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7

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

12 In the Matter of the Accusation Against:

Case No. 79/24-4512

13 **DANIEL MATEOS RICO**
14 **DBA SAN JOSE SMOG CHECK & AUTO SERVICE**
1160 East Santa Clara St., Unit 10
15 San Jose, CA 95116

ACCUSATION

16 **Mailing Address:**
2219 Pacina Drive
17 San Jose, CA 95116

18 Automotive Repair Dealer Registration No. ARD 294652
Smog Check Station License No. RC 294652

19 **JOSUE MATEOS MONTOYA**
20 1968 South King Road
San Jose, CA 95122

21 Smog Check Inspector License No. EO 631761
22 Smog Check Repair Technician License No. EI 631761

23 Respondents.
24

25
26 **PARTIES**

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

1 2. On or about June 19, 2019, the Bureau of Automotive Repair (Bureau) issued
2 Automotive Repair Dealer Registration Number ARD 294652 to Daniel Mateos Rico dba San
3 Jose Smog Check & Auto Service (Respondent Rico). The Automotive Repair Dealer
4 Registration was in full force and effect at all times relevant to the charges brought herein and
5 will expire on June 30, 2025, unless renewed.

6 3. On or about July 18, 2019, the Bureau issued Smog Check Station License Number
7 RC 294652 to Respondent Rico. The Smog Check Station License was in full force and effect at
8 all times relevant to the charges brought herein and will expire on June 30, 2025, unless renewed.

9 4. On or about August 14, 2012, the Bureau issued Smog Check Inspector License
10 Number EO 631761 to Respondent Montoya. The Smog Check Inspector License was in full
11 force and effect at all times relevant to the charges brought herein and will expire on July 31,
12 2025, unless renewed.

13 5. On August 14, 2012, the Bureau issued Smog Check Repair Technician License
14 Number EI 631761 to Respondent Montoya. The Smog Check Repair Technician License
15 expired on July 31, 2022, and has not been renewed.

16 **JURISDICTION**

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

19 **STATUTORY PROVISIONS**

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

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

1 9. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
2 expiration or suspension of a license by operation of law, or by order or decision of the Director
3 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
4 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary
5 proceedings against the licensee, or to render a decision suspending or revoking the license.

6 9. Section 9884.7 of the Code states:

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

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

16 ...

17 (4) Any other conduct that constitutes fraud.

18 ...

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

21 ...

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

27 ...

28 (e) For purposes of this section, "fraud" includes, but is not limited to,
violations of this chapter involving misrepresentations and all of the following:

 (1) Any act or omission that is included within the definition of either "actual
fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573
of the Civil Code.

 (2) A misrepresentation in any manner, whether intentionally false or due to
gross negligence, of a material fact.

 (3) A promise or representation not made honestly and in good faith.

 (4) An intentional failure to disclose a material fact.

(5) Any act in violation of Section 484 of the Penal Code.

10. 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.

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

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

...

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

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

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

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

14. Section 44072.8 of the Health and Safety Code states: "When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director."

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

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

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

...

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

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

1 injured.

2 ...

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

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

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

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

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

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

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

16 **REGULATORY PROVISIONS**

17 17. California Code of Regulations, title 16, section 3340.24, states:

18 (a) Any disciplinary or reinstatement proceeding under this article involving
19 licensed stations, licensed technicians, or fleet owners licensed pursuant to section
20 44020 of the Health and Safety Code shall be conducted in accordance with chapter 5
21 (commencing with section 11500) of division 3, Title 2 of the Government Code.

22 ...

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

26 ...

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

28 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.

...

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

...

(b) A licensed station shall not sell or otherwise transfer unused certificates to another licensed station, to a new owner of the business, or to any person other than a customer whose vehicle has been inspected in accordance with the procedures specified in section 3340.42 of this article.

(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. The following conditions shall apply:

(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

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

...

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

...

(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.

...

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

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

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

...

