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8
9 **BEFORE THE**
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. 79/20-7459

13 **CRISTINA PORTILLO**
DBA FREEDOM SMOG
14 195 S. Union Road
Manteca, CA 95337

ACCUSATION

15 **Automotive Repair Dealer Registration**
16 **No. ARD 270071**
Smog Check, Test Only, Station License
17 **No. TC 270071**

18 **and**

19 **CRISTINA PORTILLO**
DBA FREEDOM SMOG
20 830 Kansas Ave., #301
Modesto, CA 95351

21 **Automotive Repair Dealer Registration**
22 **No. ARD 270786**
Smog Check Station License No. RC 270786

23 **and**

24 **CRISTINA PORTILLO**
DBA FREEDOM SMOG
25 2660 Patterson Road
26 Riverbank, CA 95367

27 **Automotive Repair Dealer Registration**
No. ARD 279837
28 **Smog Check Station License No. RC 279837**

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1230 11th Street
Modesto, CA 95354

and

195 S. Union Road
Manteca, CA 95337

and

P.O. Box 1635
Winton, CA 95388

Respondents.

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Cristina Portillo, dba Freedom Smog - Manteca

3. On or about September 10, 2012, the Director issued Smog Check, Test Only, Station License Number TC 270071(station license) to Respondent Portillo. The station license was in

1 full force and effect at all times relevant to the charges brought herein and will expire on August
2 31, 2021, unless renewed.

3 **Cristina Portillo, dba Freedom Smog – Kansas Ave., Modesto**

4 4. On or about November 7, 2012, the Director issued Registration No. ARD 270786 to
5 Respondent Portillo. The registration was in full force and effect at all times relevant to the
6 charges brought herein and will expire on November 30, 2020, unless renewed.

7 5. On or about February 14, 2018, the Director issued Smog Check Station License
8 Number RC 270786 to Respondent Portillo. The smog check station license was in full force and
9 effect at all times relevant to the charges brought herein and will expire on November 30, 2020,
10 unless renewed.

11 **Cristina Portillo, dba Freedom Smog – Riverbank**

12 6. On or about April 8, 2015, the Director issued Registration No. ARD 279837 to
13 Respondent Portillo. The registration was in full force and effect at all times relevant to the
14 charges brought herein and will expire on April 30, 2021, unless renewed.

15 7. On or about July 17, 2018, the Director issued Smog Check Station License Number
16 RC 279837 to Respondent Portillo. The smog check station license was in full force and effect at
17 all times relevant to the charges brought herein and will expire on April 30, 2021, unless renewed.

18 **Cristina Portillo, dba Freedom Smog – 11th Street, Modesto**

19 8. On or about August 9, 2019, the Director issued Registration No. ARD 295097 to
20 Respondent Portillo. The registration was in full force and effect at all times relevant to the
21 charges brought herein and will expire on August 31, 2021, unless renewed.

22 9. On or about September 5, 2019, the Director issued Smog Check Station License
23 Number RC 295097 to Respondent Portillo. The station license was in full force and effect at all
24 times relevant to the charges brought herein and will expire on August 31, 2021, unless renewed.

25 **Smog Check Inspector License- Respondent Portillo**

26 10. On or about October 15, 2014, the Director issued Smog Check Inspector License
27 Number EO 637408 to Respondent Portillo. The smog check inspector license was in full force
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1 and effect at all times relevant to the charges brought herein and will expire on April 30, 2022,
2 unless renewed.

3 **Smog Check Inspector License- Respondent Hernandez-Villa**

4 11. On or about September 17, 2015, Director issued Smog Check Inspector License
5 Number EO 638574 to Alejandro Hernandez-Villa (Respondent Hernandez-Villa). The smog
6 check station license was in full force and effect at all times relevant to the charges brought herein
7 and will expire on October 31, 2021, unless renewed.

8 **JURISDICTION**

9 12. This Accusation is brought before the Director for the Bureau under the authority of
10 the following laws. All section references are to the Business and Professions Code (Code)
11 unless otherwise indicated.

12 13. Code section 22 states:

13 "Board" as used in any provisions of this code, refers to the board in which the
14 administration of the provision is vested, and unless otherwise expressly provided,
15 shall include "bureau," "commission," "committee," "department," "division,"
"examining committee," "program," and "agency."

