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

12
13 In the Matter of the Accusation Against:

Case No. 79/24-362

14 **JAVIER LUCIANO LOPEZ, DBA**
15 **INLAND EMPIRE SMOG AND REPAIR**
1763 Valley Blvd., Unit G
16 **Bloomington, CA 92316**

ACCUSATION

17 **Automotive Repair Dealer Registration No.**
18 **ARD 289675**
Smog Check, Test-and-Repair, Station
License No. RC 289675

19 **and**

20 **HUNG PHI QUACH**
15446 Arlington Way
21 **Fontana, CA 92336**

22 **Smog Check Inspector License No. EO**
23 **640877**

24 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 February 23, 2018, the Bureau issued Automotive Repair Dealer Registration Number ARD 289675 to Javier Luciano Lopez, dba Inland Empire Smog and Repair (Respondent Inland Empire Smog). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2025, unless renewed.

3. On or about March 30, 2018, the Bureau issued Smog Check, Test-and-Repair, Station License Number RC 289675 to Respondent Inland Empire Smog. The Smog Check, Test-and-Repair, Station License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2025, unless renewed.

4. On or about August 8, 2018, the Bureau issued STAR Station Certification Respondent Inland Empire Smog. The STAR Station Certification was suspended on April 11, 2023.

5. On or about January 24, 2018, the Bureau issued Smog Check Inspector License Number EO 640877 to Hung Phi Quach (Respondent Quach). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on December 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. Section 9884.7 of the Code provides that the Director may revoke an automotive repair dealer registration.

8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director 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. Section 9884.7 of the Code provides, in pertinent part:

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

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

• • •

(4) Any other conduct that constitutes fraud.

• • •

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

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12. Section 9889.22 of the Code provides:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

13. Health and Safety Code section 44012 provides:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement

1 testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or
2 two-speed idle testing, on model year 2000 and newer vehicles only, beginning no
3 earlier than January 1, 2013, and on model-year 1996-99, inclusive, vehicles only,
4 beginning no earlier than January 1, 2025. However, the department, in consultation
5 with the state board, may prescribe alternative test procedures that include loaded
6 mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic
7 systems that the department and the state board determine exhibit operational
8 problems. The department shall ensure, as appropriate to the test method, the
9 following:

10 (a) Emission control systems required by state and federal law are reducing
11 excess emissions in accordance with the standards adopted pursuant to subdivisions
12 (a) and (c) of Section 44013.

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

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

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

25 (e) For diesel-powered vehicles, a visual inspection is made of emission control
26 devices and the vehicle's exhaust emissions are tested in accordance with procedures
27 prescribed by the department, that may include, but are not limited to, onboard
28 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.

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

(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.

15. Health and Safety Code section 44032 provides:

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.

16. Health and Safety Code section 44059 provides:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 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.

17. Health and Safety Code section 44072.2 provides, 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 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.

...

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

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

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

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

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

3 **REGULATORY PROVISIONS**

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

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

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

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

11 (a) Inspect, test and repair vehicles, as applicable, in accordance with section
12 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code,
13 and section 3340.42 of this article.

14 . . .

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

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

21 22. California Code of Regulations, title 16, section 3340.41 provides, in pertinent part:

22 . . .

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

27 . . .

28 (h) No licensed station shall have in the approved testing area at any time any
electronic device or software capable of simulating the OBD data stream from a
vehicle or manipulating OBD VIN, calibration identification, calibration verification
number, MIL-status, readiness, or diagnostic trouble codes collected from a vehicle
during a Smog Check Inspection.

. . .

23. 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.

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

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(e) 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

25. 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.

FACTUAL ALLEGATIONS

26. 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 Data Link Connector (DLC). The California OIS software requires a continuous Internet connection when performing a Smog Check inspection and the OIS software communicates with Bureau's central database through the Internet connection. The bar code scanner is used to input technician information, the vehicles identification number (VIN), and Department of Motor Vehicles (DMV) renewal information. The printer provides a Vehicle

1 Inspection Report (VIR) containing inspection results for motorists and a Smog Check Certificate
2 of Compliance number for passing vehicles.

