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

12 In the Matter of the Accusation Against:

Case No. 79/25-10839

13 **JHOVAN N NUNEZ-OWNER DBA**
14 **JOSE'S SMOG CHECK**
11441 Cedar Ave., Unit B
Bloomington, CA 92316

ACCUSATION

15 **Automotive Repair Dealer Registration No.**
16 **ARD 303171**
17 **Smog Check, Test Only, Station License No.**
18 **TC 303171**

19 **and**

20 **CARLOS ALFONSO GAMBOA**
21 **6278 Apple Ave.**
22 **Rialto, CA 92377**

23 **Smog Check Inspector License No. EO**
24 **644004**

25 Respondents.

26 **PARTIES**

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

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1 **Jhovan N Nunez-Owner dba Jose's Smog Check**

2 **Automotive Repair Dealer Registration**

3 2. On or about August 1, 2022, the Bureau issued Automotive Repair Dealer
4 Registration Number ARD 303171 to Jhovan N Nunez-Owner dba Jose's Smog Check
5 ("Respondent Jose's Smog"). The Automotive Repair Dealer Registration was in full force and
6 effect at all times relevant to the charges brought herein and will expire on August 31, 2026,
7 unless renewed.

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

9 3. On or about December 6, 2022, the Bureau issued Smog Check, Test-Only, Station
10 License Number TC 303171 to Respondent Jose's Smog. The Smog Check, Test-Only, Station
11 License was in full force and effect at all times relevant to the charges brought herein and will
12 expire on August 31, 2026, unless renewed.

13 **STAR Station Certification**

14 4. Respondent Jose's Smog is also certified as a STAR Station. The certification was
15 suspended on September 2, 2025.

16 **Carlos Alfonso Gamboa**

17 **Smog Check Inspector License**

18 5. On or about November 7, 2022, the Bureau issued Smog Check Inspector License
19 Number EO 644004 to Carlos Alfonso Gamboa ("Respondent Gamboa"). The Smog Check
20 Inspector License was in full force and effect at all times relevant to the charges brought herein
21 and will expire on February 28, 2027, unless renewed.

22 **JURISDICTION**

23 6. Business and Professions Code ("Code") section 9884.7 provides that the Director
24 may revoke an automotive repair dealer registration.

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

8. 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.

9. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY PROVISIONS

10. Section 9884.7 of the Code states:

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

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

• • • •

(4) Any other conduct which constitutes fraud.

• • • •

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

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

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

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

dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

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

(e) For diesel-powered vehicles, a visual inspection is made of emission control devices and the vehicle's exhaust emissions are tested in accordance with procedures 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.

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

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

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

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

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

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

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

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

14. Section 44059 of the Health and Safety Code states:

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

15. Section 44072.2 of the Health and Safety Code states:

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

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

....

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

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

16. 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.

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

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent

inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

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

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

(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

18. California Code of Regulations, title 16, section 3340.24, 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.

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

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..

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

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

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

....

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

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

Smog check inspection methods are prescribed in the Smog Check Manual,

referenced by section 3340.45.

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

(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COST RECOVERY

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

FACTUAL ALLEGATIONS

25. During the course of a Bureau Representative's regular duties, the Bureau Representative accessed the Vehicle Information Database ("VID") and reviewed Smog Check

1 data transmitted from Respondent Jose's Smog. Additionally, the Bureau Representative
2 accessed the VID to produce copies of Smog Check Vehicle Inspection Reports, Board
3 Diagnostic Inspection System inspection ("OIS") Test Details, and Certificate Sales relating to
4 the vehicles mentioned in the Bureau Representative's report.

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

- 10 • Engine speed in revolutions per minute ("RPM").
- 11 • The throttle position is measured by a throttle position sensor ("TPS") mounted onto
12 the throttle shaft. It is measured in a percentage of opening from 0% at idle and near
13 or up to 100% at full throttle.
- 14 • Manifold absolute pressure as measured by a manifold air pressure sensor ("MAP")
15 connected to an intake manifold source, measured in kilo pascals ("kpa"). Typical
16 readings for a normally aspirated vehicle are as follows: 25 kPa to 45 kPa at idle,
17 with a subsequent decrease as the rpm is raised.
- 18 • Mass airflow is measured by a mass air flow sensor ("MAF") mounted in the engine's
19 air intake tract and measured in grams per second or grams/sec ("gps").