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

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

shall receive the following:

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

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

22. California Code of Regulations, title 16, section 3340.45, states, "[a]ll Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the Smog Check Manual, dated January 2021, which is hereby incorporated by reference."

23. California Code of Regulations, title 16, section 3371, states:

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading. Advertisements and advertising signs shall clearly show the following:

...

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

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

COST RECOVERY

25. Section 125.3 of the Code provides, in pertinent part, that the Bureau 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. California's Smog Check Program requires the owners of most motor vehicles in California to take and pass a Smog Check inspection and receive a Certificate of Compliance

1 every two years when renewing their registration and also when the vehicle's title is transferred.
2 These inspections are performed by Smog Check inspectors at Smog Check Stations, both of
3 which are licensed by the Bureau.

4 27. The Smog Check inspection in certain Enhanced areas of the State is an Acceleration
5 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
6 as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons, Carbon
7 Monoxide, Oxides of Nitrogen, Carbon Dioxide, and Oxygen. The inspection involves a test of
8 the vehicle's tailpipe emissions on a dynamometer. In Basic areas of the State, or depending on a
9 vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed
10 Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a
11 dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute
12 (RPM).

13 28. The inspector also performs visual and functional tests on the vehicle as outlined in
14 the Smog Check Manual. The visual inspection of the emission control components verifies the
15 required emission control devices are present and properly connected. Functional tests are also
16 performed which, depending on the vehicle, may include checking the ignition timing,
17 malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low-pressure test
18 of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas
19 cap.

20 29. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
21 the use of the On Board Diagnostic Inspection System (OIS) instead of the EIS for the smog
22 testing of 2000 model year and newer gas powered and 1998 and newer diesel vehicles. Most
23 older vehicles require the ASM or TSI test on the EIS. Gas powered vehicles with a gross vehicle
24 weight rating over 14,000 pounds require an inspection on the EIS.

25 30. The newer OIS smog inspection uses a Data Acquisition Device (DAD), a computer,
26 a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a vehicle's On
27 Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR OIS computer
28 to the vehicle's diagnostic link connector (DLC) to retrieve the data from the vehicle. The bar

code scanner is used to input technician information, the vehicle identification number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection Reports.

31. Data retrieved and recorded during a 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's 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.

32. PIDs are data points reported by the vehicle on-board computer to a scan tool or BAR-OIS. Examples of PIDs are engine speed, vehicle speed, engine temperature, and other input and output values utilized by the vehicle's on-board computer.

33. As part of the OIS smog inspections, the technician also performs a visual and functional test on the vehicle being inspected. The visual inspection of the emission control components verifies the required emission control devices are present and properly connected and a functional test is performed of the malfunction indicator light (MIL). The OIS software makes the determination whether the vehicle passes the inspection based on the results of the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of compliance is issued. The information from the smog inspection is then transmitted to the Vehicle Information Data (VID).

34. The Bureau can access the VID to view test data on smog check inspections performed at any Smog Check Station, or search for, retrieve, and print a test record for a particular vehicle which has been tested. The VID has an internal clock that is set to Pacific Standard Time and records the time and date for each inspection. If a vehicle passes the Smog Inspection, the vehicle information and test results are electronically transmitted to Department of Motor Vehicles.

35. 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:

- 1 a. Engine speed in revolutions per minute (RPM).
- 2 b. Throttle position as measured by a throttle position sensor (TPS) mounted onto the
- 3 throttle shaft. The throttle position is measured in a percentage of opening from 0% at idle to up
- 4 to 100% at full throttle.
- 5 c. Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
- 6 connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a
- 7 normally aspirated vehicle are as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle,
- 8 and 101 kpa at full throttle (atmospheric pressure at sea level).
- 9 d. Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's
- 10 air intake tract. Air flow is measured in grams per second (gps).

