

1 ROB BONTA  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 MARISSA N. HAMILTON  
Deputy Attorney General  
4 State Bar No. 322489  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6701  
6 Facsimile: (916) 731-2126  
E-mail: Marissa.Hamilton@doj.ca.gov  
7 *Attorneys for Complainant*

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. 79/24-11143

13 **FRANCISCO E. PINTO, DBA L&R SMOG**  
14 **534 S Mountain Ave K**  
15 **Ontario, CA 91762**

**ACCUSATION**

16 **Mailing Address:**  
17 **402 E. Rialto**  
18 **San Bernardino, CA 92408**

19 **Automotive Repair Dealer Registration No.**  
20 **ARD 285573**  
21 **Smog Check, Test Only, Station License No.**  
22 **TC 285573,**

23 **and**

24 **FRANCISCO E. PINTO**  
25 **437 Eucalyptus Court**  
26 **Redlands, CA 92373**

27 **Smog Check Inspector License No. EO**  
28 **639740**

Respondents.

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1 **PARTIES**

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

4 ***Automotive Repair Dealer Registration***

5 2. On or about December 15, 2016, Bureau of Automotive Repair issued Automotive  
6 Repair Dealer Registration Number ARD 285573 to Francisco E. Pinto, dba L&R Smog  
7 (Respondent L&R Smog). The Automotive Repair Dealer Registration was in full force and  
8 effect at all times relevant to the charges brought herein and will expire on December 31, 2025,  
9 unless renewed.

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

11 3. On or about January 10, 2017, Bureau of Automotive Repair issued Smog Check,  
12 Test Only, Station License Number TC 285573 to Respondent L&R Smog. The Smog Check,  
13 Test Only, Station License was in full force and effect at all times relevant to the charges brought  
14 herein and will expire on December 31, 2025, unless renewed.

15 ***STAR Station Certification***

16 4. Respondent L&R Smog is also certified as a STAR Station. The certification was  
17 issued on or about April 16, 2017, and will remain active unless the Automotive Repair Dealer  
18 Registration and/or Smog Check, Test Only, Station License is revoked, cancelled, becomes  
19 delinquent, or the certification is suspended.

20 ***Smog Check Inspector License***

21 5. On or about September 29, 2016, Bureau of Automotive Repair issued Smog Check  
22 Inspector License Number EO 639740 to Francisco E. Pinto (Respondent Pinto). The Smog  
23 Check Inspector License was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on December 31, 2026, unless renewed.

25 **JURISDICTION**

26 6. This Accusation is brought before the Director of the Department of Consumer  
27 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

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1 All section references are to the Business and Professions Code (Code) unless otherwise  
2 indicated.

3 7. Business and Professions Code section 118, subdivision (b), provides that suspension,  
4 expiration, surrender, or cancellation of a license shall not deprive the Director of jurisdiction to  
5 proceed with a disciplinary action during the period within which the license may be renewed,  
6 restored, reissued or reinstated.

7 8. Business and Professions Code section 9884.7 provides that the Director may revoke  
8 an automotive repair dealer registration.

9 9. Business and Professions Code section 9884.13 provides, in pertinent part, that the  
10 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a  
11 disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or  
12 permanently invalidating (suspending or revoking) a registration.

13 10. Section 9884.22, subdivision (a), of the Code provides:

14 (a) Notwithstanding any other provision of law, the director may revoke,  
15 suspend, or deny at any time any registration required by this article on any of the  
16 grounds for disciplinary action provided in this article. The proceedings under this  
17 article shall be conducted in accordance with Chapter 5 (commencing with Section  
11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director  
shall have all the powers granted therein.

18 11. Health and Safety Code section 44002 provides, in pertinent part, that the Director  
19 has all the powers and authority granted under the Automotive Repair Act for enforcing the  
20 Motor Vehicle Inspection Program.

21 12. Section 44072.6 of the Health and Safety Code provides:

22 The expiration or suspension of a license by operation of law or by order or  
23 decision of the director or a court of law, or the voluntary surrender of a license by a  
24 licensee shall not deprive the director of jurisdiction to proceed with any investigation  
of, or action or disciplinary proceedings against, the licensee, or to render a decision  
suspending or revoking the license.

