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

14 In the Matter of the Accusation Against:

Case No. **79/24-15583**

15 **JOSE ANGEL NOVOA; DBA NOVOA'S**
16 **SMOG CHECK**
4161 Riverview Dr.
Jurupa Valley, CA 92509

ACCUSATION

17 **Automotive Repair Dealer Registration No.**
18 **ARD 305648, Smog Check, Test-Only**
19 **License No. TC 305648**

20 **and**

21 **JOSE ANGEL NOVOA GUTIERREZ**
22 **21205 Pala Foxia Pl.**
23 **Moreno Valley, CA 92557**

24 **Smog Check Inspector License No. EO**
25 **644493,**

26 Respondents
27
28

1 **PARTIES**

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

4 2. On or about April 26, 2023, Bureau of Automotive Repair issued Automotive Repair
5 Dealer Registration Number ARD 305648 to Jose Angel Novoa; dba Novoa's Smog Check
6 (Respondent or Respondent Novoa Smog Check). The Automotive Repair Dealer Registration
7 was in full force and effect at all times relevant to the charges brought herein and will expire on
8 April 30, 2025, unless renewed.

9 3. On or about August 24, 2023, Bureau of Automotive Repair issued Smog Check,
10 Test-Only License Number TC 305648 to Jose Angel Novoa; dba Novoa's Smog Check. The
11 Smog Check, Test-Only License was in full force and effect at all times relevant to the charges
12 brought herein and will expire on April 30, 2025, unless renewed.

13 4. On or about August 18, 2023, Bureau of Automotive Repair issued Smog Check
14 Inspector Number EO 644493 to Jose Angel Novoa Gutierrez¹ (Respondent or Respondent
15 Novoa Gutierrez). The Smog Check Inspector was in full force and effect at all times relevant to
16 the charges brought herein and will expire on February 28, 2027, unless renewed.

17 **JURISDICTION**

18 5. This Accusation is brought before the Director of the Department of Consumer
19 Affairs ("Director") for the Bureau, under the authority of the following laws.

20 6. Section 9884.7 of the Business and Professions Code² provides that the Director may
21 revoke an ARD registration.

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

26
27 ¹ Jose Angel Novoa and Jose Angel Novoa Gutierrez are the same person.

28 ² All statutory references herein shall be to the Business and Professions Code unless
specifically stated otherwise.

8. Section 44002 of the Health and Safety Code 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.

11. 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. . . .

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

...

(c) The department shall revoke the license of any smog check technician or station license 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. . . .

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

REGULATORY PROVISIONS

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

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.

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

A smog check technician shall comply with the following requirements at all times while licensed.

(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article. . . .”

15. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

....

(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. . . .

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

COST RECOVERY

17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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 licensee to comply subjecting the license to not being

renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

VID DATA REVIEW

18. Beginning March 9, 2015, California's Smog Check Program was updated to require the use of an On-Board Diagnostic Inspection System ("OIS"). OIS is the Smog Check equipment required in all areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition Device ("DAD"), computer, bar code scanner, and printer. The DAD is an On Board Diagnostic ("OBD") scan tool that, when requested by the California OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it supports is requested by the California OIS software and will be retrieved. The DAD connects between the OIS computer and the vehicle's DLC. The California OIS software requires a continuous Internet connection when performing a Smog Check inspection and the OIS software communicates with BAR's central database through the Internet connection. The bar code scanner is used to input technician information, the vehicles identification number ("VIN"), and DMV renewal information. The printer provides a Vehicle Inspection Report ("VIR") containing inspection results for motorists and a Smog Check Certificate of Compliance number for passing vehicles.

19. Data retrieved and recorded during an OIS smog check includes; the eVIN, which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module ("PCM"); the communication protocol, which is the manufacturer/vehicle specific language the PCM uses to relay information; and the number of Parameter Identifications ("PIDs"), which is the number of specific data values each PCM uses related to emissions controls.

20. During an OIS inspection, engine operating parameters are retrieved from the vehicle's OBD II system and recorded to the VID. This is accomplished during the functional portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- Engine speed in revolutions per minute (RPM)

- Throttle position as measured by a throttle position sensor (TPS) mounted onto the throttle shaft. Measured in a percentage of opening from 0% at idle and near or up to 100% at full throttle.
- Manifold absolute pressure as measured by a manifold air pressure sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at sea level.
- Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air intake tract. Measured in grams per second (gps).³
- Ignition timing is set by the vehicle PCM based on engine speed and load, and is measured in degrees Before Top Dead Center (BTDC).

