicle failing its smog check inspection. In addition to reporting the outcome of the OBD II functional test, the smog check inspection results also show Diagnostic Trouble Codes (DTC) if there are any in the vehicle's on-board computer memory.

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1 32. The inspector enters the results of the visual and functional inspections into the EIS.
2 The EIS unit makes the determination whether or not the vehicle passes the inspection based on
3 the results of the tailpipe, visual and functional tests.

4 33. The EIS is connected by internet connection to Bureau's Vehicle Information
5 Database (VID). If the vehicle passes the visual, functional and tailpipe tests, it passes the overall
6 inspection. A Certificate of Compliance is issued and transmitted electronically to the VID.

7 34. Beginning March 9, 2015, California's Smog Check Program was updated to require
8 the use of an On-Board Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check
9 equipment required in all areas of the State when inspecting most model-year 2000 and newer
10 gasoline and hybrid vehicles. The system consists of a certified Data Acquisition Device (DAD),
11 computer, bar code scanner, and printer. The DAD is an OBD scan tool that, when requested by
12 the BAR-OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle
13 indicates it supports is requested by the BAR-OIS software and will be retrieved. The DAD
14 connects between the BAR-OIS computer and the vehicle's DLC. The bar code scanner is used to
15 input inspector information, the vehicle identification number (VIN), and Department of Motor
16 Vehicles renewal information. The printer provides a Vehicle Inspection Report (VIR)
17 containing inspection results for motorists and a Smog Check Certificate of Compliance number
18 for passing vehicles.

19 35. Data retrieved, captured and recorded to the VID during a BAR-OIS smog check
20 inspection includes: the electronic vehicle identification number (eVIN), which is the digitally
21 stored VIN programmed into the vehicles Powertrain Control Module (PCM); the communication
22 protocol, which is the specific "language" the PCM uses to relay or communicate information to
23 scan tools and other computers or devices such as the BAR-OIS; and the number of Parameter
24 Identifications (PIDs), which is the number of specific data values each PCM reports related to
25 emissions controls. The eVIN is required to be programmed into the vehicle's PCM on 2005 and
26 newer vehicles.

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36. The communication protocol is programmed into the vehicle's on-board computer during manufacture and does not change. The protocol can be recorded in its basic characters or in an expanded form that includes additional characters. The basic form is primary and is always contained within the expanded form (i.e., ICAN11bt5 vs. ICAN11bt500, I914 vs. I9140808, JVPW vs JVPW1850, JPWM vs JPWM1850).

37. PIDs are data points reported by the vehicle on-board computer to a scan tool or BAR- OIS. Examples of PIDs are engine speed, vehicle speed, engine temperature, and other input and output values utilized by the vehicle's on-board computer. The PID count is the number of data points reported by the vehicle's on-board computer and is programmed during manufacture.

38. The Bureau has become aware of methods that Smog Check stations and Smog Check inspectors use to fraudulently issue smog certificates to vehicles that may not pass a smog check test on their own, or in some instances, are not even present during the time the test is performed. “Clean plugging” is a method by which another vehicle’s OBD II system, or another source such as defeat devices, are used to generate passing data readings or diagnostic information for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance, and or not present for testing. Defeat devices attempt to simulate engine operation during a smog check inspection by transmitting OBD II data to the VID which has been modified or replaced entirely for the purportedly inspected vehicle during the functional portion of the OIS inspection.

FACTUAL BACKGROUND

39. A Bureau Representative reviewed the VID and OIS test data for smog check inspections performed at Nicks Smog Check. The review showed a pattern of vehicles being certified with engine operating parameters not corresponding to normal engine operation. The data collected by the DAD during the OBD II functional test confirmed an OBD defeat device was used instead of the actual vehicle being tested, which constituted clean plugging. The review

1 confirmed that the following ten (10) Smog Check Certificates of Compliance were fraudulently
2 issued to vehicles inspected by Jonathan Alexis Martinez (Martinez) or Respondent Barela.¹

3 **Fraudulent Inspection Number 1 – 2001 Honda Accord EX**

4 40. On September 1, 2023, the OIS test data for Nicks Smog Check indicated that a 2001
5 Honda Accord EX, CA license 4PDS273, VIN 1HGCG16521A007997 (2001 Accord), was tested
6 and Smog Certificate of Compliance Number TM664050C was issued by Martinez.