### 25 **STATUTORY PROVISIONS**

26 13. Section 9884.7 of the Code provides, in pertinent part:

27 (a) The director, if the automotive repair dealer cannot show there was a bona  
28 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.

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

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

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

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

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

(e) For diesel-powered vehicles, a visual inspection is made of emission control devices and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the department, that may include, but are not limited to, onboard diagnostic testing. The test may include testing of emissions of any or all of the

pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

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

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

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

15. Health and Safety Code section 44015 provides, in pertinent part:

(a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of Section 44036. A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of Section 44036 shall be directed to the department to determine whether an inadvertent error can explain the irregularity, or whether the vehicle otherwise meets smog check requirements, allowing the certificate for compliance to be issued, or the vehicle shall be reinspected by a referee or another smog check station.

(3) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2.

(4) A vehicle described in subdivision (c).

(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.

...

16. 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

1 repair is performed at a licensed smog check station. Qualified smog check  
2 technicians shall perform tests of emission control devices and systems in accordance  
3 with Section 44012.

4 17. Health and Safety Code section 44059 provides:

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

10 18. Health and Safety Code section 44072.2 states, in pertinent part:

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

14 (a) Violates any section of this chapter and the regulations adopted pursuant to  
15 it, which related to the licensed activities.

16 . . .

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

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

21 . . .

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

24 19. Health and Safety Code section 44072.8 states that when a license has been revoked  
25 or suspended following a hearing under this article, any additional license issued under this  
26 chapter in the name of the licensee may be likewise revoked or suspended by the Director.

27 20. Health and Safety Code section 44072.10 states, in pertinent part:

28 (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.

. . .

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

**REGULATORY PROVISIONS**

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

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

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

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

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

...

23. California Code of Regulations, title 16, section 3340.35, subdivision (c), states, in pertinent part:

...

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

24. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides:

...

(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.

...

25. 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.

26. California Code of Regulations, title 16, section 3340.45 provides:

All 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.

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27. 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(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

28. 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

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



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

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

10           (1) Engine speed in revolutions per minute (RPM).

11           (2) Throttle position as measured by a throttle position sensor (TPS) mounted onto the  
12 throttle shaft, measured in a percentage of opening from 0% at idle and near or up to 100%  
13 at full throttle

14           (3) Manifold absolute pressure as measured by a manifold absolute pressure sensor  
15 (MAP) connected to an intake manifold source, measured in kilo pascals (kpa). Typical  
16 readings for a normally aspirated vehicle are: 0 kpa being absolute vacuum, 25kpa to 45kpa  
17 at idle, 101 kpa at full throttle, same as atmospheric pressure at sea level.

18           (4) Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's  
19 air intake tract, measured in grams per second (gps).

20           (5) Ignition timing is set by the vehicle PCM based on engine speed and load and is  
21 measured in degrees Before Top Dead Center (BTDC).

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

1 movement in the throttle from the idle position will result in an increase of airflow through the  
2 engine with corresponding increases RPM and MAF along with changes in MAP.

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

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

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

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

1 which are used to gain access to the EIS and OIS to perform smog check inspections.

2 Unauthorized use of another technician's access code or license is prohibited.

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

14 **Station Inspection – April 12, 2023**

15 38. On or about April 12, 2023, a Bureau representative conducted a station inspection at  
16 Respondent L&R Smog for an OIS DAD that was disconnected from the VID due to anomalous  
17 data being transmitted. The Bureau representative met with Respondent Pinto, and performed a  
18 self-test on the DAD, which passed. The Bureau representative reviewed deficiencies to be  
19 corrected and instructed Respondents to perform thorough inspections in compliance with the  
20 Bureau's most current Smog Check Procedures Manual and that failure to properly test vehicles  
21 would lead to disciplinary action.