11 36. During an OIS Smog Check inspection, along with other visual and functional

12 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed

13 with the engine idling and, when requested by the OIS analyzer, with an elevated or increased

14 engine speed. The increase in engine speed is performed by the inspector either stepping on the

15 throttle pedal or manually opening the throttle. The inspector's stepping on the throttle pedal or

16 manually opening the throttle results in a corresponding increase in engine RPMs by allowing an

17 increase in airflow into the engine. An increase in throttle, measured by the TPS, which increases

18 engine RPM, would result in a corresponding increase in MAF, as well as a change in MAP.

19 Stated another way, any movement in the throttle from the idle position will result in an increase

20 of airflow through the engine with corresponding increases in RPM and MAF, along with

21 changes in MAP.

22 37. The Bureau has become aware of methods some Smog Check stations and Smog

23 Check inspectors use to issue smog certificates to vehicles that will not pass a Smog Check test

24 on their own, or in some instances, are not even present during the time the test is performed.

25 38. One method is known as "clean plugging." "Clean plugging" is the act of using one

26 vehicle's properly functioning OBDII system, or another source such as an electronic defeat

27 device, to generate passing data readings or diagnostic information for the purpose of issuing a

28

smog certificate of compliance to a vehicle that is not in smog compliance and/or not being tested. The vehicle being certified is not being tested.

39. Defeat devices attempt to simulate engine operation during a Smog Check inspection by transmitting OBD II data to the VID which has been modified or replaced entirely for the purportedly inspected vehicle during the functional portion of the OIS inspection. The use of a defeat device during a Smog Check inspection is clean plugging and is strictly prohibited.

40. On or about March 12, 2024, a Bureau representative conducted a detailed review of the VID data for the Smog Check inspections performed at San Jose Smog Check & Auto Service dated from March 12, 2024, through March 18, 2024. The review showed a pattern of vehicles being certified with engine operating parameters not corresponding to normal engine operation. Those vehicles received smog certificates but were not tested during the OBD II functional test. They were clean plugged.

41. Respondents clean plugged and issued certificates of compliance to eight vehicles using an electronic defeat device and a vehicle simulator computer program. None of the eight vehicles that were issued a certificate of compliance were legitimately inspected. All the “inspections” were performed at Respondent Rico’s smog check station San Jose Smog Check & Auto Service. All eight of the vehicles were tested and certified under Respondent Montoya’s Smog Check Technician license.

Clean Plug 1:

42. On or about March 12, 2024, Respondents issued smog certificate # TU072680C to a 2003 Dodge Ram 1500 ST, VIN # 1D7HA18D33J665136. The smog certificate was issued under Respondent Montoya’s Smog Check Inspector License # EO 631761. However, a legitimate smog inspection was not performed on the vehicle. Respondents used an electronic defeat device to issue a fraudulent certificate of compliance to this vehicle.

43. The Dynamic PID Chart for the 2003 Dodge Ram 1500 ST shows between time stamp 251 and 19997, engine speed was steady at around 650 RPM. During this time, the two throttle sensors were fixed at 9% and 17.3% opening. The MAP was fixed at 103kpa. Between time stamp 21055 and 39663, the engine speed was accelerated and then held steady at around

1 1800 RPM. During the steady elevated engine RPM, the two throttle sensors were fixed at 9%
2 and 17.3% opening, and the MAP was fixed at 103kpa. The steady idle and steady elevated
3 engine speeds with the associated fixed throttle positions, and the subsequent fixed MAP readings
4 associated with the same engine speeds and throttle parameters, are not characteristic or expected
5 for normal engine operation.

6 **Clean Plug 2:**

7 44. On or about March 12, 2024, Respondents issued smog certificate # TU072681C to a
8 2003 Honda Odyssey EXL, VIN # 5FNRL18703B128668. The smog certificate was issued
9 under Respondent Montoya's Smog Check Inspector License # EO 631761. However, a
10 legitimate smog inspection was not performed on the vehicle. Respondents used an electronic
11 defeat device to issue a fraudulent certificate of compliance to this vehicle.