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

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

³ Not all vehicles include both MAP and MAF parameters. Many vehicles will have either MAP or MAF parameters separately.

1 23. If the vehicle passes the visual, functional and tailpipe tests, it passes the overall
2 inspection, and a Certificate of Compliance is issued and transmitted electronically to the Vehicle
3 Information Database (“VID”). These Certificates of Compliance are purchased in blocks of fifty
4 (50) through the EIS or OIS from the VID, using a pre-arranged electronic bank account debit
5 system or by check, via mail, from Bureau Headquarters in Sacramento. Each Certificate of
6 Compliance has a unique control number so that it can be tracked to determine which Smog
7 Check Station purchased the Certificate of Compliance and to which vehicle it was issued.

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

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

26 26. Respondent has engaged in numerous acts or omissions constituting violations of the
27 Automotive Repair Act (Business and Professions Code section 9880 *et seq.*) and Motor Vehicle
28 Inspection Program (Health and Safety Code section 44000 *et seq.*) through their practice of

1 “clean plugging.”⁴ Respondent’s OIS Test Data available on the State database indicates that
2 Respondent is involved in fraudulent smog inspection activities. A Bureau representative
3 initiated an investigation based on information transmitted to the VID for smog check inspections
4 performed by Respondent. The investigation revealed that the data related to certain vehicles
5 certified by Respondent contained a pattern of unmistakable discrepancies between the
6 information transmitted during the inspections and documented information known about the
7 vehicles at issue. Specifically, the representative compared the data received from the certified
8 vehicles to data from vehicles of the same year, make, and model and determined that the data
9 from at least ten (10) of the certified vehicles were fraudulently tested by Respondent during the
10 smog inspection using the “clean plugging” method as follows:

11 **Fraudulent Inspection #1**

12 27. Bureau Program Representative Steve Koch (Koch) reviewed the OIS Test Data for
13 Novoa’s Smog Check. The review indicates on April 29, 2024, a 2002 Ford F350 Super Duty,
14 CA license 6V72341, VIN 1FDWF36L42EA70968 (2002 F350), was tested and smog certificate
15 # TU481037C was issued under licensed Smog Check Technician #EO644493, Novoa Gutierrez.

16 28. The Dynamic data and PID Charts for the 2002 F350 shows between time stamp 19
17 and 16669 engine speed is steady at approximately 575 RPM. During this time the throttle is
18 fixed at 19.6% opening, the MAF is fixed at 5.31 gps, and the ignition timing advance for #1
19 cylinder is fixed at 17.5 degrees BTDC. After time stamp 16669 the engine speed increases to
20 approximately 1900 RPM. From the time the engine RPM increases off idle to the higher RPMs,
21 the throttle is fixed at the same 19.6% opening, the MAF is fixed at the same 5.31 gps, and the
22 ignition timing advance for #1 cylinder is fixed at the same 17.5 degrees BTDC.

23 29. During the period the dynamic data was collected, the only parameter that changed
24 was engine RPM. The throttle position, MAF, and ignition timing advance readings remained
25 unchanged even though the engine speed was increased. These readings are not characteristic or

26 ⁴ “Clean plugging” refers to the use of another vehicle’s properly functioning On Board
27 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic
28 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 expected for normal engine operation. The discrepancies in the OIS Test Data prove the DAD
2 was not connected to the 2002 F350 being certified, causing the issuance of a fraudulent Smog
3 Certificate of Compliance.

4 **Previous Failing Test: 2002 F350**

5 30. A previous failing test was performed on the 2002 F350 at another station on April
6 22, 2024. The 2002 F350 failed the test for incomplete OBDII readiness monitors. The vehicle
7 also had a pending OBDII DTC P0455.

8 **Fraudulent Inspection #2**

9 31. Koch reviewed the OIS Test Data for Novoa's Smog Check. The review indicates on
10 May 4, 2024, a 2003 Ford Ranger Super Cab, CA license 97245N3, VIN 1FTYR14V53PB41601
11 (2003 Ranger), was tested and smog certificate # TU481042C was issued under licensed Smog
12 Check Technician #EO644493, Novoa Gutierrez.