22 **Station Data Review**

23 39. A Bureau representative initiated an investigation, in which he reviewed OIS test data  
24 for the smog check inspections performed at Respondent L&R Smog. The investigation revealed  
25 that data related to certain vehicles certified by Respondents contained a pattern of unmistakable  
26 discrepancies between the information transmitted during the inspections and known similar data  
27 for the vehicles being tested. Specifically, the Bureau representative observed a pattern of  
28 vehicles being certified with engine operating parameters not corresponding to normal engine

operation, confirming the vehicles receiving smog certificates were not tested during the OBD functional test, which constitutes clean plugging, as follows:

**Clean Plug #1**

40. On or about March 14, 2023, a 2001 GMC New Sierra K1500, CA License #61841L1, VIN #1GTEK19T11E135379 (2001 New Sierra), was tested and smog certificate #TE525653C was issued by Respondent L&R Smog under the license of Smog Check Inspector #EO639740, Respondent Pinto.

41. The Dynamic PID OBD II data for the 2001 New Sierra shows between time stamp 256 and 17642, engine speed is steady at approximately 575 RPM. During this time, the throttle is fixed at .4% opening, the MAF is fixed at 4.89 gps, the MAP is fixed at 35 kPa, and the ignition timing advance for the #1 cylinder is fixed at 19 degrees BTDC. After time stamp 17642, the engine speed accelerates to approximately 2100 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same .4% opening, the MAF is fixed at the same 4.89 gps, the MAP is fixed at the same 35 kPa, and the ignition timing advance for the #1 cylinder is also still fixed at the same 19 degrees BTDC.

42. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, 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 DAD was not connected to the 2001 New Sierra being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

**Clean Plug #2**

43. On or about March 22, 2023, a 2001 Hyundai Sonata GL, CA License #4SJN255, VIN #KMHWF25S51A373055 (2001 Sonata), was tested and smog certificate #TE525699C was issued by Respondent L&R Smog under the license of Smog Check Inspector #EO639740, Respondent Pinto.

44. The Dynamic PID OBD II data for the 2001 Sonata shows between time stamp 276 and 19764, engine speed is steady at approximately 775 RPM. During this time, the throttle is

1 fixed at 0% opening, the MAF is fixed at 2.39 gps, and the ignition timing advance for the #1  
2 cylinder is fixed at 8 degrees BTDC. After time stamp 19764, the engine speed accelerates to  
3 approximately 2175 RPM. From the time the engine RPM increases off idle to the higher RPMs,  
4 the throttle is fixed at the same 0% opening, the MAF is fixed at the same 2.39 gps, and the  
5 ignition timing advance for the #1 cylinder is also still fixed at the same 8 degrees BTDC.

6 45. During the entire period the dynamic data was collected, the only parameter that  
7 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings  
8 remained unchanged even though the engine speed was increased. These readings are not  
9 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data  
10 prove the OIS DAD was not connected to the 2001 Sonata being certified, causing the issuance of  
11 a fraudulent Smog Check Certificate of Compliance.

12 **Clean Plug #3**

13 46. On or about March 23, 2023, a 2005 Honda Civic DX VP, CA License #5KYN585,  
14 VIN #1HGEM22175L048288 (2005 Civic), was tested and smog certificate #TE783606C was  
15 issued by Respondent L&R Smog under the license of Smog Check Inspector #EO639740,  
16 Respondent Pinto.

17 47. The Dynamic PID OBD II data for the 2005 Civic shows between time stamp 306  
18 and 16808, engine speed is steady at approximately 575 RPM. During this time, the throttle is  
19 fixed at 9.4% opening, the MAP is fixed at 30 kPa, and the ignition timing advance for the #1  
20 cylinder is fixed at 6 degrees BTDC. After time stamp 16808, the engine speed accelerates to  
21 approximately 2100 RPM. From the time the engine RPM increases off idle to the higher RPMs,  
22 the throttle is fixed at the same 9.4% opening, the MAP is fixed at the same 30 kPa, and the  
23 ignition timing advance for the #1 cylinder is also still fixed at the same 6 degrees BTDC.

24 48. During the entire period the dynamic data was collected, the only parameter that  
25 changed was engine RPM. The throttle position, MAP, and ignition timing advance readings  
26 remained unchanged even though the engine speed was increased. These readings are not  
27 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data  
28

1 prove the OIS DAD was not connected to the 2005 Civic being certified, causing the issuance of  
2 a fraudulent Smog Check Certificate of Compliance.