12 45. The Dynamic PID Chart for the 2003 Honda Odyssey EXL shows between time
13 stamp 122 and 20192, engine speed was steady at around 650 RPM. During this time, the throttle
14 was fixed at 9.4% opening. The MAP was fixed at 27kpa. Between time stamp 22122 and
15 38142, the engine speed was accelerated and then held steady at around 1700 RPM. During the
16 steady elevated engine RPM, the throttle was fixed at 9.4% opening, and the MAP was fixed at
17 27kpa. The steady idle and steady elevated engine speeds with the associated fixed throttle
18 positions, and the subsequent fixed MAP readings associated with the same engine speeds and
19 throttle parameters, are not characteristic or expected for normal engine operation.

20 **Clean Plug 3:**

21 46. On or about March 17, 2024, Respondents issued smog certificate # TU368111C to a
22 2003 Toyota Tundra Access Cab SR5, VIN # 5TBRT34173S435174. The smog certificate was
23 issued under Respondent Montoya's Smog Check Inspector License # EO 631761. However, a
24 legitimate smog inspection was not performed on the vehicle. Respondents used an electronic
25 defeat device to issue a fraudulent certificate of compliance to this vehicle.

26 47. The Dynamic PID Chart for the 2003 Toyota Tundra Access Cab SR5 shows between
27 time stamp 156 and 17309, engine speed was steady at around 750 RPM. During this time, the
28 throttle was fixed at 17.6% opening. The MAF was fixed at 5.29gps. Between time stamp 18020

1 and 34185, the engine speed was accelerated and then held steady at around 1800 RPM. During
2 the steady elevated engine RPM, the throttle was fixed at 17.6% opening, and the MAF was fixed
3 at 5.29gps. The steady idle and steady elevated engine speeds with the associated fixed throttle
4 positions, and the subsequent fixed MAF readings associated with the same engine speeds and
5 throttle parameters, are not characteristic or expected for normal engine operation.

6 **Clean Plug 4:**

7 48. On or about March 17, 2024, Respondents issued smog certificate # TU368112C to a
8 2000 Nissan Frontier Crew Cab XE, VIN # 1N6ED27T6YC333204. The smog certificate was
9 issued under Respondent Montoya's Smog Check Inspector License # EO 631761. However, a
10 legitimate smog inspection was not performed on the vehicle. Respondents used an electronic
11 defeat device to issue a fraudulent certificate of compliance to this vehicle.

12 49. The Dynamic PID Chart for the 2000 Nissan Frontier Crew Cab XE shows between
13 time stamp 196 and 18668, engine speed was steady at around 725 RPM. During this time, the
14 throttle was fixed at 0% opening. The MAP was fixed at 35kpa, and the MAF was fixed at
15 5.75gps. Between time stamp 19048 and 35342, the engine speed was accelerated and then held
16 steady at around 1800 RPM. During the steady elevated engine RPM, the throttle was fixed at
17 0% opening. During the steady elevated engine RPM, the MAP was fixed at 35kpa, and the MAF
18 was fixed at 5.75gps. The steady idle and steady elevated engine speeds with the associated fixed
19 throttle positions, and the subsequent fixed MAP and MAF readings associated with the same
20 engine speeds and throttle parameters, are not characteristic or expected for normal engine
21 operation.

22 **Clean Plug 5:**

23 50. On or about March 17, 2024, Respondents issued smog certificate # TU368113C to a
24 2004 Lexus RX330, VIN # JTHJA31U340063311. The smog certificate was issued under
25 Respondent Montoya's Smog Check Inspector License # EO 631761. However, a legitimate
26 smog inspection was not performed on the vehicle. Respondents used an electronic defeat device
27 to issue a fraudulent certificate of compliance to this vehicle.