20 27. During normal engine operation at idle, the engine speed is relatively steady around
21 its target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP
22 and/or MAF readings are also steady. In order for the engine speed to increase, the throttle would
23 have to be opened in order to increase airflow through the engine. The engine's management
24 systems supply fuel and spark timing appropriate to any changes in throttle position and engine
25 speed. An increase in throttle, measured by the TPS, which increases engine RPM, would result
26 in a corresponding increase in MAF as well as a decrease in MAP.

27 28. During an OIS Smog Check Inspection, along with other visual and functional
28 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, at an elevated or increased
engine speed.

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1 29. The increase in engine speed is performed by the smog check inspector by stepping
2 on the throttle pedal or manually opening the throttle, resulting in a corresponding increase in
3 engine RPMs by allowing an increase in airflow into the engine.

4 30. The Bureau Representative conducted a detailed review of the VID data for the Smog
5 Check inspections performed at Respondent Jose's Smog's facility. The review showed a pattern
6 of vehicles being certified with engine operating parameters not corresponding to normal engine
7 operation, confirming the vehicles receiving smog certificates were not tested during the OBD II
8 functional test, which constitutes clean plugging¹. The Bureau Representative's comprehensive
9 review into the Smog Check activities at Respondent Jose's Smog's facility confirmed that ten
10 (10) Smog Check Certificates of Compliance were fraudulently issued to vehicles.

11 **Fraudulent Inspection No. 1-2004 Toyota Tacoma**

12 31. A Bureau Representative reviewed the OIS Test Data for Respondent Jose's Smog.
13 The review showed that on or about May 28, 2024, a 2004 Toyota Tacoma was tested, and
14 Certificate of Compliance Number TY256498C was issued by Respondent Gamboa.

15 32. The OBD Data and Dynamic Data Charts for the 2004 Toyota Tacoma showed that
16 between timestamps 834 and 36154, the engine RPM was steady at around 650 RPM. During
17 this time, the data showed that the throttle was fixed at 10.2 % opening, and the MAF was fixed
18 at 3.54 gps. After timestamp 36154, the data showed the engine RPM was increased and then
19 held above 1348 RPM. From the time the engine RPM increased off idle to the higher RPMs, the
20 data showed that the throttle continued to stay fixed at the same 10.2% opening, and the MAF
21 continued to stay fixed at the same 3.54 gps.

22 33. During the entire period the dynamic data was collected, the only parameter that
23 changed was the engine RPM. The throttle position and MAF readings remained unchanged even
24 though the engine RPM was increased. These readings were not characteristic or expected for
25 normal engine operation. The discrepancies in the OIS Test Data proved that the OIS DAD was

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

1 not connected to the 2004 Toyota Tacoma being certified, which caused the issuance of a
2 fraudulent Smog Check Certificate of Compliance.

3 **Fraudulent Inspection No. 2-2003 Toyota Camry LE**

4 34. A Bureau Representative reviewed the OIS Test Data for Respondent Jose's Smog.
5 The review showed that on or about June 1, 2024, a 2003 Toyota Camry LE was tested, and
6 Certificate of Compliance Number TY541410C was issued by Respondent Gamboa.

7 35. The OBD Data and Dynamic Data Charts for the 2003 Toyota Camry LE showed that
8 between timestamps 844 and 26610, the engine RPM was steady at around 675 RPM. During
9 this time, the data showed that the throttle was fixed at 15.7% opening and the MAF was fixed at
10 0.46 gps. After timestamp 26610, the data showed the engine RPM was increased and then held
11 steady at around 1325 RPM. From the time the engine RPM increased off idle to the higher
12 RPMs, the data showed that the throttle continued to stay fixed at the same 15.7% opening and
13 the MAF continued to stay fixed at the same 0.46 gps.