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

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

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

1 30. During an OIS Smog Check inspection, along with other visual and functional
2 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
3 with the engine idling and, when requested by the OIS analyzer, and an elevated or increased
4 engine speed. The increase in engine speed is performed by the inspector by stepping on the
5 throttle pedal or manually opening the throttle, resulting in a corresponding increase in engine
6 RPMs by allowing an increase in airflow into the engine.

7 31. If the vehicle passes the visual, functional and tailpipe tests, it passes the overall
8 inspection and a Certificate of Compliance is issued and transmitted electronically to the VID.
9 Each Certificate of Compliance has a unique control number so that it can be tracked to determine
10 which Smog Check Station purchased the Certificate of Compliance and to which vehicle it was
11 issued.

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

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

1 34. The Bureau has become aware of methods some Smog Check stations and Smog
2 Check inspectors use to fraudulently issue smog certificates to vehicles that will not pass a Smog
3 Check test on their own, or in some instances, are not even present during the time the test is
4 performed. One method is known as “clean plugging.” “Clean plugging” is a method by which
5 another vehicle’s properly functioning OBD II system, or another source such as defeat devices,
6 are used to generate passing data readings or diagnostic information for the purpose of
7 fraudulently issuing smog certificates to vehicles that are not in smog compliance and or not
8 present for testing. Defeat devices attempt to simulate engine operation during a Smog Check
9 inspection by transmitting OBD II data to the VID which has been modified or replaced entirely
10 for the purportedly inspected vehicle during the functional portion of the OIS inspection. The use
11 of a defeat device during a Smog Check inspection is clean plugging and is strictly prohibited.

12 35. Between January 2023 and February 2023, a Bureau representative investigated and
13 reviewed OIS test data for the smog check inspection performed at Inland Empire Smog. The
14 investigation revealed that data related to certain vehicles certified by Respondents contained a
15 pattern of vehicles being certified with improbable engine operating parameters not
16 corresponding to normal engine operation. The data collected by the DAD during the OBD II
17 functional test confirmed an OBD defeat device was used instead of the actual vehicle being
18 tested, which constitutes clean plugging, as follows:

19 **Clean Plug # 1**

20 36. On or about January 27, 2023, a 2000 Toyota Tacoma Xtracab Prerunner, CA license
21 6G37441, VIN 4TASN92N7YZ618930 (2000 Tacoma), was tested and smog certificate
22 IR784568C was issued by Respondent Inland Empire Smog under the license of Smog Check
23 Inspector #EO 640877, Respondent Quach.

24 37. The Dynamic PID Chart for the 2000 Tacoma shows between time stamp 346 and
25 22715 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at
26 12.5% opening, the MAF is fixed at 5.96 gps, and the ignition timing advance for #1 cylinder is
27 fixed at 12 degrees BTDC. After time stamp 22715 the engine speed accelerates to
28 approximately 1825 RPM. From the time the engine RPM increases off idle to the higher RPMs,

the throttle is fixed at the same 12.5% opening, the MAF is fixed at the same 5.96 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 12 degrees BTDC.

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

39. A failing test was performed on the 2000 Tacoma on April 28, 2022 at another station. The 2000 Tacoma failed the visual inspection for the EVAP system and Other Emission Related Components/Systems, an illuminated MIL, and confirmed DTCs P0100, P0110, and P0120. No OBDII data was collected.

Clean Plug # 2

40. On or about February 4, 2023, a 2004 Hyundai Santa Fe GLS, CA license 5SZZ453, VIN KM8SC13EX4U736449 (2004 Santa Fe), was tested and smog certificate IT062555C was issued by Respondent Inland Empire Smog under the license of Smog Check Inspector #EO 640877, Respondent Quach.