13 32. The Dynamic data and PID Charts for the 2003 Ranger shows between time stamp 27
14 and 17990 engine speed is steady at approximately 775 RPM. During this time the throttle is
15 fixed at 18.8% opening, the MAF is fixed at 4.92 gps, and the ignition timing advance for #1
16 cylinder is fixed at 18 degrees BTDC. After time stamp 17990 the engine speed increases to
17 approximately 1850 RPM. From the time the engine RPM increases off idle to the higher RPMs,
18 the throttle is fixed at the same 18.8% opening, the MAF is fixed at the same 4.92 gps, and the
19 ignition timing advance for #1 cylinder is fixed at the same 18 degrees BTDC.

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

26 **Fraudulent Inspection #3**

27 34. Koch reviewed the OIS Test Data for Novoa's Smog Check. The review indicates on
28 May 5, 2024, a 2001 Toyota 4Runner SR5, CA license 8GOG400, VIN JT3HN86R210334836

(2001 4Runner), was tested and smog certificate # TU481043C was issued under licensed Smog Check Technician #EO644493, Novoa Gutierrez.

35. The Dynamic data and PID Charts for the 2001 4Runner shows between time stamp 99 and 18358 engine speed is steady at approximately 875 RPM. During this time the throttle is fixed at 14.1% opening, the MAF is fixed at 5.29 gps, and the ignition timing advance for #1 cylinder is fixed at 15 degrees BTDC. After time stamp 18358 the engine speed increases to approximately 1750 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 14.1% opening, the MAF is fixed at the same 5.29 gps, and the ignition timing advance for #1 cylinder is fixed at the same 15 degrees BTDC.

36. During the 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 was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the DAD was not connected to the 2001 4Runner being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Previous Failing Test: 2001 4Runner

37. A previous failing test was performed on the 2001 4Runner at another station on November 14, 2022. The 2001 4Runner failed the test for an illuminated MIL, and stored OBDII DTCs P0440, P0441, and P0446.

Fraudulent Inspection #4

38. Koch reviewed the OIS Test Data for Novoa's Smog Check. The review indicates on May 8, 2024, a 2000 Dodge Grand Caravan SE, CA license 8BKT766, VIN 1B4GP44R6YB684642 (2000 Grand Caravan), was tested and smog certificate # TU481045C was issued under licensed Smog Check Technician #EO644493, Novoa Gutierrez.

39. The Dynamic data and PID Charts for the 2000 Grand Caravan shows between time stamp 319 and 18483 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at 16.5% opening, the MAP is fixed at 35 kPa, and the ignition timing advance for #1 cylinder is fixed at 11.5 degrees BTDC. After time stamp 18483 the engine speed increases to

1 approximately 2150 RPM. From the time the engine RPM increases off idle to the higher RPMs,
2 the throttle is fixed at the same 16.5% opening, the MAP is fixed at the same 35 kPa, and the
3 ignition timing advance for #1 cylinder is fixed at the same 11.5 degrees BTDC.

4 40. During the period the dynamic data was collected, the only parameter that changed
5 was engine RPM. The throttle position, MAP, and ignition timing advance readings remained
6 unchanged even though the engine speed was increased. These readings are not characteristic or
7 expected for normal engine operation. The discrepancies in the OIS Test Data prove the DAD
8 was not connected to the 2000 Grand Caravan being certified, causing the issuance of a
9 fraudulent Smog Certificate of Compliance.

10 **Fraudulent Inspection #5**

11 41. Koch reviewed the OIS Test Data for Novoa's Smog Check. The review indicates on
12 May 8, 2024, a 2007 Nissan Frontier King Cab LE, CA license 95855J1, VIN
13 1N6AD06W17C444496 (2007 Frontier), was tested and smog certificate # TU481046C was
14 issued under licensed Smog Check Technician #EO644493, Novoa Gutierrez.

15 42. The Dynamic data and PID Charts for the 2007 Frontier shows between time stamp
16 186 and 17125 engine speed is steady at approximately 600 RPM. During this time the throttle is
17 fixed at 3.9% opening, the MAF is fixed at 3.5 gps, and the ignition timing advance for #1
18 cylinder is fixed at 15 degrees BTDC. After time stamp 17125 the engine speed increases to
19 approximately 1750 RPM. From the time the engine RPM increases off idle to the higher RPMs,
20 the throttle is fixed at the same 3.9% opening, the MAF is fixed at the same 3.5 gps, and the
21 ignition timing advance for #1 cylinder is fixed at the same 15 degrees BTDC.