14 36. During the entire period the dynamic data was collected, the only parameter that
15 changed was the engine RPM. The throttle position and MAF readings remained unchanged even
16 though the engine RPM was increased. These readings are not characteristic or expected for
17 normal engine operation. The discrepancies in the OIS Test Data proved that the OIS DAD was
18 not connected to the 2003 Toyota Camry LE being certified, which caused the issuance of a
19 fraudulent Smog Check Certificate of Compliance.

20 **Fraudulent Inspection No. 3-2003 Dodge Ram 1500 ST**

21 37. A Bureau Representative reviewed the OIS Test Data for Respondent Jose's Smog.
22 The review showed that on or about June 22, 2024, a 2003 Dodge Ram 1500 ST was tested, and
23 Certificate of Compliance Number IZ676165C was issued by Respondent Gamboa.

24 38. The OBD Data and Dynamic Data Charts for the 2003 Dodge Ram 1500 ST showed
25 that between timestamps 340 and 22756, the engine speed was steady at approximately 600 RPM.
26 During this time, the data showed that the throttle was fixed at 11.8% opening and the MAP was
27 fixed at 96 kPa. After timestamp 22756, the data showed the engine RPM was increased and then
28 held steady at around 1350 RPM. From the time the engine RPM increases off idle to the higher

1 RPMs, the data showed that the throttle continued to stay fixed at the same 11.8% opening, and
2 the MAP continued to stay fixed at the same 96 kPa.

3 39. During the entire period the dynamic data was collected, the only parameter that
4 changed was the engine RPM. The throttle position and MAP readings remained unchanged even
5 though the engine RPM was increased. These readings were not characteristic or expected for
6 normal engine operation. The discrepancies in the OIS Test Data proved that the OIS DAD was
7 not connected to the 2003 Dodge Ram 1500 ST being certified, which caused the issuance of a
8 fraudulent Smog Check Certificate of Compliance.

9 **Fraudulent Inspection No. 4-2003 Mercedes-Benz CL 55 AMG**

10 40. A Bureau Representative reviewed the OIS Test Data for Respondent Jose's Smog.
11 The review showed that on or about June 26, 2024, a 2003 Mercedes-Benz CL 55 AMG was
12 tested, and Certificate of Compliance Number IZ676188C was issued by Respondent Gamboa.

13 41. The OBD Data and Dynamic Data Charts for the 2003 Mercedes-Benz CL 55 AMG
14 showed that between timestamps 823 and 19478, the engine speed was steady at approximately
15 675 RPM. During this time, the data showed that the throttle was at 2.7% opening, the MAP was
16 fixed at 40 kPa, and the MAF was fixed at 8.33 gps. After timestamp 19478, the data showed the
17 engine RPM was increased and then held steady at around 1400 RPM. From the time the engine
18 RPM increased off idle to the higher RPMs, the data showed that the throttle continued to stay at
19 the same 2.7% opening, the MAP continued to stay fixed at the same 40 kPa, and the MAF
20 continued to stay fixed at the same 8.33 gps.

21 42. During the entire period the dynamic data was collected, the only parameter that
22 changed was the engine RPM. The throttle position, MAP, and MAF readings remained
23 unchanged even though the engine RPM was increased. These readings were not characteristic or
24 expected for normal engine operation. The discrepancies in the OIS Test Data proved that the
25 OIS DAD was not connected to the 2003 Mercedes-Benz CL 55 AMG being certified, which
26 caused the issuance of a fraudulent Smog Check Certificate of Compliance.

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1 **Fraudulent Inspection No. 5-2002 Mercedes-Benz C 230K Sport Coupe**

2 43. A Bureau Representative reviewed the OIS Test Data for Respondent Jose's Smog.
3 The review showed that on or about July 3, 2024, a 2002 Mercedes-Benz C 230K Sport Coupe
4 was tested, and Certificate of Compliance Number UA083323C was issued by Respondent
5 Gamboa.