41. The Dynamic PID Chart for the 2004 Santa Fe shows between time stamp 272 and 17274 engine speed is steady at approximately 650 RPM. During this time the throttle is fixed at 8.2% opening, the MAF is fixed at 4.12 gps, and the ignition timing advance for #1 cylinder is fixed at 6 degrees BTDC. After time stamp 17274 the engine speed accelerates to approximately 1650 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 8.2% opening, the MAF is fixed at the same 4.12 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 6 degrees BTDC.

42. 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 was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data

1 prove the OIS was not connected to the 2004 Santa Fe being certified, causing the issuance of a
2 fraudulent Smog Check Certificate of Compliance.

3 43. Two previous failing tests were performed on the 2004 Santa Fe. The most recent test
4 was done on October 14, 2022 at another station. The 2004 Santa Fe failed the visual inspection
5 for a tampered catalyst and Other Emission Related Components/Systems, and incomplete OBDII
6 readiness monitors. No OBDII dynamic data was collected.

7 44. The earlier failing test was performed on December 7, 2021 at another station. The
8 2004 Santa Fe failed the visual inspection for a tampered catalyst, and confirmed OBDII DTCs
9 P0302, P0741, P1159, and P1194. No OBDII dynamic data was collected.

10 **Clean Plug # 3**

11 45. On or about February 8, 2023, a 2002 Acura MDX, CA license 6CCA608, VIN
12 2HNYD18292H517437 (2002 MDX), was tested and smog certificate number TC913114C was
13 issued by Respondent Inland Empire Smog under the license of Smog Check Inspector #EO
14 640877, Respondent Quach.

15 46. The Dynamic PID Chart for the 2002 MDX shows between time stamp 296 and
16 17745 engine speed is steady at approximately 800 RPM. During this time the throttle is fixed at
17 9.4% opening, the MAP is fixed at 27 kPa, and the ignition timing advance for #1 cylinder is
18 fixed at 6.5 degrees BTDC. After time stamp 17745 the engine speed accelerates to
19 approximately 2025 RPM. From the time the engine RPM increases off idle to the higher RPMs,
20 the throttle is fixed at the same 9.4% opening, the MAP is fixed at the same 27 kPa, and the
21 ignition timing advance for #1 cylinder is also still fixed at the same 6.5 degrees BTDC.

22 47. During the entire period the dynamic data was collected, the only parameter that
23 changed was engine RPM. The throttle position, MAP, and ignition timing advance readings
24 remained unchanged even though the engine speed was increased. These readings are not
25 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
26 prove the OIS was not connected to the 2002 MDX being certified, causing the issuance of a
27 fraudulent Smog Check Certificate of Compliance.

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1 **Clean Plug # 4**

2 48. On or about February 13, 2023, a 2001 Toyota RAV4, CA license 4PYU111, VIN
3 JTEGH20V910012918 (2001 RAV4), was tested and smog certificate TE026839C was issued by
4 Respondent Inland Empire Smog under the license of Smog Check Inspector #EO 640877,
5 Respondent Quach.

6 49. The Dynamic PID Chart for the 2001 RAV4 shows between time stamp 320 and
7 22462 engine speed is steady at approximately 850 RPM. During this time the throttle is fixed at
8 12.9% opening, the MAF is fixed at 1.79 gps, and the ignition timing advance for #1 cylinder is
9 fixed at 12 degrees BTDC. After time stamp 22462 the engine speed accelerates to
10 approximately 1950 RPM. From the time the engine RPM increases off idle to the higher RPMs,
11 the throttle is fixed at the same 12.9% opening, the MAF is fixed at the same 1.79 gps, and the
12 ignition timing advance for #1 cylinder is also still fixed at the same 12 degrees BTDC.

13 50. During the entire period the dynamic data was collected, the only parameter that
14 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
15 remained unchanged even though the engine speed was increased. These readings are not
16 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
17 prove the OIS was not connected to the 2001 RAV4 being certified, causing the issuance of a
18 fraudulent Smog Check Certificate of Compliance.