7 41. The dynamic PIDs for the 2001 Accord showed that between time stamps 845 and
8 21416, the engine speed was steady at approximately 825 RPM. During this time, the throttle
9 was fixed at 10.2% opening, the MAP (Manifold Air Pressure Sensor) was fixed at 25 kPa (kilo
10 pascals), and the ignition timing advance for the #1 cylinder was fixed at 9.5 degrees BTDC
11 (Before Top Dead Center). After time stamp 21416, the engine speed accelerated to
12 approximately 1500 RPM. From the time the engine RPM increased off idle to the higher RPMs,
13 the throttle was fixed at the same 10.2% opening, the MAP was fixed at the same 25 kPa, and the
14 ignition timing advance for the #1 cylinder was also still fixed at the same 9.5 degrees BTDC.

15 42. During the entire period the dynamic data was collected, the only parameter that
16 changed was engine RPM. The throttle position, MAP, and ignition timing advance readings
17 remained unchanged even though the engine speed increased. These readings were not
18 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
19 proved that the DAD was not connected to the 2001 Accord being certified, causing the issuance
20 of a fraudulent Smog Check Certificate of Compliance.

21 **Previous Failing Test: 2001 Accord**

22 43. A previous failing test was performed on the 2001 Accord at another station on July
23 31, 2023. The dynamic OBD II PID data collected during the test showed the expected change in
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25 ¹ On or about February 20, 2018, the Bureau issued Smog Check Inspector License Number
26 EO 640931 to Jonathan Alexis Martinez. The Smog Check Inspector License was in full force
27 and effect at all times relevant to the charges brought in this Accusation. The Smog Check
28 Inspector License was revoked by default decision in Bureau case number 79/24-5528, effective
March 18, 2025.

the throttle, MAP, and ignition timing advance parameters as characteristic or expected for normal engine operation.

Fraudulent Inspection Number 2 – 2003 Toyota Corolla CE

44. On October 3, 2023, the OIS test data for Nicks Smog Check indicated that a 2003 Toyota Corolla CE, CA license 8AVZ843, VIN 1NXBR32E33Z063000 (2003 Corolla), was tested and Smog Certificate of Compliance Number IV692136C was issued by Martinez.

45. The dynamic PIDs for the 2003 Corolla showed that between time stamps 851 and 24868, the engine speed was steady at approximately 700 RPM. During this time, the throttle was fixed at 10.6% opening, the MAF (Mass Air Flow sensor) was fixed at .45 gps (grams per second), and the ignition timing advance for the #1 cylinder was fixed at 5 degrees BTDC. After time stamp 24868, the engine speed accelerated to approximately 1600 RPM. From the time the engine RPM increased off idle to the higher RPMs, the throttle was fixed at the same 10.6% opening, the MAF was fixed at the same .45 kPa, and the ignition timing advance for the #1 cylinder was fixed at 5 degrees BTDC.

46. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed increased. These readings were not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data proved that the DAD was not connected to the 2003 Corolla being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Previous Failing Test: 2003 Corolla

47. A previous failing test was performed on the 2003 Corolla at another station on June 6, 2023. The 2003 Corolla failed the test for incomplete OBD II readiness monitors.

Fraudulent Inspection Number 3 – 2000 Suburban

48. On October 17, 2023, the OIS test data for Nicks Smog Check indicated that a 2000 Chevrolet Suburban C1500, CA license 4MPT379, VIN 3GNEC16T9YG217775 (2000 Suburban), was tested and Smog Certificate of Compliance Number IX029246C was issued by Martinez.

49. The dynamic PIDs for the 2000 Suburban showed that between time stamps 336 and 19397, the engine speed was steady at approximately 575 RPM. During this time, the throttle was fixed at 7.8% opening, the MAF was fixed at 6.17 gps, the MAP was fixed at 34 kPa, and the ignition timing advance for the #1 cylinder was fixed at 17 degrees BTDC. After time stamp 19397, the engine speed accelerated to approximately 1600 RPM. From the time the engine RPM increased off idle to the higher RPMs, the throttle was fixed at the same 7.8% opening, the MAF was fixed at the same 6.17 gps, the MAP was fixed at the same 34 kPa, and the ignition timing advance for the #1 cylinder was fixed at the same 17 degrees BTDC.

50. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, MAP, and ignition timing advance readings remained unchanged even though the engine speed increased. These readings were not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data proved that the DAD was not connected to the 2000 Suburban being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Previous Failing Test: 2000 Suburban

51. A previous failing test was performed on the 2000 Suburban at another station on September 5, 2023. The 2000 Suburban failed the test for incomplete OBD II readiness monitors.

Fraudulent Inspection Number 4 – 2001 Frontier

52. On November 13, 2023, the OIS test data for Nicks Smog Check indicated that a 2001 Nissan Frontier King Cab XE, CA license 6S42345, VIN 1N6DD26S31C383147 (2001 Frontier), was tested and Smog Check Certificate of Compliance Number TO811069C was issued by Martinez.

53. The dynamic PID for the 2001 Frontier showed that between time stamps 958 and 24237, the engine speed was steady at approximately 850 RPM. During this time, the throttle was fixed at 0% opening, the MAF was fixed at 5.18 gps, and the ignition timing advance for the #1 cylinder was fixed at 12 degrees BTDC. After time stamp 24237, the engine speed accelerated to approximately 1650 RPM. From the time the engine RPM increased off idle to the higher

1 RPMs, the throttle was fixed at the same 0% opening, the MAF was fixed at the same 5.18 gps,
2 and the ignition timing advance for the #1 cylinder was fixed at the same 12 degrees BTDC.

3 54. 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 increased. These readings were not
6 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
7 proved that the DAD was not connected to the 2001 Frontier being certified, causing the issuance
8 of a fraudulent Smog Check Certificate of Compliance.

9 **Previous Failing Test: 2001 Frontier**

10 55. A previous failing test was performed on the 2001 Frontier at another station on
11 October 12, 2023. The 2001 Frontier failed the test for incomplete OBD II readiness monitors.
12 The dynamic OBD II PID data collected during the test showed the expected change in the
13 throttle, MAF, and ignition timing advance parameters as characteristic or expected for normal
14 engine operation.

15 **Fraudulent Inspection Number 5 – 2004 Camry**

16 56. On December 20, 2023, the OIS test data for Nicks Smog Check indicated that a 2004
17 Toyota Camry LE, CA license 5GUL425, VIN 4T1BE32K74U878366 (2004 Camry), was tested
18 and Smog Check Certificate of Compliance Number TQ182029C was issued by Martinez.

19 57. The dynamic PID for the 2004 Camry showed that between time stamps 847 and
20 19765, the engine speed was steady at approximately 700 RPM. During this time, the throttle
21 was fixed at 15.7% opening, the MAF was fixed at .4 gps, and the ignition timing advance for the
22 #1 cylinder was fixed at 5 degrees BTDC. After time stamp 19765, the engine speed accelerated
23 to approximately 1800 RPM. From the time the engine RPM increased off idle to the higher
24 RPMs, the throttle was fixed at the same 15.7% opening, the MAF was fixed at the same .4 gps,
25 and the ignition timing advance for the #1 cylinder was a fixed at the same 5 degrees BTDC.

26 58. During the entire period the dynamic data was collected, the only parameter that
27 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
28 remained unchanged even though the engine speed increased. These readings were not

characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data proved that the DAD was not connected to the 2004 Camry being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Previous Failing Test: 2004 Camry

59. A previous failing test was performed on the 2004 Camry at another station on September 9, 2023. The 2004 Camry failed the test for a tampered catalyst and incomplete OBD II readiness monitors. The dynamic OBD II PID data collected during the test showed the expected change in the throttle, MAF, and ignition timing advance parameters as characteristic or expected for normal engine operation.

Fraudulent Inspection Number 6 – 2003 Frontier

60. On January 16, 2024, the OIS test data for Nicks Smog Check indicated that a 2003 Nissan Frontier Crew Cab XE, CA license 7E20097, VIN 1N6ED29X63C436891 (2003 Frontier), was tested and Smog Check Certificate of Compliance Number IX993797C was issued by Respondent Barela.