6 44. The OBD Data and Dynamic Data Charts for the 2002 Mercedes-Benz C 230K Sport
7 Coupe showed that between timestamps 832 and 63686, the engine speed was steady at
8 approximately 725 RPM. During this time, the data showed the throttle was fixed at 3.1%
9 opening and the MAF was fixed at 3.81 gps. After timestamp 63686, the data showed the engine
10 RPM was increased and then held steady at around 1425 RPM. From the time the engine RPM
11 increases off idle to the higher RPMs, the data showed that the throttle continued to stay fixed at
12 the same 3.1% opening and the MAF continued to stay fixed at the same 3.81 gps.

13 45. During the entire period the dynamic data was collected, the only parameter that
14 changed was the engine RPM. The throttle position and MAF readings remained unchanged even
15 though the engine RPM was increased. These readings were not characteristic or expected for
16 normal engine operation. The discrepancies in the OIS Test Data proved that the OIS DAD was
17 not connected to the 2002 Mercedes-Benz C 230K Sport Coupe being certified, which caused the
18 issuance of a fraudulent Smog Check Certificate of Compliance.

19 **Fraudulent Inspection No. 6-2001 Nissan Sentra SE**

20 46. A Bureau Representative reviewed the OIS Test Data for Respondent Jose's Smog.
21 The review showed that on or about August 19, 2024, a 2001 Nissan Sentra SE was tested, and
22 Certificate of Compliance Number UC180248C was issued by Respondent Gamboa.

23 47. The OBD Data and Dynamic Data Charts for the 2001 Nissan Sentra SE showed that
24 between timestamps 965 and 22005, the engine speed was steady at approximately 650 RPM.
25 During this time, the data showed that the throttle was at 0% opening and the MAF was at 0.44
26 gps. After timestamp 22005, the data showed the engine RPM was increased and then held
27 steady at around 1425 RPM. From the time the engine RPM increases off idle to the higher
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1 RPMs, the data showed that the throttle continued to stay at the same 0% opening and the MAF
2 continued to stay at the same 0.44 gps.

3 48. During the entire period the dynamic data was collected, the only parameter that
4 changed was the engine RPM. The throttle position and MAF readings remained unchanged even
5 though the engine RPM was increased. These readings were not characteristic or expected for
6 normal engine operation. The discrepancies in the OIS Test Data proved that the OIS DAD was
7 not connected to the 2001 Nissan Sentra SE being certified, which caused the issuance of a
8 fraudulent Smog Check Certificate of Compliance.

9 **Fraudulent Inspection No. 7-2002 Chevrolet Silverado C1500**

10 49. A Bureau Representative reviewed the OIS Test Data for Respondent Jose's Smog.
11 The review showed that on or about August 21, 2024, a 2002 Chevrolet Silverado C1500 was
12 tested, and Certificate of Compliance Number JB032913C was issued by Respondent Gamboa.

13 50. The OBD Data and Dynamic Data Charts for the 2002 Chevrolet Silverado C1500
14 showed that between timestamps 342 and 17383, the engine speed was steady at approximately
15 650 RPM. During this time, the data showed that the throttle was fixed at 0.4% opening, the
16 MAP was fixed at 97 kPa, and the MAF was fixed at 5.39 gps. After timestamp 17383, the data
17 showed the engine RPM was increased and then held steady at around 1500 RPM. From the time
18 the engine RPM increased off idle to the higher RPMs, the data showed that the throttle continued
19 to stay fixed at the same 0.4% opening, the MAP continued to stay fixed at the same 97 kPa, and
20 the MAF continued to stay fixed at the same 5.39 gps.

21 51. During the entire period the dynamic data was collected, the only parameter that
22 changed was the engine RPM. The throttle position, MAP, and MAF readings remained
23 unchanged even though the engine RPM was increased. These readings were not characteristic or
24 expected for normal engine operation. The discrepancies in the OIS Test Data proved that the
25 OIS DAD was not connected to the 2002 Chevrolet Silverado C1500 being certified, which
26 caused the issuance of a fraudulent Smog Check Certificate of Compliance.