1 51. The Dynamic PID Chart for the 2004 Lexus RX330 shows between time stamp 139
2 and 19163, engine speed was steady at around 675 RPM. During this time, the throttle was fixed
3 at 18% opening. The MAF was fixed at 4.56gps. Between time stamp 19476 and 35748, the
4 engine speed was accelerated and then held steady at around 1750 RPM. During the steady
5 elevated engine RPM, the throttle was fixed at 18% opening, and the MAF was fixed at 4.56gps.
6 The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and
7 the subsequent fixed MAF readings associated with the same engine speeds and throttle
8 parameters, are not characteristic or expected for normal engine operation.

9 **Clean Plug 6:**

10 52. On or about March 17, 2024, Respondents issued smog certificate # TU368114C to a
11 2004 Toyota Sienna XLE, VIN # 5TDZA22CX4S044307. The smog certificate was issued under
12 Respondent Montoya's Smog Check Inspector License # EO 631761. However, a legitimate
13 smog inspection was not performed on the vehicle. Respondents used an electronic defeat device
14 to issue a fraudulent certificate of compliance to this vehicle.

15 53. The Dynamic PID Chart for the 2004 Toyota Sienna XLE shows between time stamp
16 147 and 20624, engine speed was steady at around 750 RPM. During this time, the throttle was
17 fixed at 16.1% opening. The MAF was fixed at 3.17gps. Between time stamp 22100 and 37604,
18 the engine speed was accelerated and then held steady at around 1900 RPM. During the steady
19 elevated engine RPM, the throttle was fixed at 16.1% opening, and the MAF was fixed at
20 3.17gps. The steady idle and steady elevated engine speeds with the associated fixed throttle
21 positions, and the subsequent fixed MAF readings associated with the same engine speeds and
22 throttle parameters, are not characteristic or expected for normal engine operation.

23 **Clean Plug 7:**

24 54. On or about March 17, 2024, Respondents issued smog certificate # TU368115C to a
25 2000 Toyota Tundra Access Cab, VIN # 5TBRT3419YS029937. The smog certificate was issued
26 under Respondent Montoya's Smog Check Inspector License # EO 631761. However, a
27 legitimate smog inspection was not performed on the vehicle. Respondents used an electronic
28 defeat device to issue a fraudulent certificate of compliance to this vehicle.

1 55. The Dynamic PID Chart for the 2000 Toyota Tundra Access Cab shows between time
2 stamp 151 and 22302, engine speed was steady at around 775 RPM. During this time, the throttle
3 was fixed at 15.3% opening. The MAF was fixed at 8.87gps. Between time stamp 23387 and
4 34193, the engine speed was accelerated and then held steady at around 1750 RPM. During the
5 steady elevated engine RPM, the throttle was fixed at 15.3% opening, and the MAF was fixed at
6 8.87gps. The steady idle and steady elevated engine speeds with the associated fixed throttle
7 positions, and the subsequent fixed MAF readings associated with the same engine speeds and
8 throttle parameters, are not characteristic or expected for normal engine operation.

9 **Clean Plug 8:**

10 56. On or about March 18, 2024, Respondents issued smog certificate # TU368116C to a
11 2003 Honda Accord LX, VIN # 1HGCM56393A005634. The smog certificate was issued under
12 Respondent Montoya's Smog Check Inspector License # EO 631761. However, a legitimate
13 smog inspection was not performed on the vehicle. Respondents used an electronic defeat device
14 to issue a fraudulent certificate of compliance to this vehicle.