61. The dynamic PID for the 2003 Frontier showed that between time stamps 964 and 25085, the engine speed was steady at approximately 850 RPM. During this time, the throttle was fixed at 0% opening, the MAF was fixed at 4.23 gps, and the ignition timing advance for the #1 cylinder was fixed at 10 degrees BTDC. After time stamp 25085, the engine speed accelerated to approximately 1625 RPM. From the time the engine RPM increased off idle to the higher RPMs, the throttle was fixed at the same 0% opening, the MAF was fixed at the same 4.23 gps, and the ignition timing advance for the #1 cylinder was fixed at the same 10 degrees BTDC.

62. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed increased. These readings were not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove that the DAD was not connected to the 2003 Frontier being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

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Previous Failing Test: 2003 Frontier

63. A previous failing test was performed on the 2003 Frontier by Respondent Barela at Nicks Smog Check on January 12, 2024. The 2003 Frontier failed the test for an illuminated MIL, and stored OBD II DTCs P0328 and P0430. The dynamic OBD II PID data collected during the test showed the expected change in the throttle, MAF, and ignition timing advance parameters as characteristic or expected for normal engine operation

Fraudulent Inspection Number 7 – 2001 Tundra

64. On January 29, 2024, the OIS test data for Nicks Smog Check indicated that a 2001 Toyota Tundra Access Cab, CA license 6M68100, VIN 5TBRT341X1S157187 (2001 Tundra), was tested and Smog Check Certificate of Compliance Number TS281664C was issued by Respondent Barela.

65. The dynamic PID for the 2001 Tundra showed that between time stamps 843 and 35262, the engine speed was steady at approximately 850 RPM. During this time, the throttle was fixed at 15.3% opening, the MAF was fixed at 5.15 gps, and the ignition timing advance for the #1 cylinder was fixed at 15 degrees BTDC. After time stamp 35262, the engine speed accelerated to approximately 1550 RPM. From the time the engine RPM increased off idle to the higher RPMs, the throttle was fixed at the same 15.3% opening, the MAF was fixed at the same 5.15 gps, and the ignition timing advance for the #1 cylinder was fixed at the same 15 degrees BTDC.

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

Previous Failing Test: 2001 Tundra

67. A previous failing test was performed on the 2001 Tundra by Respondent Barela at Nicks Smog Check on January 19, 2024. The 2001 Tundra failed the test for an illuminated MIL,

1 and stored OBD II DTCs P0441 and P0446. The dynamic OBD II PID data collected during the
2 test showed the expected change in the throttle, MAF, and ignition timing advance parameters as
3 characteristic or expected for normal engine operation

4 **Fraudulent Inspection Number 8 – 2004 Tundra**

5 68. On February 7, 2024, the OIS test data for Nicks Smog Check indicated that a 2004
6 Toyota Tundra Access Cab SR5, CA license 7U40580, VIN 5TBRN34154S440370 (2004
7 Tundra), was tested and Smog Check Certificate of Compliance Number TS475905C was issued
8 by Respondent Barela.

9 69. The dynamic PID for the 2004 Tundra showed that between time stamps 868 and
10 21536, the engine speed was steady at approximately 775 RPM. During this time, the throttle
11 was fixed at 15.7% opening, the MAF was fixed at 3.32 gps, and the ignition timing advance for
12 the #1 cylinder was fixed at 12.5 degrees BTDC. After time stamp 21536, the engine speed
13 accelerated to approximately 1825 RPM. From the time the engine RPM increased off idle to the
14 higher RPMs, the throttle was fixed at the same 15.7% opening, the MAF was fixed at the same
15 3.32 gps, and the ignition timing advance for the #1 cylinder was fixed at the same 12.5 degrees
16 BTDC.

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

23 **Previous Failing Tests: 2004 Tundra**

24 71. A previous failing test was performed on the 2001 Tundra by Respondent Barela at
25 Nicks Smog Check on January 31, 2024. The 2004 Tundra failed the test for an illuminated MIL,
26 and stored OBD II DTCs P0442 and P0505. The dynamic OBD II PID data collected during the
27 test showed the expected change in the throttle, MAF, and ignition timing advance parameters as
28 characteristic or expected for normal engine operation

72. A previous failing test was performed on the 2004 Tundra at another station on January 22, 2024. The 2004 Tundra failed the test for an illuminated MIL, incomplete OBD II readiness monitors, and stored OBD II DTCs P0420, P0442 and P0505.