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1 **Fraudulent Inspection No. 8-2003 Toyota Corolla Matrix XR**

2 52. A Bureau Representative reviewed the OIS Test Data for Respondent Jose's Smog.
3 The review showed that on or about August 30, 2024, a 2003 Toyota Corolla Matrix XR was
4 tested, and Certificate of Compliance Number JB032949C was issued by Respondent Gamboa.

5 53. The OBD Data and Dynamic Data Charts for the 2003 Toyota Corolla Matrix XR
6 showed that between timestamps 846 and 20482, the engine speed was steady at approximately
7 825 RPM. During this time, the data showed that the throttle was fixed at 10.6% opening and the
8 MAF was fixed at 3.39 gps. After timestamp 20482, the data showed the engine RPM was
9 increased and then held steady at around 1525 RPM. From the time the engine RPM increased
10 off idle to the higher RPMs, the data showed that the throttle continued to stay fixed at the same
11 10.6% opening and the MAF continued to stay fixed at the same 3.39 gps.

12 54. During the entire period the dynamic data was collected, the only parameter that
13 changed was the engine RPM. The throttle position and MAF readings remained unchanged even
14 though the engine RPM was increased. These readings were not characteristic or expected for
15 normal engine operation. The discrepancies in the OIS Test Data proved that the OIS DAD was
16 not connected to the 2003 Toyota Corolla Matrix XR being certified, which caused the issuance
17 of a fraudulent Smog Check Certificate of Compliance.

18 **Fraudulent Inspection No. 9-2000 GMC Sonoma**

19 55. A Bureau Representative reviewed the OIS Test Data for Respondent Jose's Smog.
20 The review showed that on or about September 6, 2024, a 2000 GMC Sonoma was tested, and
21 Certificate of Compliance Number UC730265C was issued by Respondent Gamboa.

22 56. The OBD Data and Dynamic Data Charts for the 2000 GMC Sonoma showed that
23 between timestamps 349 and 17792, the engine speed was steady at approximately 700 RPM.
24 During this time, the data showed that the throttle was fixed at 0.4% opening, the MAP was fixed
25 at 97 kPa, and the MAF was fixed at 20 gps. After timestamp 17792, the data showed the engine
26 RPM was increased and then held steady at around 1425 RPM. From the time the engine RPM
27 increases off idle to the higher RPMs, the data showed that the throttle continued to stay fixed at
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1 the same 0.4% opening, the MAP continued to stay fixed at the same 97 kPa, and the MAF
2 continued to stay fixed at the same 20 gps.

3 57. During the entire period the dynamic data was collected, the only parameter that
4 changed was the engine RPM. The throttle position, MAP, and MAF readings remained
5 unchanged even though the engine RPM was increased. These readings were not characteristic or
6 expected for normal engine operation. The discrepancies in the OIS Test Data proved that the
7 OIS DAD was not connected to the 2000 GMC Sonoma being certified, which caused the
8 issuance of a fraudulent Smog Check Certificate of Compliance.

9 **Fraudulent Inspection No. 10-2000 Toyota Camry CE**

10 58. A Bureau Representative reviewed the OIS Test Data for Respondent Jose's Smog.
11 The review showed that on or about September 16, 2024, a 2000 Toyota Camry CE was tested,
12 and Certificate of Compliance Number UE021977C was issued by Respondent Gamboa.

13 59. The OBD Data and Dynamic Data Charts for the 2000 Toyota Camry CE showed that
14 between timestamps 848 and 23762, the engine speed was steady at approximately 675 RPM.
15 During this time, the data showed that the throttle was fixed at 11% opening and the MAF was
16 fixed at 4.74 gps. After timestamp 23762, the engine RPM was increased and then held steady at
17 around 1450 RPM. From the time the engine RPM increased off idle to the higher RPMs, the
18 data showed that the throttle continued to stay fixed at the same 11%, and the MAF continued to
19 stay fixed at the same 4.74 gps.