16 14. Code section 477 provides, in pertinent part, that Board includes bureau, commission,
17 committee, department, division, examining committee, program, and agency. License includes
18 certificate, registration or other means to engage in a business or profession regulated by the
19 Code.

20 15. Code section 9884.7 provides that the Director may revoke an automotive repair
21 dealer registration.

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

26 17. Health and Safety Code (Health & Saf. Code) section 44002 provides, in pertinent
27 part, that the Director has all the powers and authority granted under the Automotive Repair Act
28 for enforcing the Motor Vehicle Inspection Program.

18. Health & Saf. 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.

19. Health & Saf. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional licenses issued under this chapter in the name of the license may be likewise revoked or suspended by the editor.

STATUTORY PROVISIONS

20. Code section 9884.7 states, in pertinent part:

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

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

• • •

(4) Any other conduct which constitutes fraud.

• • •

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

21. Health & Saf. Code section 44012 provides, in pertinent part, that tests at smog check stations shall be performed in accordance with procedures prescribed by the department.

22. Health & Saf. Code section 44015, subdivision (b), provides that a certificate of compliance shall be issued if a vehicle meets the requirements of the Health & Saf. Code section 44012.

23. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

4 . . .

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

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

9 . . .

10 24. Health & Saf. Code section 44072.10 states, in pertinent part:

11 . . .

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

16 . . .

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

19 . . .

20 25. Health & Saf. Code section 44024.5, subdivision (a) states:

21 The department shall compile and maintain statistical and emissions profiles
22 and data from motor vehicles that are subject to the motor vehicle inspection
23 program. The department may use data from any source, including remote sensing
24 data, in use data, and other motor vehicle inspection program data, to develop and
25 confirm the validity of the profiles, to evaluate the program, and to assess the
26 performance of smog check stations. The department shall undertake these
27 requirements directly or seek a qualified vendor for these services.

28 26. Health & Saf. Code section 44037 states, in pertinent part:

(a) The department shall compile and maintain records, using the sampling
methodology necessary to ensure their scientific validity and reliability, of tests and
repairs performed by qualified smog check technicians at licensed smog check
stations pursuant to this chapter on all of the following information:

(1) The motor vehicle identification information and the test data collected at
the station.

. . .

(5) Data received and compiled through the use of the centralized computer
database and computer network to be established pursuant to Section 44037.1 , and
any other information determined to be essential by the department for program

enhancement to achieve greater efficiency, consumer protection, cost-effectiveness, convenience, or emission reductions.

...

27. Health & Saf. Code section 44037.1 states, in pertinent part:

(a) On or before January 1, 1995, the department shall design and establish the equipment necessary to operate a centralized computer data base and computer network that is readily accessible by all licensed smog check technicians on a real time basis.

(b) The centralized computer data base and network shall be designed with all of the following capabilities:

...

(2) To provide smog check technicians and the department with information as to the date and result of prior smog check tests performed on each vehicle to discourage vehicle owners from shopping for certificates of compliance and to permit the department to identify smog check stations for further investigation as potential violators of this chapter.

(3) To provide the department with data on the failure rates and repair effectiveness for vehicles of each make and model year on a statewide basis, and by smog check station and technician, to facilitate identification of smog check stations and technicians as potential violators of this chapter.

...

(8) To be compatible with the department's recordkeeping and compilation requirements established by Section 44037.

...

(c) After January 1, 1995, each smog check station shall transmit vehicle data emission test results to the department's centralized data base. Each smog check station shall also transmit vehicle data and emission measurements made before and after repair. The department shall establish, by regulation, the form, manner, and frequency of the data transmittals.

REGULATORY PROVISIONS

28. California Code of Regulations, title 16 (CCR), section 3340.17 states, in pertinent part:

...

(c) Vehicle data and test results from the OBD Inspection System (OIS) shall be transmitted to the Bureau's centralized database . . .

COST RECOVERY

29. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **BACKGROUND**

4 30. On or about March 9, 2015, California's Smog Check Program was updated to keep
5 pace with ever-advancing technology. The program update requires the use of an On-Board
6 Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all
7 areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles
8 and most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition
9 Device (DAD), computer, bar code scanner, and printer.