3 **Clean Plug #4**

4 49. On or about March 25, 2023, a 2003 Nissan 350Z Coupe, CA License #8TPY758,  
5 VIN #JN1AZ34E63T015528 (2003 350Z), was tested and smog certificate #TE783611C was  
6 issued by Respondent L&R Smog under the license of Smog Check Inspector #EO639740,  
7 Respondent Pinto.

8 50. The Dynamic PID OBD II data for the 2003 350Z shows between time stamp 370 and  
9 19524, engine speed is steady at approximately 700 RPM. During this time, the throttle is fixed  
10 at 0.8% opening, the MAF is fixed at 8.83 gps, and the ignition timing advance for the #1  
11 cylinder is fixed at 14 degrees BTDC. After time stamp 19524, the engine speed accelerates to  
12 approximately 1950 RPM. From the time the engine RPM increases off idle to the higher RPMs,  
13 the throttle is fixed at the same 0.8% opening, the MAF is fixed at the same 8.83 gps, and the  
14 ignition timing advance for the #1 cylinder is also still fixed at the same 14 degrees BTDC.

15 51. During the entire period the dynamic data was collected, the only parameter that  
16 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings  
17 remained unchanged even though the engine speed was increased. These readings are not  
18 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data  
19 prove the OIS DAD was not connected to the 2003 350Z being certified, causing the issuance of a  
20 fraudulent Smog Check Certificate of Compliance.

21 **Clean Plug #5**

22 52. On or about August 3, 2023, a 2001 Dodge RAM Van B1500, CA License  
23 #6V98371, VIN #2B7HB11Y01K528645 (2001 RAM Van), was tested and smog certificate  
24 #TK828667C was issued by Respondent L&R Smog under the license of Smog Check Inspector  
25 #EO639740, Respondent Pinto.

26 53. The Dynamic PID OBD II data for the 2001 RAM Van shows between time stamp  
27 318 and 17419, engine speed is steady at approximately 700 RPM. During this time, the throttle  
28 is fixed at 9.8% opening, the MAP is fixed at 30 kPa, and the ignition timing advance for the #1

1 cylinder is fixed at 13 degrees BTDC. After time stamp 17419, the engine speed accelerates to  
2 approximately 2100 RPM. From the time the engine RPM increases off idle to the higher RPMs,  
3 the throttle is fixed at the same 9.8% opening, the MAP is fixed at the same 30 kPa, and the  
4 ignition timing advance for the #1 cylinder is also still fixed at the same 13 degrees BTDC.

5 54. During the entire period the dynamic data was collected, the only parameter that  
6 changed was engine RPM. The throttle position, MAP, and ignition timing advance readings  
7 remained unchanged even though the engine speed was increased. These readings are not  
8 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data  
9 prove the OIS DAD was not connected to the 2001 RAM Van being certified, causing the  
10 issuance of a fraudulent Smog Check Certificate of Compliance.

11 **Clean Plug #6**

12 55. On or about August 17, 2023, a 2002 Lexus RX 300, CA License #4XFE642, VIN  
13 #JTJGF10UX20137288 (2002 RX 300), was tested and smog certificate #TK828679C was issued  
14 by Respondent L&R Smog under the license of Smog Check Inspector #EO639740, Respondent  
15 Pinto.

16 56. The Dynamic PID OBD II data for the 2002 RX 300 shows between time stamp 268  
17 and 17961, engine speed is steady at approximately 700 RPM. During this time, the throttle is  
18 fixed at 12.2% opening, the MAF is fixed at 6.68 gps, and the ignition timing advance for the #1  
19 cylinder is fixed at 11 degrees BTDC. After time stamp 17961, the engine speed accelerates to  
20 approximately 2000 RPM. From the time the engine RPM increases off idle to the higher RPMs,  
21 the throttle is fixed at the same 12.2% opening, the MAF is fixed at the same 6.68 gps, and the  
22 ignition timing advance for the #1 cylinder is also still fixed at the same 11 degrees BTDC.

23 57. During the entire period the dynamic data was collected, the only parameter that  
24 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings  
25 remained unchanged even though the engine speed was increased. These readings are not  
26 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data  
27 prove the OIS DAD was not connected to the 2002 RX 300 being certified, causing the issuance  
28 of a fraudulent Smog Check Certificate of Compliance.