19 51. A failing test was performed on the 2001 RAV4 on December 10, 2022 at another
20 station. The 2001 RAV4 failed the functional inspection for incomplete OBDII readiness
21 monitor. No OBDII data was collected.

22 **Clean Plug # 5**

23 52. On or about February 18, 2023, a 2002 Toyota Sienna CE, CA license 5MRS784,
24 VIN 4T3ZF19C42U468451 (2002 Sienna), was tested and smog certificate TE242455C was
25 issued by Respondent Inland Empire Smog under the license of Smog Check Inspector #EO
26 640877, Respondent Quach.

27 53. The Dynamic PID Chart for the 2002 Sienna shows between time stamp 322 and
28 18635 engine speed is steady at approximately 625 RPM. During this time the throttle is fixed at

1 11% opening, the MAF is fixed at 3.23 gps, and the ignition timing advance for #1 cylinder is
2 fixed at 14.5 degrees BTDC. After time stamp 18635 the engine speed accelerates to
3 approximately 1350 RPM and then accelerates again to approximately 1600 RPM. From the time
4 the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 11%
5 opening, the MAF is fixed at the same 3.23 gps, and the ignition timing advance for #1 cylinder is
6 also still fixed at the same 14.5 degrees BTDC.

7 54. During the entire period the dynamic data was collected, the only parameter that
8 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
9 remained unchanged even though the engine speed was increased. These readings are not
10 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
11 prove the OIS was not connected to the 2002 Sienna being certified, causing the issuance of a
12 fraudulent Smog Check Certificate of Compliance.

13 55. Two previous failing tests were performed on the 2002 Sienna. The most recent test
14 was done on February 11, 2023 at Inland Empire Smog by Respondent Quach. The 2002 Sienna
15 failed the functional inspection for an illuminated MIL and stored DTCs P0325, P0420, and
16 P0446.

17 56. The Dynamic PID Chart for the data collected during the February 11, 2023
18 inspection on the 2002 Sienna shows the vehicle idled at approximately 700 RPMs before engine
19 speed was raised to approximately 1500 RPMs by opening the throttle. There was the expected
20 change in the throttle, MAF, and ignition timing advance parameters as characteristic or expected
21 for normal engine operation.

22 57. The earlier failing test was performed on February 9, 2023 at another station. The
23 2002 Sienna failed the functional inspection for an illuminated MIL, and confirmed OBDII DTCs
24 P0325, P0420, and P0446. No OBDII dynamic data was collected.

25 **Clean Plug # 6**

26 58. On or about February 18, 2023, a 2000 Toyota 4Runner, CA license 8HOV931, VIN
27 JT3GM84R7Y0057869 (2000 4Runner), was tested and smog certificate TE242459C was issued
28

1 by Respondent Inland Empire Smog under the license of Smog Check Inspector #EO 640877,
2 Respondent Quach.

3 59. The Dynamic PID Chart for the 2000 4Runner shows between time stamp 336 and
4 28751 engine speed is steady at approximately 725 RPM. During this time the throttle is fixed at
5 10.6% opening, the MAF is fixed at 2.62 gps, and the ignition timing advance for #1 cylinder is
6 fixed at 15 degrees BTDC. After time stamp 28751 the engine speed accelerates to approximately
7 2000 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is
8 fixed at the same 10.6% opening, the MAF is fixed at the same 2.62 gps, and the ignition timing
9 advance for #1 cylinder is also still fixed at the same 15 degrees BTDC.

10 60. During the entire period the dynamic data was collected, the only parameter that
11 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
12 remained unchanged even though the engine speed was increased. These readings are not
13 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
14 prove the OIS was not connected to the 2000 4Runner being certified, causing the issuance of a
15 fraudulent Smog Check Certificate of Compliance.

16 **Clean Plug # 7**

17 61. On or about February 21, 2023, a 2004 Nissan Murano SL, CA license 5GMM381,
18 VIN JN8AZ08T94W203047 (2004 Murano), was tested and smog certificate TE242500C was
19 issued by Respondent Inland Empire Smog under the license of Smog Check Inspector #EO
20 640877, Respondent Quach.