10 31. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the
11 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between
12 the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used
13 to input technician information, the vehicle identification number, and the Department of Motor
14 Vehicle (DMV) renewal information. The vehicle identification number (VIN) that is physically
15 present on all vehicles is required to be programmed into the vehicle's On-Board Diagnostics —
16 Generation II (OBD II) on 2005 and newer vehicles, and on many occasions was programmed
17 into the OBD II computer in earlier model-years. The electronically programmed VIN is referred
18 to as the “eVIN”, is captured by the Bureau during a smog check inspection, and should match
19 the physical VIN on the vehicle. The printer is used to provide a vehicle inspection report, which
20 shows the inspection results and the Smog Check Certificate of Compliance Number for passing
21 vehicles. Data retrieved and recorded during an OIS smog check includes the eVIN, the
22 communication protocol¹, and the number of Parameter Identifications (PID).²

24 ¹ The OBD II communication protocol describes the specified communication “language”
25 used by the OBD II computer to communication to scan tools and other devices such as the BAR-
26 OIS. The communication protocol is programmed into the vehicle's on-board computer during
27 manufacture and does not change.

28 ² PIDs are data points reported by the vehicle's on-board computer to a scan tool or BAR-
OIS, such as engine speed, vehicle speed, engine temperature, etc. The PID count is the number
of data points reported by the vehicle's on-board computer and is programmed during
manufacture

REVIEW OF OIS TEST DATA

32. Bureau representative I.E. reviewed OIS test data pertaining to smog inspections conducted at Respondent Portillo's facility, Freedom Smog - Manteca. I.E. found that the facility's smog check technician, Respondent Hernandez-Villa, performed smog inspections on ten (10) vehicles identified below using a method of "clean plugging,"³

Vehicle 1

33. The OIS test data showed that on August 23, 2019, Respondent Hernandez-Villa performed a smog inspection on a 2009 Ford Mustang Shelby GT500 (Vehicle 1), resulting in the issuance of electronic Smog Certificate of Compliance Number QW778280C. The OIS test details for Vehicle 1 showed that the eVIN reported does not match the physical VIN on the vehicle. I.E. reviewed the Comparative OIS Test Data for 2009 Ford Mustang Shelby GT500 vehicles and found that the PID count recorded during the inspection on Vehicle 1 was not consistent with the PID count for that make and model vehicle. I.E. concluded that the DAD was not connected to Vehicle 1 during the inspection.

34. The OIS test data showed that on June 30, 2017, a previous test was performed by another smog facility on Vehicle 1. I.E. found that the eVIN that was reported during the inspection and the communication protocol and PID count recorded during the June 30, 2017, inspection matched the communication protocol and PID count for 2009 Ford Mustang Shelby GT500 vehicles.

35. Further, OIS test data showed that on December 7, 2015, a smog test was performed on a 2014 Chevrolet Camaro at a another facility and that the eVIN transmitted to the Bureau's Vehicle Information Database (VID) was the same eVIN that was recorded during the smog inspection on Vehicle 1 on August 23, 2019. In addition, the communication protocol and PID count recorded during the inspection on the 2014 Chevrolet Camaro were consistent with the communication protocol and PID count recorded during the August 23, 2019, inspection on

³ Clean-plugging is a method by which another vehicle's properly functioning OBD II system, or other source, is used to generate passing data readings or diagnostic information for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance and/or not present during testing.

Vehicle 1. I.E. concluded that Respondent Hernandez-Villa used the 2014 Chevrolet Camaro's properly functioning OBD II system during the August 23, 2019, smog inspection on Vehicle 1, resulting in the issuance of a fraudulent certificate of compliance for that vehicle.

Vehicle 2

36. The OIS test data showed that on March 11, 2020, Respondent Hernandez-Villa performed a smog inspection on a 2005 Honda Accord Hybrid (Vehicle 2), resulting in the issuance of electronic Smog Certificate of Compliance Number RG448094C. The OIS test details for Vehicle 2 showed that the eVIN reported does not match the physical VIN on the vehicle. I.E. reviewed the Comparative OIS Test Data for 2005 Honda Accord Hybrid vehicles and found that the communication protocol and the PID count recorded during the inspection on Vehicle 2 were not consistent with the communication protocol and PID count for that make and model vehicle. I.E. concluded that the DAD was not connected to Vehicle 2 during the inspection.