58. A previous failing test was performed on the 2003 RX 300 at another station on or about May 10, 2022. The 2002 RX 300 failed the inspection for an illuminated malfunction indicator light (MIL), and confirmed diagnostic codes P0325 and P0330. The Dynamic PID OBD II data shows the expected change in the throttle, MAF, and ignition timing advance parameters as characteristic or expected for normal engine operation.

**Clean Plug #7**

59. On or about July 24, 2024, a 2001 Lexus IS 300, CA License #9DOE642, VIN #JTHBD182610022917 (2001 IS 300), was tested and smog certificate #IZ550523C was issued by Respondent L&R Smog under the license of Smog Check Inspector #EO639740, Respondent Pinto.

60. The Dynamic PID OBD II data for the 2001 IS 300 shows between time stamp 275 and 22821, engine speed is steady at approximately 675 RPM. During this time, the throttle is fixed at 13.7% opening, the MAF is fixed at .5 gps, and the ignition timing advance for the #1 cylinder is fixed at 5 degrees BTDC. After time stamp 22821, the engine speed accelerates to approximately 1950 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 13.7% opening, the MAF is fixed at the same .5 gps, and the ignition timing advance for the #1 cylinder is also still fixed at the same 5 degrees BTDC.

61. 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 DAD was not connected to the 2001 IS 300 being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

**Clean Plug #8**

62. On or about July 27, 2024, a 2002 Subaru Impreza WRX, CA License #8UNH096, VIN #JF1GG29622G830007 (2002 Impreza), was tested and smog certificate #IZ550528C was issued by Respondent L&R Smog under the license of Smog Check Inspector #EO639740, Respondent Pinto.



63. The Dynamic PID OBD II data for the 2002 Impreza shows between time stamp 337 and 19150, engine speed is steady at approximately 675 RPM. During this time, the throttle is fixed at 0% opening, the MAF is fixed at 3.39 gps, the MAP is fixed at 40 kPa, and the ignition timing advance for the #1 cylinder is fixed at 11 degrees BTDC. After time stamp 19150, the engine speed accelerates to approximately 1850 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0% opening, the MAF is fixed at the same 3.39 gps, the MAP is fixed at the same 40 kPa, and the ignition timing advance for the #1 cylinder is fixed at the same 11 degrees BTDC.

64. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, 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 DAD was not connected to the 2002 Impreza being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

**Clean Plug #9**

On or about July 29, 2024, a 2004 Dodge RAM 1500 ST, CA License #8Y25482, VIN #1D7HA18K14J282831 (2004 RAM), was tested and smog certificate #IZ550534C was issued by Respondent L&R Smog under the license of Smog Check Inspector #EO639740, Respondent Pinto.

65. The Dynamic PID OBD II data for the 2004 RAM shows between time stamp 261 and 17229, engine speed is steady at approximately 750 RPM. During this time, the throttle is fixed at 14.1% opening, the MAP is fixed at 97 kPa, and the ignition timing advance for the #1 cylinder is fixed at -64 degrees BTDC. After time stamp 17229, 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 14.1% opening, the MAP is fixed at the same 97 kPa, and the ignition timing advance for the #1 cylinder is fixed at the same -64 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

1 remained unchanged even though the engine speed was increased. These readings are not  
2 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data  
3 prove the OIS DAD was not connected to the 2004 RAM being certified, causing the issuance of  
4 a fraudulent Smog Check Certificate of Compliance.

5 **Clean Plug #10**

6 67. On or about July 30, 2024, a 2000 Toyota Camry CE, CA License #4HTV684, VIN  
7 #JT2BG22K3Y0403053 (2000 Camry), was tested and smog certificate #IZ550538C was issued  
8 by Respondent L&R Smog under the license of Smog Check Inspector #EO639740, Respondent  
9 Pinto.

10 68. The Dynamic PID OBD II data for the 2000 Camry shows between time stamp 276  
11 and 21999, engine speed is steady at approximately 725 RPM. During this time, the throttle is  
12 fixed at 13.7% opening, the MAP is fixed at 97 kPa, and the ignition timing advance for the #1  
13 cylinder is fixed at 5 degrees BTDC. After time stamp 21999, the engine speed accelerates to  
14 approximately 2400 RPM, then decelerates to approximately 2000 RPM. From the time the  
15 engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 13.7%  
16 opening, the MAP is fixed at the same 97 kPa, and the ignition timing advance for the #1 cylinder  
17 is fixed at the same 5 degrees BTDC.