22 43. During the period the dynamic data was collected, the only parameter that changed
23 was engine RPM. The throttle position, MAF, and ignition timing advance readings remained
24 unchanged even though the engine speed was increased. These readings are not characteristic or
25 expected for normal engine operation. The discrepancies in the OIS Test Data prove the DAD
26 was not connected to the 2007 Frontier being certified, causing the issuance of a fraudulent Smog
27 Certificate of Compliance.

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Fraudulent Inspection #6

44. Koch reviewed the OIS Test Data for Novoa's Smog Check. The review indicates on May 13, 2024, a 2006 Nissan Altima S, CA license 6CID642, VIN 1N4AL11D26N357183 (2006 Altima), was tested and smog certificate # TU481050C was issued under licensed Smog Check Technician #EO644493, Novoa Gutierrez.

45. The Dynamic data and PID Charts for the 2006 Altima shows between time stamp 182 and 18276 engine speed is steady at approximately 950 RPM. During this time the throttle is fixed at 1.6% opening, the MAF is fixed at 4.82 gps, and the ignition timing advance for #1 cylinder is fixed at 8 degrees BTDC. After time stamp 18276 the engine speed increases to approximately 1800 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 1.6% opening, the MAF is fixed at the same 4.82 gps, and the ignition timing advance for #1 cylinder is fixed at the same 8 degrees BTDC.

46. During the 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 was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the DAD was not connected to the 2006 Altima being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Previous Failing Test: 2006 Altima

47. A previous failing test was performed on the 2006 Altima at another station on October 18, 2023. The 2006 Altima failed the test for incomplete OBDII readiness monitors. The vehicle also had a pending OBDII DTC P0011.

Fraudulent Inspection #7

48. Koch reviewed the OIS Test Data for Novoa's Smog Check. The review indicates on May 13, 2024, a 2000 Toyota Celica GT-S, CA license 8LGL703, VIN JTDDY32T1Y0010177 (2000 Celica), was tested and smog certificate # TW961203C was issued under licensed Smog Check Technician #EO644493, Novoa Gutierrez.

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49. The Dynamic data and PID Charts for the 2000 Celica shows between time stamp 98 and 16849 engine speed is steady at approximately 950 RPM. During this time the throttle is fixed at 11% opening, the MAF is fixed at 3.68 gps, and the ignition timing advance for #1 cylinder is fixed at 15 degrees BTDC. After time stamp 16849 the engine speed increases to approximately 1775 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 11% opening, the MAF is fixed at the same 3.68 gps, and the ignition timing advance for #1 cylinder is fixed at the same 15 degrees BTDC.

50. During the 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 was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the DAD was not connected to the 2000 Celica being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Fraudulent Inspection #8

51. Koch reviewed the OIS Test Data for Novoa's Smog Check. The review indicates on May 14, 2024, a 2002 Lexus IS 300, CA license 9KNK496, VIN JTHBD192420051803 (2002 IS300), was tested and smog certificate # TW961204C was issued under licensed Smog Check Technician #EO644493, Novoa Gutierrez.

52. The Dynamic data and PID Charts for the 2002 IS300 shows between time stamp 91 and 17029 engine speed is steady at approximately 700 RPM. During this time the throttle is fixed at 11.4% opening, the MAF is fixed at 3.12 gps, and the ignition timing advance for #1 cylinder is fixed at 10.5 degrees BTDC. After time stamp 17029 the engine speed increases to approximately 1800 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 11.4% opening, the MAF is fixed at the same 3.12 gps, and the ignition timing advance for #1 cylinder is fixed at the same 10.5 degrees BTDC.

53. During the 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 was increased. These readings are not characteristic or

1 expected for normal engine operation. The discrepancies in the OIS Test Data prove the DAD
2 was not connected to the 2002 IS300 being certified, causing the issuance of a fraudulent Smog
3 Certificate of Compliance.