37. The OIS test data showed that on January 3, 2018, a previous test was performed by another smog facility on Vehicle 2. I.E. found that the eVIN that was reported during the inspection and the communication protocol and PID count recorded during the January 3, 2018, inspection matched the communication protocol and PID count for 2005 Honda Accord Hybrid vehicles.

38. Further, OIS test data showed that on March 11, 2020, Respondent Hernandez-Villa performed a smog test on a 2012 Nissan Xterra and that the eVIN transmitted to VID was the same eVIN that was recorded during the March 11, 2020, smog inspection on Vehicle 2. In addition, the communication protocol and PID count recorded during the March 11, 2020, inspection on the 2012 Nissan Xterra were consistent with the communication protocol and PID count recorded during the March 11, 2020, inspection on Vehicle 2. I.E. concluded that Respondent Hernandez-Villa used the 2012 Nissan Xterra's properly functioning OBD II system during the March 11, 2020, smog inspection on Vehicle 2, resulting in the issuance of a fraudulent certificate of compliance for that vehicle.

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Vehicle 3

39. The OIS test data showed that on April 21, 2020, Respondent Hernandez-Villa performed a smog inspection on a 2008 Cadillac STS (Vehicle 3), resulting in the issuance of electronic Smog Certificate of Compliance Number RI242816C. The OIS test details for Vehicle 3 showed that the eVIN reported does not match the physical VIN on the vehicle. I.E. reviewed the Comparative OIS Test Data for 2008 Cadillac STS vehicles and found that the PID count recorded during the inspection on Vehicle 3 was not consistent with the PID count for that make and model vehicle. I.E. concluded that the DAD was not connected to Vehicle 3 during the inspection.

40. The OIS test data showed that on September 6, 2019, a previous test was performed by another smog facility on Vehicle 3. I.E found that the eVIN that was reported during the inspection and the communication protocol and PID count recorded during the September 6, 2019, inspection matched the communication protocol and PID count for 2008 Cadillac STS vehicles.

41. Further, OIS test data showed that on April 21, 2020, Respondent Hernandez-Villa performed a smog test on a 2012 Jeep Liberty Sport and that the eVIN transmitted to VID was the same eVIN that was recorded during the April 21, 2020, smog inspection on Vehicle 3. In addition, the communication protocol and PID count recorded during the April 21, 2020, inspection on the 2012 Jeep Liberty Sport were consistent with the communication protocol and PID count recorded during the April 21, 2020, inspection on Vehicle 3. I.E. concluded that Respondent Hernandez-Villa used the 2012 Jeep Liberty Sport's properly functioning OBD II system during the April 21, 2020, smog inspection on Vehicle 3, resulting in the issuance of a fraudulent certificate of compliance for that vehicle.

Vehicle 4

42. The OIS test data showed that on May 6, 2020, Respondent Hernandez-Villa performed a smog inspection on a 2005 Acura TL (Vehicle 4), resulting in the issuance of electronic Smog Certificate of Compliance Number RI636656C. The OIS test details for Vehicle 4 showed that the eVIN reported does not match the physical VIN on the vehicle. I.E. reviewed

1 the Comparative OIS Test Data for 2005 Acura TL vehicles and found that the PID count
2 recorded during the inspection on Vehicle 4 was not consistent with the PID count for that make
3 and model vehicle. I.E. concluded that the DAD was not connected to Vehicle 4 during the
4 inspection.

5 43. The OIS test data showed that on April 2, 2018, a previous test was performed by
6 another smog facility on Vehicle 4. I.E. found that the eVIN that was reported during the
7 inspection and the communication protocol and PID count recorded during the April 2, 2018,
8 inspection matched the communication protocol and PID count for 2005 Acura TL vehicles.

9 44. Further, OIS test data showed that on May 6, 2020, Respondent Hernandez-Villa
10 performed a smog test on a 2005 Jaguar S-Type and that the eVIN transmitted to VID was the
11 same eVIN that was recorded during the May 6, 2020, smog inspection on Vehicle 4. In addition,
12 the communication protocol and PID count recorded during the May 6, 2020, inspection on the
13 2005 Jaguar S-Type were consistent with the communication protocol and PID count recorded
14 during the May 6, 2020, inspection on Vehicle 4. I.E. concluded that Respondent Hernandez-
15 Villa used the 2005 Jaguar S-Type's properly functioning OBD II system during the May 6, 2020,
16 smog inspection on Vehicle 4, resulting in the issuance of a fraudulent certificate of compliance
17 for that vehicle.