21 62. The Dynamic PID Chart for the 2004 Murano shows between time stamp 398 and
22 75283 engine speed is steady at approximately 700 RPM. During this time the throttle is fixed at
23 .4% opening, the MAF is fixed at 2.88 gps, and the ignition timing advance for #1 cylinder is
24 fixed at 16 degrees BTDC. After time stamp 75283 the engine speed accelerates to
25 approximately 2050 RPM. From the time the engine RPM increases off idle to the higher RPMs,
26 the throttle is fixed at the same .4% opening, the MAF is fixed at the same 2.88 gps, and the
27 ignition timing advance for #1 cylinder is also still fixed at the same 16 degrees BTDC.
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63. 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 was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2004 Murano being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Clean Plug # 8

64. On or about February 22, 2023, a 2003 Honda Odyssey EXL, CA license 6ZPL420, VIN 5FNRL18973B079292 (2003 Odyssey), was tested and smog certificate TE349721C was issued by Respondent Inland Empire Smog under the license of Smog Check Inspector #EO 640877, Respondent Quach.

65. The Dynamic PID Chart for the 2003 Odyssey shows between time stamp 385 and 30303 engine speed is steady at approximately 775 RPM. During this time the throttle is fixed at 9.4% opening, the MAP is fixed at 25 kPa, and the ignition timing advance for #1 cylinder is fixed at 8.5 degrees BTDC. After time stamp 30303 the engine speed accelerates to approximately 1800 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 9.4% opening, the MAP is fixed at the same 25 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 8.5 degrees BTDC.

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

Clean Plug # 9

67. On or about February 22, 2023, a 2002 Mercedes Benz C 32 AMG KOMPRESSOR, CA license 7GUB573, VIN WDBRF65J62F210174 (2002 C32), was tested and smog certificate

TE349727C was issued by Respondent Inland Empire Smog under the license of Smog Check Inspector #EO 640877, Respondent Quach.

68. The Dynamic PID Chart for the 2002 C32 shows between time stamp 300 and 17020 engine speed is steady at approximately 675 RPM. During this time the throttle is fixed at 2% opening, the MAP is fixed at 37 kPa, MAF is fixed at 3.97 gps and the ignition timing advance for #1 cylinder is fixed at -8.5 degrees BTDC. After time stamp 17020 the engine speed accelerates to approximately 2050 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 2% opening, the MAP is fixed at the same 37 kPa, MAF is fixed at 3.97 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same -8.5 degrees BTDC.

69. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAP, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2002 C32 being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

70. A failing test was performed on the 2002 C32 on October 28, 2022 at another station. The 2002 C32 failed the visual inspection for an illuminated MIL, incomplete OBDII readiness monitors, and confirmed OBDII DTC P0600. No OBDII data was collected.

Clean Plug # 10

71. On or about February 23, 2023, a 2000 Buick Regal LS, CA license 4KIF401, VIN 2G4WB55K8Y1302403 (2000 Regal), was tested and smog certificate TE349744C was issued by Respondent Inland Empire Smog under the license of Smog Check Inspector #EO 640877, Respondent Quach.

72. The Dynamic PID Chart for the 2000 Regal shows between time stamp 290 and 28689 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at 0% opening, the MAP is fixed at 31 kPa, MAF is fixed at 3.18 gps and the ignition timing advance for #1 cylinder is fixed at 20 degrees BTDC. After time stamp 28689 the engine speed

1 accelerates to approximately 1600 RPM. From the time the engine RPM increases off idle to the
2 higher RPMs, the throttle is fixed at the same 0% opening, the MAP is fixed at the same 31 kPa,
3 MAF is fixed at 3.18 gps, and the ignition timing advance for #1 cylinder is also still fixed at the
4 same 20 degrees BTDC.