4 **Fraudulent Inspection #9**

5 54. Koch reviewed the OIS Test Data for Novoa's Smog Check. The review indicates on
6 May 14, 2024, a 2003 Nissan Frontier Crew Cab XE, CA license 7E57023, VIN
7 1N6ED29X33C443197 (2003 Frontier), was tested and smog certificate # TW961205C was
8 issued under licensed Smog Check Technician #EO644493, Novoa Gutierrez.

9 55. The Dynamic data and PID Charts for the 2003 Frontier shows between time stamp
10 97 and 17829 engine speed is steady at approximately 725 RPM. During this time the throttle is
11 fixed at 0% opening, the MAF is fixed at 6.62 gps, and the ignition timing advance for #1
12 cylinder is fixed at 13 degrees BTDC. After time stamp 17829 the engine speed increases to
13 approximately 1750 RPM. From the time the engine RPM increases off idle to the higher RPMs,
14 the throttle is fixed at the same 0% opening, the MAF is fixed at the same 6.62 gps, and the
15 ignition timing advance for #1 cylinder is fixed at the same 13 degrees BTDC.

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

22 **Fraudulent Inspection #10**

23 57. Koch reviewed the OIS Test Data for Novoa's Smog Check. The review indicates on
24 July 5, 2024, a 2003 Land Rover Discovery II S, CA license 6GVU981, VIN
25 SALTK16483A797970 (2003 Discovery), was tested and smog certificate # TW961214C was
26 issued under licensed Smog Check Technician #EO644493, Novoa Gutierrez.

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58. The Dynamic data and PID Charts for the 2003 Discovery shows between time stamp 163 and 17035 engine speed is steady at approximately 800 RPM. During this time the throttle is fixed at 0% opening, the MAF is fixed at 7.21 gps, and the ignition timing advance for #1 cylinder is fixed at 18 degrees BTDC. After time stamp 17035 the engine speed increases to approximately 1875 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0% opening, the MAF is fixed at the same 7.21 gps, and the ignition timing advance for #1 cylinder is fixed at the same 18 degrees BTDC.

59. During the 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 was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the DAD was not connected to the 2003 Discovery being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements - Respondent Novoa's Smog Check)

60. Respondent Novoa's Smog Check's registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which they knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent certified that the vehicles set forth above in paragraphs 27-59, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using the clean plugging method in order to issue smog certificates of compliance, and did not test or inspect the vehicles as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud - Respondent Novoa's Smog Check)

61. Respondent Novoa's Smog Check's registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(4), in that Respondent Novoa's Smog Check committed acts which constitute fraud by issuing electronic certificates of compliance for the

1 vehicles set forth above in paragraphs 27-59, without performing bona fide inspections of the
2 emission control devices and systems on those vehicles, thereby depriving the People of the State
3 of California of the protection afforded by the Motor Vehicle Inspection Program.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with the Motor Vehicle Inspection Program –**
6 **Respondent Novoa’s Smog Check)**

7 62. Respondent Novoa’s Smog Check’s smog station license is subject to disciplinary
8 action pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with
9 Health and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth
10 above in paragraphs 27-59, Respondent failed to comply with the following sections of the Health
11 and Safety Code:

12 (a) **Section 44012**: Respondent Novoa’s Smog Check failed to ensure that the emission
13 control tests were performed on the vehicles, in accordance with procedures prescribed by the
14 department.

15 (b) **Section 44015**: Respondent Novoa’s Smog Check issued electronic certificates of
16 compliance for the vehicles, without ensuring that the vehicles were properly tested and inspected
17 to determine if they were in compliance with Health and Safety Code section 44012.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program -**
20 **Respondent Novoa’s Smog Check)**

21 63. Respondent Novoa’s Smog Check’s smog station license is subject to disciplinary
22 action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the
23 vehicles set forth above in paragraphs 27-59, Respondent failed to comply with the following
24 provisions of the California Code of Regulations, Title 16, as follows:

25 (a) **Section 3340.35, subdivision (c)**: Respondent Novoa’s Smog Check issued
26 electronic certificates of compliance even though those vehicles had not been inspected in
27 accordance with section 3340.42, Title 16, of the California Code of Regulations.