18 **Vehicle 5**

19 45. The OIS test data showed that on May 8, 2020, Respondent Hernandez-Villa
20 performed a smog inspection on a 2000 Mitsubishi Montero Sport LS (Vehicle 5), resulting in the
21 issuance of electronic Smog Certificate of Compliance Number RI700006C. The OIS test details
22 for Vehicle 5 showed that the eVIN reported does not match the physical VIN on the vehicle. I.E.
23 reviewed the Comparative OIS Test Data for 2000 Mitsubishi Montero Sport LS vehicles and
24 found that the communication protocol and the PID count recorded during the inspection on
25 Vehicle 5 were not consistent with the communication protocol and PID count for that make and
26 model vehicle. I.E. concluded that the DAD was not connected to Vehicle 5 during the
27 inspection.

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1 46. The OIS test data showed that on April 16, 2020, a previous test was performed by
2 another smog facility on Vehicle 5. I.E. found that the eVIN was not transmitted during the
3 inspection and the communication protocol and PID count recorded during the April 16, 2020,
4 inspection matched the communication protocol and PID count for 2000 Mitsubishi Montero
5 Sport LS vehicles.

6 47. Further, OIS test data showed that on May 8, 2020, Respondent Hernandez-Villa
7 performed a smog test on a 2006 Mazda 3i and that the eVIN transmitted to VID was the same
8 eVIN that was recorded during the May 8, 2020, smog inspection on Vehicle 5. In addition, the
9 communication protocol and PID count recorded during the May 8, 2020, inspection on the 2006
10 Mazda 3i were consistent with the communication protocol and PID count recorded during the
11 May 8, 2020, inspection on Vehicle 5. I.E. concluded that Respondent Hernandez-Villa used the
12 2006 Mazda 3i's properly functioning OBD II system during the May 8, 2020, smog inspection
13 on Vehicle 5, resulting in the issuance of a fraudulent certificate of compliance for that vehicle.

14 **Vehicle 6**

15 48. The OIS test data showed that on May 21, 2020, Respondent Hernandez-Villa
16 performed a smog inspection on a 2003 Ford Mustang Mach 1 (Vehicle 6), resulting in the
17 issuance of electronic Smog Certificate of Compliance Number RK061407C. The OIS test
18 details for Vehicle 6 showed that the eVIN reported does not match the physical VIN on the
19 vehicle. I.E. reviewed the Comparative OIS Test Data for 2003 Ford Mustang Mach 1 vehicles
20 and found that the communication protocol and the PID count recorded during the inspection on
21 Vehicle 6 were not consistent with the communication protocol and PID count for that make and
22 model vehicle. I.E. concluded that the DAD was not connected to Vehicle 6 during the
23 inspection.

24 49. Further, OIS test data showed that on May 21, 2020, Respondent Hernandez-Villa
25 performed a smog test on a 2012 Chevrolet Malibu LS and that the eVIN transmitted to VID was
26 the same eVIN that was recorded during the May 21, 2020, smog inspection on Vehicle 6. In
27 addition, the communication protocol and PID count recorded during the May 21, 2020,
28 inspection on the 2012 Chevrolet Malibu LS were consistent with the communication protocol

1 and PID count recorded during the May 21, 2020, inspection on Vehicle 6. I.E. concluded that
2 Respondent Hernandez-Villa used the 2012 Chevrolet Malibu's properly functioning OBD II
3 system during the May 21, 2020, smog inspection on Vehicle 6, resulting in the issuance of a
4 fraudulent certificate of compliance for that vehicle.

5 **Vehicle 7**

6 50. The OIS test data showed that on June 2, 2020, Respondent Hernandez-Villa
7 performed a smog inspection on a 2006 Nissan Pathfinder (Vehicle 7), resulting in the issuance of
8 electronic Smog Certificate of Compliance Number RK368432C. The OIS test details for
9 Vehicle 7 showed that the eVIN reported does not match the physical VIN on the vehicle. I.E.
10 reviewed the Comparative OIS Test Data for 2006 Nissan Pathfinder vehicles and found that the
11 communication protocol and the PID count recorded during the inspection on Vehicle 7 were not
12 consistent with the communication protocol and PID count for that make and model vehicle.
13 I.E. concluded that the DAD was not connected to Vehicle 7 during the inspection.