20 60. During the entire period the dynamic data was collected, the only parameter that
21 changed was the engine RPM. The throttle position and MAF readings remained unchanged even
22 though the engine RPM was increased. These readings were not characteristic or expected for
23 normal engine operation. The discrepancies in the OIS Test Data proved that the OIS DAD was
24 not connected to the 2000 Toyota Camry CE being certified, which caused the issuance of a
25 fraudulent Smog Check Certificate of Compliance.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 61. Respondent Jose's Smog's Automotive Repair Registration is subject to discipline
4 pursuant to Code section 9884.7, subdivision (a)(1) and California Code of Regulations, title 16,
5 section 3373, in that between May 28, 2024, through September 16, 2024, Respondent Jose's
6 Smog made or authorized statements which he knew or in the exercise of reasonable care should
7 have known to be untrue or misleading, as follows: Respondent Jose's Smog certified that
8 vehicles 1 through 10, set forth above, had passed inspection and were in compliance with
9 applicable laws and regulations. In fact, Respondent Jose's Smog conducted the inspections on
10 the vehicles using the clean plugging method by substituting or using different vehicles or another
11 source during the OBD II functional tests to issue smog certificates of compliance for the ten (10)
12 vehicles, and did not test or inspect the ten (10) vehicles as required by Health and Safety Code
13 section 44012. Complainant refers to, and by this reference incorporates, the allegations set forth
14 above in paragraphs 25 through 60, as though fully set forth.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 62. Respondent Jose's Smog's Automotive Repair Registration is subject to discipline
18 pursuant to Code section 9884.7, subdivision (a)(4), in that between May 28, 2024, through
19 September 16, 2024, Respondent Jose's Smog committed acts that constitute fraud by issuing
20 electronic smog certificates of compliance for vehicles 1 through 10, set forth above, without
21 performing bona fide inspections of the emission control devices and systems on those vehicles,
22 thereby depriving the People of the State of California of the protection afforded by the Motor
23 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
24 allegations set forth above in paragraphs 25 through 60, as though fully set forth.

25 **THIRD CAUSE FOR DISCIPLINE**

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

27 63. Respondent Jose's Smog's Automotive Repair Registration is subject to disciplinary
28 action under Code section 9884.7, subdivision (a)(6), in that between May 28, 2024, through

September 16, 2024, regarding vehicles 1 through 10, set forth above, Respondent Jose's Smog failed in a material respect to comply with the provisions of this chapter or regulations adopted pursuant to it by issuing electronic smog certificates of compliance for the ten (10) vehicles without performing bona fide inspections of the emissions 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 set forth above in paragraphs 25 through 60, as though fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Motor Vehicle Inspection Program)

64. Respondent Jose's Smog's Smog Check, Test Only Station License is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between May 28, 2024, through September 16, 2024, regarding vehicles 1 through 10, set forth above, Respondent Jose's Smog failed to comply with the following sections of that Code:

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

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

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

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 25 through 60, as though fully set forth.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

4 65. Respondent Jose's Smog's Smog Check, Test Only Station License is subject to
5 discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between
6 May 28, 2024, through September 16, 2024, regarding vehicles 1 through 10, set forth above,
7 Respondent Jose's Smog failed to comply with provisions of California Code of Regulations, title
8 16, as follows:

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

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

16 c. **Section 3340.41, subdivision (c):** Respondent Jose's Smog knowingly entered false
17 information into the emissions inspection system for the ten (10) vehicles identified above.

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

20 Complainant refers to, and by this reference incorporates, the allegations set forth above in
21 paragraphs 25 through 60, as though fully set forth.