15 57. The Dynamic PID Chart for the 2003 Honda Accord LX shows between time stamp
16 126 and 21407, engine speed was steady at around 700 RPM. During this time, the throttle was
17 fixed at 9.4% opening. The MAP was fixed at 26kpa. Between time stamp 22199 and 40460, the
18 engine speed was accelerated and then held steady at around 1850 RPM. During the steady
19 elevated engine RPM, the throttle was fixed at 9.4% opening, and the MAP was fixed at 26kpa.
20 The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and
21 the subsequent fixed MAP readings associated with the same engine speeds and throttle
22 parameters, are not characteristic or expected for normal engine operation.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements - Registration)**

25 58. Respondent Rico's Automotive Repair Dealer Registration is subject to discipline
26 under Code section 9884.7, subdivision (a)(1), in that Respondent Rico made statements which he
27 knew or which by exercise of reasonable care should have known were untrue or misleading, as
28 set forth above in paragraphs 42 through 57, above. Respondent Rico purported to test vehicles,

1 and certified that the vehicles passed inspection and were in compliance with applicable laws and
2 regulations. In fact, Respondent Rico conducted the inspections on those vehicles using clean
3 plugging methods.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud - Registration)**

6 59. Respondent Rico's Automotive Repair Dealer Registration is subject to discipline
7 under Code section 9884.7, subdivision (a)(4), in that he committed acts which constitute
8 fraud, as set forth above in paragraphs 42 through 57, above, above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(False or Misleading Records - Registration)**

11 60. Respondent Rico's Automotive Repair Dealer Registration is subject to discipline
12 under Code section 9884.7, subdivision (a)(6), in that he violated California Code of Regulations,
13 title 16, sections 3373 and/or 3371, by creating and issuing false or misleading certificates of
14 compliance and vehicle inspection reports for the eight vehicles that were clean plugged, as set
15 forth above in paragraphs 42 through 57, above. The certificates and inspection reports falsely
16 indicated the vehicles were tested in accordance with all Bureau requirements and the vehicles
17 were qualified to receive certificates of compliance.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Dishonesty, Fraud or Deceit – Smog Licenses)**

20 61. Respondent Rico's Smog Check Station License is subject to discipline under Health
21 and Safety Code sections 44072.10 and/or 44072.2, subdivision (d), in that he committed acts
22 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
23 certificates of compliance for vehicles without performing bona fide inspections of the emission
24 control devices and systems on the vehicles, thereby depriving the People of the State of
25 California the protection afforded by the Motor Vehicle Inspection Program, as set forth above
26 in paragraphs 42 through 57, above.

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FIFTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program - Smog Licenses)

62. Respondent Rico's Smog Check Station License is subject to discipline under Health and Safety Code sections 44072.10 and/or 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and/or applicable regulations, through conduct described in paragraphs 42 through 57, as follows:

a. **Health and Safety Code Section 44012:** Respondent Rico failed to ensure that smog inspections were performed on vehicles in accordance with procedures prescribed by the department.

b. **Health and Safety Code Section 44059:** Respondent Rico willfully made false statements in issuing the Smog Certificates of compliance and on the Vehicle Inspection Reports.

c. **Code of Regulations, title 16, Section 3340.24, subdivision (c):** Respondent Rico falsely or fraudulently issued electronic certificates of compliance to certain vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles.

d. **Code of Regulations, title 16, Section 3340.30, subdivision (a):** Respondent Rico failed to inspect the vehicles in accordance with Health and Safety Code section 44012 and California Code of Regulations title 16, section 3340.42.

e. **Code of Regulations, title 16, Section 3340.41, subdivision (c):** Respondent Rico entered false information about vehicles being tested into OIS.

f. **Code of Regulations, title 16, Section 3340.41, subdivision (h):** Respondent Rico had electronic devices and/or software capable of simulating the OBD data stream from a vehicle and/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 in the approved testing area of the station.

g. **Code of Regulations, title 16, Section 3340.42:** Respondent Rico failed to conduct the required smog tests and inspections on certain vehicles in accordance with the Bureau's specifications.

h. **Code of Regulations, title 16, Section 3340.45:** Respondent Rico violated the

1 procedures contained in the Smog Check Manual by entering vehicle identification information
2 for a vehicle that was not being tested.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Dishonesty, Fraud or Deceit – Smog Licenses)**