14 51. The OIS test data showed that on March 9, 2018, a previous test was performed by
15 another smog facility on Vehicle 7. I.E. found that the eVIN that was reported during the
16 inspection and the communication protocol and PID count recorded during the March 9, 2018,
17 inspection matched the communication protocol and PID count for 2006 Nissan Pathfinder
18 vehicles.

19 52. Further, OIS test data showed that on June 2, 2020, Respondent Hernandez-Villa
20 performed a smog test on a 2010 Nissan Versa and that the eVIN transmitted to VID was the
21 same eVIN that was recorded during the June 2, 2020, smog inspection on Vehicle 7. In addition,
22 the communication protocol and PID count recorded during the June 2, 2020, inspection on the
23 2010 Nissan Versa were consistent with the communication protocol and PID count recorded
24 during the June 2, 2020, inspection on Vehicle 7. I.E. concluded that Respondent Hernandez-
25 Villa used the 2010 Nissan Versa's properly functioning OBD II system during the June 2, 2020,
26 smog inspection on Vehicle 7, resulting in the issuance of a fraudulent certificate of compliance
27 for that vehicle. DMV information found that the registered owner of the 2006 Nissan Pathfinder
28 shares the same mailing address as Respondent Hernandez-Villa.

Vehicle 8

53. The OIS test data showed that on June 2, 2020, Respondent Hernandez-Villa performed a smog inspection on a 2007 Jeep Grand Cherokee (Vehicle 8), resulting in the issuance of electronic Smog Certificate of Compliance Number RK368437C. The OIS test details for Vehicle 8 showed that the eVIN reported does not match the physical VIN on the vehicle. I.E. reviewed the Comparative OIS Test Data for 2007 Jeep Grand Cherokee vehicles and found that the communication protocol and the PID count recorded during the inspection on Vehicle 8 were not consistent with the communication protocol and PID count for that make and model vehicle. I.E. concluded that the DAD was not connected to Vehicle 8 during the inspection.

54. The OIS test data showed that on March 5, 2018, a previous test was performed by another smog facility on Vehicle 8. I.E. found that the eVIN that was reported during the inspection and the communication protocol and PID count recorded during the March 5, 2018, inspection matched the communication protocol and PID count for 2007 Jeep Grand Cherokee vehicles.

55. Further, OIS test data showed that on June 2, 2020, Respondent Hernandez-Villa performed a smog test on a 2005 GMC Canyon and that the eVIN transmitted to VID was the same eVIN that was recorded during the June 2, 2020, smog inspection on Vehicle 8. In addition, the communication protocol and PID count recorded during the June 2, 2020, inspection on the 2005 GMC Canyon were consistent with the communication protocol and PID count recorded during the June 2, 2020, inspection on Vehicle 8. I.E. concluded that Respondent Hernandez-Villa used the 2005 GMC Canyon's properly functioning OBD II system during the June 2, 2020, smog inspection on Vehicle 8, resulting in the issuance of a fraudulent certificate of compliance for that vehicle.

Vehicle 9

56. The OIS test data showed that on June 5, 2020, Respondent Hernandez-Villa performed a smog inspection on a 2006 Jeep Wrangler (Vehicle 9), resulting in the issuance of electronic Smog Certificate of Compliance Number RK510011C. The OIS test details for

1 Vehicle 9 showed that the eVIN reported does not match the physical VIN on the vehicle. I.E.
2 reviewed the Comparative OIS Test Data for 2006 Jeep Wrangler vehicles and found that the
3 communication protocol and the PID count recorded during the inspection on Vehicle 9 were not
4 consistent with the communication protocol and PID count for that make and model vehicle. I.E.
5 concluded that the DAD was not connected to Vehicle 9 during the inspection.

6 57. The OIS test data showed that on March 19, 2018, a previous test was performed by
7 another smog facility on Vehicle 9. I.E. found that the eVIN that was reported during the
8 inspection and the communication protocol and PID count recorded during the March 19, 2018,
9 inspection matched the communication protocol and PID count for 2006 Jeep Wrangler vehicles.