18 69. During the entire period the dynamic data was collected, the only parameter that  
19 changed was engine RPM. The throttle position, MAP and ignition timing advance readings  
20 remained unchanged even though the engine speed was increased. These readings are not  
21 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data  
22 prove the OIS DAD was not connected to the 2000 Camry being certified, causing the issuance of  
23 a fraudulent Smog Check Certificate of Compliance.

24 70. A previous failing test was performed on the 2000 Camry at another station on or  
25 about March 25, 2023. The 2000 Camry failed the inspection for incomplete OBD II readiness  
26 monitors. No dynamic OBD II PID data was collected during the inspection.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements – Respondent L&R Smog)**

3 71. Respondent L&R Smog's Automotive Repair Dealer Registration is subject to  
4 disciplinary action under Code section 9884.7, subdivision (a)(1), in that, with respect to the 10  
5 vehicles identified above, Respondent L&R Smog made or authorized statements which they  
6 knew, or in the exercise of reasonable care should have known to be untrue or misleading, as  
7 follows: Respondent L&R Smog certified that these vehicles had passed inspection and were in  
8 compliance with applicable laws and regulations, when in fact, Respondent L&R Smog  
9 conducted the inspections on the vehicles using the clean plugging method in order to issue smog  
10 certificates of compliance for the vehicles. Complainant refers to, and by this reference  
11 incorporates, the allegations set forth above in paragraphs 39-70, as though fully set forth herein.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Fraud – Respondent L&R Smog)**

14 72. Respondent L&R Smog's Automotive Repair Dealer Registration is subject to  
15 disciplinary action under Code section 9884.7, subdivision (a)(4), in that, with respect to the 10  
16 vehicles identified above, Respondent L&R Smog committed acts which constitute fraud by  
17 issuing electronic smog certificates of compliance for these vehicles without performing bona  
18 fide inspections of the emissions control devices and systems on those vehicles, thereby depriving  
19 the People of the State of California of the protection afforded by the Motor Vehicle Inspection  
20 Program. Complainant refers to, and by this reference incorporates, the allegations set forth  
21 above in paragraphs 39-70, as though fully set forth herein.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Material Violation of Automotive Repair Act – Respondent L&R Smog)**

24 73. Respondent L&R Smog's Automotive Repair Dealer Registration is subject to  
25 disciplinary action under Code section 9884.7, subdivision (a)(6), in that, with respect to the 10  
26 vehicles identified above, Respondent L&R Smog failed in a material respect to comply with the  
27 provisions of this chapter or regulations adopted pursuant to it by issuing electronic smog  
28 certificates of compliance for these vehicles without performing bona fide inspections of the

1 emissions control devices and systems on those vehicles, thereby depriving the People of the  
2 State of California of the protection afforded by the Motor Vehicle Inspection Program.  
3 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
4 paragraphs 39-70, as though fully set forth herein.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Violations of the Motor Vehicle Inspection Program – Respondent L&R Smog)**

7 74. Respondent L&R Smog's Smog Check, Test Only, Station License is subject to  
8 disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in  
9 that, with respect to the 10 vehicles identified above, Respondent L&R Smog failed to comply  
10 with the following sections of the Health and Safety Code:

11 a. **Section 44012:** Respondent L&R Smog failed to ensure that the emission control  
12 tests were performed on the vehicles in accordance with procedures prescribed by the Bureau.

13 b. **Section 44015, subdivision (b):** Respondent L&R Smog issued electronic smog  
14 certificates of compliance for the vehicles without ensuring that the vehicles were properly tested  
15 and inspected to determine if they were in compliance with Health and Safety Code section  
16 44012.

17 c. **Section 44059:** Respondent L&R Smog willfully made false entries for the  
18 electronic smog certificates of compliance for the vehicles by certifying that the vehicles had  
19 been inspected as required when, in fact, they had not.