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

11 74. A failing test was performed on the 2000 Regal on February 22, 2023 at another
12 station. The 2000 Regal failed the OBD II Functional Test for incomplete OBDII readiness
13 monitors. No OBDII data was collected.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements – Respondent Inland Empire Smog)**

16 75. Respondent Inland Empire Smog's Automotive Repair Dealer Registration is subject
17 to disciplinary action under Code section 9884.7, subdivision (a)(1), in that, with respect to the
18 vehicles identified above, Respondent Inland Empire Smog made or authorized statements which
19 they knew, or in the exercise of reasonable care should have known to be untrue or misleading, as
20 follows: Respondent Inland Empire Smog certified that these vehicles had passed inspection and
21 were in compliance with applicable laws and regulations, when in fact, Respondent Inland
22 Empire Smog conducted the inspections on the vehicles using the clean plugging method in order
23 to issue smog certificates of compliance for the vehicles. Complainant refers to, and by this
24 reference incorporates, the allegations set forth above in paragraphs 26-74 as though fully set
25 forth herein.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud – Respondent Inland Empire Smog)**

3 76. Respondent Inland Empire Smog's Automotive Repair Dealer Registration is subject
4 to disciplinary action under Code section 9884.7, subdivision (a)(4), in that, with respect to the
5 vehicles identified above, Respondent Inland Empire Smog committed acts which constitute
6 fraud by issuing electronic smog certificates of compliance for these vehicles without performing
7 bona fide inspections of the emissions control devices and systems on those vehicles, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program. Complainant refers to, and by this reference incorporates, the allegations set
10 forth above in paragraphs 26-74, as though fully set forth herein.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 77. Respondent Inland Empire Smog's Automotive Repair Dealer Registration is subject
14 to disciplinary action under Code section 9884.7, subdivision (a)(6), in that, with respect to the
15 vehicles identified above, Respondent Inland Empire Smog failed in a material respect to comply
16 with the provisions of this chapter or regulations adopted pursuant to it by issuing electronic smog
17 certificates of compliance for these vehicles without performing bona fide inspections of the
18 emissions control devices and systems on those vehicles, thereby depriving the People of the
19 State of California of the protection afforded by the Motor Vehicle Inspection Program.
20 Complainant refers to, and by this reference incorporates, the allegations set forth above in
21 paragraphs 26-74, as though fully set forth herein.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

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

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

4 b. **Section 44015, subdivision (b):** Respondent Inland Empire Smog issued electronic
5 smog certificates of compliance for the vehicles without ensuring that the vehicles were properly
6 tested and inspected to determine if they were in compliance with Health and Safety Code section
7 44012.

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

11 Complainant refers to, and by this reference incorporates, the allegations set forth above in
12 paragraphs 26-74, as though fully set forth herein.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection** 15 **Program – Respondent Inland Empire Smog)**

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

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

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

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

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

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

5 Complainant refers to, and by this reference incorporates, the allegations set forth above in
6 paragraphs 26-74, as though fully set forth herein.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud, or Deceit – Respondent Inland Empire Smog)**

9 80. Respondent Inland Empire Smog's Smog Check, Test-and-Repair, Station License is
10 subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in
11 conjunction with Health and Safety Code section 44072.10, subdivision (c), in that, with respect
12 to the vehicles identified above, Respondent Inland Empire Smog committed dishonest,
13 fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates
14 of compliance for the vehicles without performing bona fide inspections of the emission control
15 devices and systems on those vehicles, thereby depriving the People of the State of California of
16 the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by
17 this reference incorporates, the allegations set forth above in paragraphs 26-74, as though fully set
18 forth herein.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Unlawful Software or Simulation Device – Respondent Inland Empire Smog)**

21 81. Respondent Inland Empire Smog's Smog Check, Test-and-Repair, Station License is
22 subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in
23 conjunction with California Code of Regulations, title 16, section 3340.41, subdivision (h), in that
24 Respondent Inland Empire Smog had an electric device or software capable of simulating the
25 OBD data stream from a vehicle or manipulating OBD information in the station's testing area.
26 Complainant refers to, and by this reference incorporates, the allegations set forth above in
27 paragraphs 26-74, as though fully set forth herein.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program – Respondent Quach)**