10 58. Further, OIS test data showed that on June 5, 2020, Respondent Hernandez-Villa
11 performed a smog test on a 2012 Dodge Ram and that the eVIN transmitted to VID was the same
12 eVIN that was recorded during the June 5, 2020, smog inspection on Vehicle 9. In addition, the
13 communication protocol and PID count recorded during the June 5, 2020, inspection on the 2012
14 Dodge Ram were consistent with the communication protocol and PID count recorded during the
15 June 5, 2020, inspection on Vehicle 9. I.E. concluded that Respondent Hernandez-Villa used the
16 2012 Dodge Ram's properly functioning OBD II system during the June 5, 2020, smog inspection
17 on Vehicle 9, resulting in the issuance of a fraudulent certificate of compliance for that vehicle.

18 **Vehicle 10**

19 59. The OIS test data showed that on June 11, 2020, Respondent Hernandez-Villa
20 performed a smog inspection on a 2002 Volkswagen Jetta (Vehicle 10), resulting in the issuance
21 of electronic Smog Certificate of Compliance Number RK653797C. The OIS test details for
22 Vehicle 10 showed that the eVIN reported does not match the physical VIN on the vehicle. I.E.
23 reviewed the Comparative OIS Test Data for 2002 Volkswagen Jetta vehicles and found that the
24 communication protocol and the PID count recorded during the inspection on Vehicle 10 were
25 not consistent with the communication protocol and PID count for that make and model vehicle.
26 I.E. concluded that the DAD was not connected to Vehicle 10 during the inspection.

27 60. The OIS test data showed that on February 14, 2020, a previous test was performed
28 by another smog facility on Vehicle 10. I.E. found that the eVIN was not transmitted during the

1 inspection and the communication protocol and PID count recorded during the February 14, 2020,
2 inspection matched the communication protocol and PID count for 2002 Volkswagen Jetta
3 vehicles.

4 61. Further, OIS test data showed that on August 14, 2019, a smog test was performed on
5 a 2010 Dodge Dakota at a another facility and that the eVIN transmitted to VID was the same
6 eVIN that was recorded during the smog inspection on Vehicle 10 on June 11, 2020. In addition,
7 the communication protocol and PID count recorded during the inspection on the 2010 Dodge
8 Dakota were consistent with the communication protocol and PID count recorded during the June
9 11, 2020, inspection on Vehicle 10. I.E. concluded that Respondent Hernandez-Villa used the
10 2010 Dodge Dakota's properly functioning OBD II system during the June 11, 2020, smog
11 inspection on Vehicle 10, resulting in the issuance of a fraudulent certificate of compliance for
12 that vehicle.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Untrue and Misleading Statements- Respondent Portillo)**

15 62. Respondent Portillo's registration is subject to disciplinary action under Code section
16 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which she knew or
17 in the exercise of reasonable care should have known to be untrue or misleading, as follows:
18 Respondent Portillo's smog check technician, Respondent Hernandez-Villa, certified Vehicles 1
19 through 10, identified in paragraphs 33 through 61 above, had passed inspection and were in
20 compliance with applicable laws and regulations. In fact, Respondent Hernandez-Villa conducted
21 smog inspections on vehicles using clean-plugging methods in that he substituted or used a
22 different vehicle during inspection in order to issue smog certificates of compliance for the
23 vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Fraud – Respondent Portillo)**

26 63. Respondent Portillo's registration is subject to disciplinary action under Code section
27 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud by issuing
28 smog certificates of compliance for Vehicles 1 through 10 identified in paragraphs 33 through 61

1 above, without ensuring that bona fide inspections were performed of the emission control
2 devices and systems on the vehicles, thereby depriving the People of the State of California of the
3 protections afforded by the Motor Vehicle Inspection Program.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Violations of the Motor Vehicle Inspection Program – Respondent Portillo)**

6 64. Respondent Portillo's station license is subject to disciplinary action under Health &
7 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
8 following sections of that Code:

9 a. **Section 44012:** Respondent failed to ensure that the emission control tests
10 were performed on Vehicles 1 through 10, identified in paragraphs 33 through 61 above, in
11 accordance with procedures prescribed by the department.