5 63. Respondent Montoya’s Smog Check Inspector License is subject to discipline under
6 Health and Safety Code sections 44072.10 and/or 44072.2, subdivision (d), in that he committed
7 acts involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
8 certificates of compliance for vehicles without performing bona fide inspections of the emission
9 control devices and systems on the vehicles, thereby depriving the People of the State of
10 California the protection afforded by the Motor Vehicle Inspection Program, as set forth above
11 in paragraphs 42 through 57, above.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(Violation of the Motor Vehicle Inspection Program - Smog Licenses)**

14 64. Respondent Montoya’s Smog Check Inspector License is subject to discipline under
15 Health and Safety Code sections 44072.10 and/or 44072.2, subdivisions (a) and (c), in that he
16 violated sections of that Code and/or applicable regulations, through conduct described in
17 paragraphs 42 through 57, as follows:

18 a. **Health and Safety Code Section 44012:** Respondent Montoya failed to ensure that
19 smog inspections were performed on vehicles in accordance with procedures prescribed by the
20 department.

21 b. **Health and Safety Code Section 44059:** Respondent Montoya willfully made false
22 statements in issuing the Smog Certificates of compliance and on the Vehicle Inspection Reports.

23 c. **Code of Regulations, title 16, Section 3340.24, subdivision (c):** Respondent
24 Montoya falsely or fraudulently issued electronic certificates of compliance to certain vehicles
25 without performing bona fide inspections of the emission control devices and systems on those
26 vehicles.

27 d. **Code of Regulations, title 16, Section 3340.30, subdivision (a):** Respondent
28 Montoya failed to inspect the vehicles in accordance with Health and Safety Code section 44012

1 and California Code of Regulations title 16, section 3340.42.

2 e. **Code of Regulations, title 16, Section 3340.41, subdivision (c):** Respondent
3 Montoya entered false information about vehicles being tested into OIS.

4 f. **Code of Regulations, title 16, Section 3340.41, subdivision (h):** Respondent
5 Montoya had electronic devices and/or software capable of simulating the OBD data stream from
6 a vehicle and/or manipulating OBD VIN, calibration identification, calibration verification
7 number, MIL status, readiness, or diagnostic trouble codes collected from a vehicle during a
8 Smog Check Inspection in the approved testing area of the station.

9 g. **Code of Regulations, title 16, Section 3340.42:** Respondent Montoya failed to
10 conduct the required smog tests and inspections on certain vehicles in accordance with the
11 Bureau's specifications.

12 h. **Code of Regulations, title 16, Section 3340.45:** Respondent Montoya violated the
13 procedures contained in the Smog Check Manual by entering vehicle identification information
14 for a vehicle that was not being tested.

15 **OTHER MATTERS**

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

20 66. Pursuant to Health & Safety Code section 44072.8, if a license issued to Respondent
21 Rico is revoked or suspended following a hearing, any additional license issued under Chapter 5
22 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
23 likewise revoked or suspended by the Director.

24 67. Pursuant to Health & Safety Code section 44072.8, if a license issued to Respondent
25 Montoya is revoked or suspended following a hearing, any additional license issued under
26 Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may
27 be likewise revoked or suspended by the Director.

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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 294652, issued to Daniel Mateos Rico dba San Jose Smog Check & Auto Service;
 2. Revoking or suspending Smog Check Station License Number RC 294652, issued to Daniel Mateos Rico dba San Jose Smog Check & Auto Service;
 3. Revoking or suspending any additional Automotive Repair Dealer Registration(s) issued to Daniel Mateos Rico;
 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to Daniel Mateos Rico;
 5. Ordering Daniel Mateos Rico to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and, if placed on probation, the costs of probation monitoring;
 6. Revoking or suspending Smog Check Inspector License Number EO 631761, issued to Josue Mateos Montoya;
 7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to Josue Mateos Montoya;
 8. Ordering Josue Mateos Montoya to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and, if placed on probation, the costs of probation monitoring;
- and,
9. Taking such other and further action as deemed necessary and proper.

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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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