22 **SIXTH CAUSE FOR DISCIPLINE**

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

24 66. Respondent Jose's Smog's Smog Check, Test Only Station License is subject to
25 discipline pursuant to Health and Safety Code sections 44072.2, subdivision (d) in conjunction
26 with 44072.10, subdivision (c), in that between May 28, 2024, through September 16, 2024,
27 regarding vehicles 1 through 10, set forth above, Respondent Jose's Smog committed acts
28 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic smog

1 certificates of compliance for those vehicles without performing bona fide inspections of the
2 emission control devices and systems on the vehicles, thereby depriving the People of the State of
3 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
4 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 25
5 through 60, as though fully set forth.

6 **SEVENTH CAUSE FOR DISCIPLINE**

7 **(Violations of the Motor Vehicle Inspection Program – Respondent Gamboa)**

8 67. Respondent Gamboa's Smog Check Inspector License is subject to disciplinary action
9 under Health and Safety Code section 44072.2, subdivision (a), in that between May 28, 2024,
10 through September 16, 2024, regarding vehicles 1 through 10, set forth above, Respondent
11 Gamboa violated the following Health and Safety Code sections:

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

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

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

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

24 Complainant refers to, and by this reference incorporates, the allegations set forth above in
25 paragraphs 25 through 60, as though fully set forth.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

4 68. Respondent Gamboa's Smog Check Inspector License is subject to discipline
5 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between May 28,
6 2024, through September 16, 2024, regarding vehicles 1 through 10, set forth above, he failed to
7 comply with provisions of California Code of Regulations, title 16, as follows:

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

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

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

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

18 Complainant refers to, and by this reference incorporates, the allegations set forth above in
19 paragraphs 25 through 60, as though fully set forth.

20 **NINTH CAUSE FOR DISCIPLINE**

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

22 69. Respondent Gamboa's Smog Check Inspector License is subject to disciplinary action
23 under Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and
24 Safety Code section 44072.10, subdivision (c), in that May 28, 2024, through September 16,
25 2024, regarding vehicles 1 through 10, set forth above, Respondent Gamboa committed acts
26 involving dishonesty, fraud, or deceit when he issued electronic smog certificates of compliance
27 for the vehicles without performing bona fide inspections of the emission control devices and
28 systems on those vehicles, thereby depriving the People of the State of California of the

1 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
2 reference incorporates, the allegations set forth above in paragraphs 25 through 60, as though
3 fully set forth.

4 **OTHER MATTERS**

5 70. Pursuant to Code section 9884.7, subdivision (c), the director may suspend revoke,
6 or place on probation the registrations for all places of business operated in this state by Jhovan N
7 Nunez, upon a finding that said Respondent Jose's Smog has, or is, engaged in a course of
8 repeated and willful violations of the laws and regulations pertaining to an automotive repair
9 dealer.

10 71. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only
11 Station License No. TC 303171, issued to Jhovan N Nunez-Owner dba Jose's Smog Check, is
12 revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Div 26 of the
13 Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the
14 director.

15 72. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
16 License No. EO 644004, issued to Carlos Alfonso Gamboa, is revoked or suspended, any
17 additional license issued under Chapter 5 of Part 5 of Div 26 of the Health and Safety Code in the
18 name of said licensee may be likewise revoked or suspended by the director.

19 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 303171, issued to Jhovan N Nunez-Owner dba Jose's Smog Check;

25 2. Revoking, suspending, or placing on probation any other automotive repair dealer
26 registration issued in the name of Jhovan N Nunez;

27 3. Revoking or suspending Smog Check, Test-Only, Station License Number TC
28 303171, issued to Jhovan N Nunez-Owner dba Jose's Smog Check;

1 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
2 Division 26 of the Health and Safety Code in the name of Jhovan N Nunez;

3 5. Revoking or suspending Smog Check Inspector License Number EO 644004, issued
4 to Carlos Alfonso Gamboa;

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

7 7. Ordering Jhovan N. Nunez and Carlos Alfonso Gamboa to pay the Bureau of
8 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3 and if placed on probation, the costs of
10 probation monitoring;

11 and,

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

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14 DATED: As of Digital Signature Date

15 PATRICK DORAIS
16 Chief
17 Bureau of Automotive Repair
18 Department of Consumer Affairs
19 State of California
20 *Complainant*

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