Fraudulent Inspection Number 9 – 2000 Civic

73. On February 7, 2024, the OIS test data for Nicks Smog Check indicated that a 2000 Honda Civic HX, CA license 8WIW198, VIN 1HGEJ7128YL108311 (2000 Civic), was tested and Smog Check Certificate of Compliance Number TS475906C was issued by Respondent Barela.

74. The dynamic PID for the 2000 Civic showed that between time stamps 840 and 24912, the engine speed was steady at approximately 650 RPM. During this time, the throttle was fixed at 9.8% opening, the MAP was fixed at 25 kPa, and the ignition timing advance for the #1 cylinder was fixed at 11.5 degrees BTDC. After time stamp 24912, the engine speed accelerated to approximately 1800 RPM. From the time the engine RPM increased off idle to the higher RPMs, the throttle was fixed at the same 9.8% opening, the MAP was fixed at the same 25 kPa, and the ignition timing advance for the #1 cylinder was fixed at the same 11.5 degrees BTDC.

75. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAP, and ignition timing advance readings remained unchanged even though the engine speed increased. These readings were not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data proved that the DAD was not connected to the 2000 Civic being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Previous Failing Test: 2000 Civic

76. A previous failing test was performed on the 2000 Civic by Respondent Barela at Nicks Smog Check on January 31, 2024. The 2000 Civic failed the test for incomplete OBD II readiness monitors, and a tampered catalyst. The dynamic OBD II PID data collected during the test showed the expected change in the throttle, MAP, and ignition timing advance parameters as characteristic or expected for normal engine operation.

Fraudulent Inspection Number 10 – 2002 MPV

77. On June 18, 2024, the OIS test data for Nicks Smog Check indicated that a 2002 Mazda MPV Wagon, CA license 7JIM878, VIN JM3LW28A820326062 (2002 MPV), was tested and Smog Check Certificate of Compliance Number IZ544966C was issued by Respondent Barela.

78. The dynamic PID for the 2002 MPV showed that between time stamps 953 and 19653, the engine speed was steady at approximately 700 RPM. During this time, the throttle was fixed at 0% opening, the MAF was fixed at .07 gps, and the ignition timing advance for the #1 cylinder was fixed at 0 degrees BTDC. After time stamp 19653, the engine speed accelerated to approximately 2125 RPM before decelerating to approximately 1950 RPM. From the time the engine RPM increased off idle to the higher RPMs, the throttle was fixed at the same 0% opening, the MAF was fixed at the same .07 gps, and the ignition timing advance for #1 cylinder was fixed at the same 0 degrees BTDC.

79. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed increased. These readings were not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data proved that the DAD was not connected to the 2002 MPV being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Previous Failing Tests: 2002 MPV

80. A previous failing test was performed on the 2002 MPV by Respondent Barela at Nicks Smog Check on June 11, 2024. The 2002 MPV failed the test for incomplete OBD II readiness monitors. The dynamic OBD II PID data collected during the test showed the expected change in the throttle, MAF, and ignition timing advance parameters as characteristic or expected for normal engine operation

81. A previous failing test was also performed on the 2002 MPV by Respondent Barela at Nicks Smog Check on June 4, 2024. The 2002 MPV failed the test for an illuminated MIL, and stored OBD II DTCs P0431 and P0441. The dynamic OBD II PID data collected during the test

showed the expected change in the throttle, MAF, and ignition timing advance parameters as characteristic or expected for normal engine operation.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

82. Respondent Gomez's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1). Respondent Gomez and/or his employees made statements which were known to be untrue or misleading or, which by exercise of reasonable care should have been known to be untrue or misleading, when issuing electronic smog certificates of compliance for the vehicles set forth in paragraphs 40 through 81, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had not been so inspected. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 40 through 81, as though fully set forth here.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

83. Respondent Gomez's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4). Respondent Gomez and/or his employees committed acts that constitute fraud by issuing electronic certificates of compliance for approximately 10 vehicles without performing bone fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 40 through 81, as though fully set forth here.

THIRD CAUSE FOR DISCIPLINE

(Material Violation of Automotive Repair Act)

84. Respondent Gomez's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6). Respondent Gomez and/or his employees failed in a material respect to comply with the

provisions of this chapter or regulations adopted pursuant to it when he issued electronic certificates of compliance for approximately 10 vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 40 through 81, as though fully set forth here.

FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

85. Respondent Gomez's Smog Check, Test Only, Station License is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent Gomez failed to ensure that the emission control tests were performed on approximately 10 vehicles, as described in paragraphs 40 through 81, in accordance with procedures prescribed by the department.

b. **Section 44012, subdivision (f):** Respondent Gomez failed to ensure that the visual or functional checks of emission control devices on approximately 10 vehicles, as described in paragraphs 40 through 81, were performed in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b):** Respondent Gomez issued electronic smog certificates of compliance for approximately 10 vehicles without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 40 through 81, as though fully set forth here.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

4 86. Respondent Gomez's Smog Check, Test Only, Station License is subject to
5 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that he
6 failed to comply with California Code of Regulations, title 16, section 3340.35, subdivision (c)
7 when he issued electronic smog certificates of compliance for approximately 10 vehicles, as
8 described in paragraphs 40 through 81, even though those vehicles had not been inspected in
9 accordance with California Code of Regulations, title 16, section 3340.42. Complainant refers to,
10 and by this reference incorporates, the allegations contained in paragraphs 40 through 81, as
11 though fully set forth here.

12 **SIXTH CAUSE FOR DISCIPLINE**

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

15 87. Respondent Gomez's Smog Check, Test Only, Station License is subject to
16 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in
17 conjunction with Health and Safety Code section 44072.10, subdivision (c), in that he committed
18 dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog
19 certificates of compliance for the ten (10) vehicles described in paragraphs 40 through 81 above,
20 without performing bona fide inspections of the emission control devices and systems on those
21 vehicles, thereby depriving the People of the State of California of the protection afforded by the
22 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
23 allegations contained in paragraphs 40 through 81, as though fully set forth here.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(Violations of the Motor Vehicle Inspection Program)**

26 88. Respondent Barela's Smog Check Inspector License is subject to disciplinary action
27 pursuant to Health and Safety Code section 44072.2, subdivision (a). Respondent Barela failed to
28 comply with section 44032, by failing to ensure that the emission control tests were performed on

1 5 vehicles, as described in paragraphs 60 through 81, in accordance with Health and Safety Code
2 section 44012.

3 **EIGHTH CAUSE FOR DISCIPLINE**

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

6 89. Respondent Barela's Smog Check Inspector License is subject to disciplinary action
7 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that he failed to comply
8 with provisions of the California Code of Regulations, title 16, as follows:

9 a. **Section 3340.30, subdivision (a):** Respondent Barela failed to inspect and test 5
10 vehicles, as described in paragraphs 60 through 81, in accordance with Health and Safety Code
11 section 44032, and California Code of Regulations, title 16, section 3340.30, subdivision (a).

12 b. **Section 3340.41, subdivision (c):** Respondent Barela knowingly entered false
13 information into the emissions inspection system for 5 vehicles as described in paragraphs 60
14 through 81.

15 **NINTH CAUSE FOR DISCIPLINE**

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

18 90. Respondent Barela's Smog Check Inspector License is subject to disciplinary action
19 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
20 and Safety Code section 44072.10, subdivision (c), in that he committed dishonest, fraudulent, or
21 deceitful acts whereby another was injured by issuing electronic smog certificates of compliance
22 for the five (5) vehicles identified in paragraphs 60 through 81, without performing bona fide
23 inspections of the emission control devices and systems on those vehicles, thereby depriving the
24 People of the State of California of the protection afforded by the Motor Vehicle Inspection
25 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
26 paragraphs 60 through 81, as though fully set forth here.

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OTHER MATTERS

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

92. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only, Station License Number TC 295270, issued to Respondent Gomez is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

93. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector License Number EO 644603, issued to Respondent Barela is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 295270 issued to Jose Omar Escutia Gomez – Owner dba Nicks Smog Check;

2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Jose Omar Escutia Gomez;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 295270, issued to Jose Omar Escutia Gomez – Owner dba Nicks Smog Check;

4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Jose Omar Escutia Gomez;

5. Revoking or suspending Smog Check Inspector License Number EO 644603, issued to Adrian Lee Barela;

6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Adrian Lee Barela;

7. Ordering Jose Omar Escutia Gomez and Adrian Lee Barela to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and, if placed on probation, the costs of probation monitoring; and,

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

DATED: As of digital signature date

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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