28 ///

1 (b) **Section 3340.42**: Respondent Novoa's Smog Check failed to conduct the required
2 smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Dishonesty, Fraud or Deceit - Respondent Novoa's Smog Check)**

5 64. Respondent Novoa's Smog Check's smog station license is subject to disciplinary
6 action pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with
7 Health and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth
8 above in paragraphs 27-59, Respondent committed acts involving dishonesty, fraud or deceit
9 whereby another was injured by issuing electronic certificates of compliance for those vehicles
10 without performing bona fide inspections of the emission control devices and systems on the
11 vehicles, thereby depriving the People of the State of California of the protection afforded by the
12 Motor Vehicle Inspection Program.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 **(Violations of the Motor Vehicle Inspection Program – Respondent Novoa Gutierrez)**

15 65. Respondent Novoa Gutierrez's smog check inspector license is subject to discipline
16 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that regarding the
17 vehicles set forth above in paragraphs 27-59, Respondent Novoa Gutierrez failed to comply with
18 section 44012 of the Health and Safety Code in a material respect, as follows: Respondent Novoa
19 Gutierrez failed to perform the emission control tests on those vehicles in accordance with
20 procedures prescribed by the department.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
23 **Respondent Novoa Gutierrez)**

24 66. Respondent Novoa Gutierrez's smog check inspector license is subject to discipline
25 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the
26 vehicles set forth above in paragraphs 27-59, Respondent Novoa Gutierrez failed to comply with
27 provisions of the California Code of Regulations, title 16, as follows:
28

1 (a) **Section 3340.30, subdivision (a)**: Respondent Novoa Gutierrez failed to inspect and
2 test those vehicles in accordance with Health and Safety Code section 44012.

3 (b) **Section 3340.41, subdivision (c)**: Respondent Novoa Gutierrez entered false
4 information into the EIS.

5 (c) **Section 3340.42**: Respondent Novoa Gutierrez failed to conduct the required smog
6 tests and inspections on those vehicles in accordance with the Bureau's specifications.

7 **EIGHTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud or Deceit - Respondent Novoa Gutierrez)**

9 67. Respondent Novoa Gutierrez's smog check inspector license is subject to discipline
10 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
11 and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
12 paragraphs 27-59, Respondent Novoa Gutierrez committed acts involving dishonesty, fraud or
13 deceit whereby another was injured by issuing electronic certificates of compliance for those
14 vehicles without performing bona fide inspections of the emission control devices and systems on
15 the vehicles., thereby depriving the People of the State of California of the protection afforded by
16 the Motor Vehicle Inspection Program.

17 **OTHER MATTERS**

18 68. Pursuant to Business & Professions Code section 9884.7, subdivision (c), the Director
19 may suspend, revoke, or place on probation the registration for all places of business operated in
20 this State by Respondent Novoa's Smog Check upon a finding that Respondent Novoa's Smog
21 Check has, or is, engaged in a course of repeated and willful violations of the laws and
22 regulations pertaining to an automotive repair dealer.

23 69. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station
24 License Number TC 305648 issued to Respondent Novoa's Smog Check is revoked or suspended
25 following a hearing under this article, any additional license issued under Chapter 5, Part 5,
26 Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

27 70. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
28 Number EO 644493, issued to Respondent Novoa Gutierrez, is revoked or suspended following a

1 hearing under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the
2 name of said licensee may be likewise revoked or suspended by the Director.

3 **PRAYER**

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

7 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
8 305648, issued to Jose Angel Novoa; dba Novoa's Smog Check;

9 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to
10 Respondent Jose Angel Novoa or Jose Angel Novoa Gutierrez;

11 3. Revoking or suspending Smog Check, Test-Only License Number TC 305648, issued
12 to Jose Angel Novoa; dba Novoa's Smog Check;

13 4. Revoking or suspending Smog Check Inspector License Number EO 644493, issued
14 to Jose Angel Novoa Gutierrez;

15 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
16 Division 26 of the Health and Safety Code in the name of Respondent Jose Angel Novoa or Jose
17 Angel Novoa Gutierrez;

18 6. Ordering Jose Angel Novoa and/or Jose Angel Novoa Gutierrez to pay the Bureau of
19 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
20 pursuant to Business and Professions Code section 125.3 and if placed on probation, the costs of
21 probation monitoring; and,

22 7. Taking such other and further action as deemed necessary and proper.

23
24 DATED: As of digital signature date

25 _____
26 PATRICK DORAIS
27 Chief
28 Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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