12 b. **Section 44015:** Respondent issued electronic smog certificates of compliance
13 for Vehicles 1 through 10, identified in paragraphs 33 through 61 above, without ensuring that the
14 vehicles were properly tested and inspected to determine if they were in compliance with Health
15 & Saf. Code section 44012.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
18 **Respondent Portillo)**

19 65. Respondent Portillo's station license is subject to disciplinary action under Health &
20 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
21 of title 16, California Code of Regulations, as follows:

22 a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog
23 certificates of compliance for Vehicles 1 through 10, identified in paragraphs 33 through 61
24 above, even though the vehicles had not been inspected in accordance with Code section 3340.42.

25 b. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
26 conducted on Vehicles 1 through 10, identified in paragraphs 33 through 61 above, in accordance
27 with the Bureau's specifications.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud, Deceit – Respondent Portillo)**

3 66. Respondent Portillo's station license is subject to disciplinary action under Health &
4 Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent
5 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance
6 for Vehicles 1 through 10, identified in paragraphs 33 through 61 above, without ensuring that
7 bona fide inspections were performed of the emissions control devices and systems on the
8 vehicles, thereby depriving the People of the State of California of the protection afforded by the
9 Motor Vehicle Inspection Program.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Fraud – Respondent Portillo)**

12 67. Respondent Portillo's registration is subject to disciplinary action under Code section
13 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud by issuing
14 smog certificates of compliance for Vehicles 1 through 10, identified in paragraphs 33 through 61
15 above, without ensuring that bona fide inspections were performed of the emission control
16 devices and systems on the vehicles, thereby depriving the People of the State of California of the
17 protections afforded by the Motor Vehicle Inspection Program.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Violations of the Motor Vehicle Inspection Program – Respondent Hernandez-Villa)**

20 68. Respondent Hernandez-Villa's smog check inspector license is subject to disciplinary
21 action under Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
22 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to
23 perform the emission control tests on Vehicles 1 through 10, identified in paragraphs 33 through
24 61 above, in accordance with procedures by the department.

25 **EIGHTH CAUSE FOR DISCIPLINE**

26 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
27 **Respondent Hernandez-Villa)**

28 69. Respondent Hernandez-Villa's smog check inspector license is subject to disciplinary

1 action under Code section 44072.2, subdivision (c), in that Respondent failed to comply with
2 provisions of Title 16, California Code of Regulations, as follows:

3 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test Vehicles 1
4 through 10, identified in paragraphs 33 through 61 above, in accordance with Health & Saf. Code
5 section 44012 and 44035, and Title 16, California Code of Regulations, section 3340.42.

6 b. **Section 3340.42:** Respondent failed to conduct required smog tests on Vehicles 1
7 through 10, identified in paragraphs 33 through 61 above, in accordance with the Bureau's
8 specifications.

9 **NINTH CAUSE FOR DISCIPLINE**

10 **(Dishonesty, Fraud or Deceit – Respondent Hernandez-Villa)**

11 70. Respondent Hernandez-Villa's smog check inspector license is subject to disciplinary
12 action under Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
13 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
14 certificates of compliance for Vehicles 1 through 10, identified in paragraphs 33 through 61
15 above, without performing bona fide inspections of the emissions control devices and systems on
16 the vehicles, thereby depriving the People of the State of California of the protection afforded by
17 the Motor Vehicle Inspection Program.

18 **OTHER MATTERS**

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

23 72. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
24 License Number TC 270071, issued to Respondent Portillo, doing business as Freedom Smog, is
25 revoked or suspended, any additional licenses issued under Chapter 5 of Part 5 of Chapter 26 of
26 Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the
27 Director.

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73. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License No. EO 637408 issued to Cristina Portillo, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

74. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License No. EO 638574, issued to Alejandro Hernandez-Villa, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

PRA YER

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

1. Revoking or suspending Automotive Dealer Registration Number ARD 270071,
issued to Cristina Portillo, doing business as Freedom Smog;

2. Revoking or suspending any other automotive repair dealer registration issued to Cristina Portillo;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 270071, issued to Cristina Portillo, doing business as Freedom Smog;

4. Revoking or suspending Smog Check Inspector License Number EO 637408, issued to Cristina Portillo;

5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of Cristina Portillo;

6. Revoking or suspending Smog Check Inspector License Number EO 638574, issued to Alejandro Hernandez-Villa;

7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of Alejandro Hernandez-Villa;

8. Ordering Cristina Portillo and Alejandro Hernandez-Villa 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,

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

DATED: October 9, 2020

Signature on File

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

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