20 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
21 paragraphs 39-70, as though fully set forth herein.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection**  
24 **Program – Respondent L&R Smog)**

25 75. Respondent L&R Smog's Smog Check, Test Only, Station License is subject to  
26 disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that, with  
27 respect to the 10 vehicles identified above, Respondent L&R Smog failed to comply with  
28 provisions of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent L&R Smog issued false or fraudulent certificates of compliance for the vehicles.

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

c. **Section 3340.41, subdivision (c):** Respondent L&R Smog knowingly entered false information into the emissions inspection system for the vehicles.

d. **Section 3340.42:** Respondent L&R Smog failed to ensure that the required smog tests were conducted on the vehicles in accordance with the Bureau's specifications.

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

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 39-70, as though fully set forth herein.

### SIXTH CAUSE FOR DISCIPLINE

**(Dishonesty, Fraud, or Deceit – Respondent L&R Smog)**

76. Respondent L&R Smog's Smog Check, Test Only, Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10, subdivision (c), in that, with respect to the 10 vehicles identified above, Respondent L&R Smog committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates of compliance for the vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 39-70, as though fully set forth herein.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 77. Respondent Pinto'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 10  
5 vehicles identified above, Respondent Pinto violated the following Health and Safety Code  
6 sections:

7 a. **Section 44012, subdivision (a):** Respondent Pinto 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 Pinto failed to perform emission control  
11 tests on the vehicles in accordance with procedures prescribed by the Bureau.

12 c. **Section 44032:** Respondent Pinto 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 Pinto 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 39-70, as though fully set forth herein.

20 **EIGHTH CAUSE FOR DISCIPLINE**

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

23 78. Respondent Pinto'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 10  
25 vehicles identified above, Respondent Pinto failed to comply with provisions of the California  
26 Code of Regulations, title 16, as follows:

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

1           b.     **Section 3340.30, subdivision (a):** Respondent Pinto 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 Pinto knowingly entered false  
5 information into the emissions inspection system for the vehicles.

6           d.     **Section 3340.42:** Respondent Pinto failed to ensure that the required smog tests were  
7 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 39-70, as though fully set forth herein.

#### 10                                   **ELEVENTH CAUSE FOR DISCIPLINE**

##### 11                                   **(Dishonesty, Fraud, or Deceit – Respondent Pinto)**

12           79.   Respondent Pinto'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 10 vehicles  
15 identified above, Respondent Pinto committed acts involving dishonesty, fraud, or deceit when he  
16 issued electronic smog certificates of compliance for the vehicles without performing bona fide  
17 inspections of the emission control devices and systems on those vehicles, thereby depriving the  
18 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
19 Program. Complainant refers to, and by this reference incorporates, the allegations set forth  
20 above in paragraphs 39-70, as though fully set forth herein.

#### 21                                   **OTHER MATTERS**

22           80.   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 L&R Smog, upon a finding that it has, or is, engaged in a  
25 course of repeated and willful violations of the laws and regulations pertaining to an automotive  
26 repair dealer.

27           81.   Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only,  
28 Station License No. TC 285573, issued to Respondent L&R Smog, is revoked or suspended, any

1 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code  
2 in the name of said licensee may be likewise revoked or suspended by the director.

3 82. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector  
4 License No. EO 639740, issued to Respondent Pinto, is revoked or suspended, any additional  
5 license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name  
6 of said licensee may be likewise revoked or suspended by the director.

7 **PRAYER**

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

11 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
12 285573, issued to Francisco E. Pinto, dba L & R Smog;

13 2. Revoking or suspending any other automotive repair dealer registration issued to  
14 Francisco E. Pinto;

15 3. Revoking or suspending Smog Check, Test Only, Station License Number TC  
16 285573, issued to Francisco E. Pinto, dba L & R Smog;

17 4. Revoking or suspending Smog Check Inspector License Number EO 639740, issued  
18 to Francisco E. Pinto;

19 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
20 Division 26 of the Health and Safety Code in the name of Francisco E. Pinto;

21 6. Ordering Francisco E. Pinto to pay the Bureau of Automotive Repair the reasonable  
22 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
23 Code section 125.3 and if placed on probation, the costs of probation monitoring; and,

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

DATED: As of digital signature date

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

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