3 82. Respondent Quach's Smog Check Inspector License is subject to disciplinary action
4 under Health and Safety Code section 44072.2, subdivision (a), in that, with respect to the
5 vehicles identified above, Respondent Quach violated the following Health and Safety Code
6 sections:

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

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

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

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

18 Complainant refers to, and by this reference incorporates, the allegations set forth above in
19 paragraphs 26-74, as though fully set forth herein.

20 **NINTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection**
22 **Program – Respondent Quach)**

23 83. Respondent Quach's Smog Check Inspector License is subject to disciplinary action
24 under Health and Safety Code section 44072.2, subdivision (c), in that, with respect to the
25 vehicles identified above, Respondent Quach failed to comply with provisions of the California
26 Code of Regulations, title 16, as follows:

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

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

4 c. **Section 3340.41, subdivision (c):** Respondent Quach knowingly entered false
5 information into the emissions inspection system for the vehicles.

6 d. **Section 3340.42:** Respondent La Quach failed to ensure that the required smog tests
7 were conducted on the vehicles identified above in accordance with the Bureau's specifications.

8 Complainant refers to, and by this reference incorporates, the allegations set forth above in
9 paragraphs 26-74, as though fully set forth herein.

10 **TENTH CAUSE FOR DISCIPLINE**

11 **(Dishonesty, Fraud, or Deceit – Respondent Quach)**

12 84. Respondent Quach's Smog Check Inspector License is subject to disciplinary
13 action under Health and Safety Code section 44072.2, subdivision (d), in conjunction with
14 Health and Safety Code section 44072.10, subdivision (c), in that, with respect to the vehicles
15 identified above, Respondent Quach committed acts involving dishonesty, fraud, or deceit
16 when he issued electronic smog certificates of compliance for the vehicles without performing
17 bona fide inspections of the emission control devices and systems on those vehicles, thereby
18 depriving the People of the State of California of the protection afforded by the Motor Vehicle
19 Inspection Program. Complainant refers to, and by this reference incorporates, the allegations
20 set forth above in paragraphs 26-74, as though fully set forth herein.

21 **OTHER MATTERS**

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

27 86. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test-and-
28 Repair, Station License Number RC 289675, issued to Respondent Javier Luciano Lopez, dba

1 Inland Empire Smog and Repair, is revoked or suspended following a hearing under this article,
2 any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety
3 Code in the name of said licensee may be likewise revoked or suspended by the Director.

4 87. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
5 License Number EO 640877, issued to Hung Phi Quach is revoked or suspended following a
6 hearing under this article, any additional license issued under Chapter 5 of Part 5 of Division 26
7 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended
8 by the Director.

9 **PRAYER**

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

13 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
14 289675, issued to Javier Luciano Lopez, dba Inland Empire Smog and Repair;

15 2. Revoking or suspending Smog Check, Test-and-Repair, Station License Number RC
16 289675, issued to Javier Luciano Lopez, dba Inland Empire Smog and Repair;

17 3. Revoking or suspending Smog Check Inspector License Number EO 640877, issued
18 to Hung Phi Quach;

19 4. Revoking or suspending any additional license issued under Chapter 5, Part 5 of
20 Division 26 of the Health and Safety Code in the name of Javier Luciano Lopez;

21 5. Revoking or suspending any other automotive repair dealer registration issued to
22 Javier Luciano Lopez;

23 6. Revoking or suspending any other smog check license under Chapter 5, Part 5 of
24 Division 26 of the Health and Safety Code in the name of Hung Phi Quach;

25 7. Ordering Javier Luciano Lopez and Hung Phi Quach to pay the Bureau of
26 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
27 pursuant to Business and Professions Code section 125.3; and, if placed on probation, the costs of
28 probation monitoring; and,

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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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