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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. 79/25-2829

13 **OSCAR ALDACO-OWNER DBA CUATES**
14 **SMOG CHECK**
3708 Rubidoux Blvd.
Riverside, CA 92509

ACCUSATION

15 **Automotive Repair Dealer Registration No.**
16 **ARD 290269**
Smog Check, Test Only Station License No.
17 **TC 290269**

18 **and**

19 **OSCAR ALDACO**
433 E Merrill Ave.
Rialto, CA 92376

20 **Smog Check Inspector License No. EO**
21 **637324**

22 Respondents.

23 **PARTIES**

24
25 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity
26 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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1 **Oscar Aldaco-Owner dba Cuates Smog Check**

2 **Automotive Repair Dealer Registration**

3 2. On or about April 24, 2018, the Bureau issued Automotive Repair Dealer Registration
4 Number ARD 290269 to Oscar Aldaco-Owner dba Cuates Smog Check (“Respondent Cuates
5 Smog”). The Automotive Repair Dealer Registration was in full force and effect at all times
6 relevant to the charges brought herein and will expire on April 30, 2026, unless renewed.

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

8 3. On or about June 6, 2018, the Bureau issued Smog Check, Test-Only, Station License
9 Number TC 290269 to Respondent Cuates Smog. The Smog Check, Test-Only, Station License
10 was in full force and effect at all times relevant to the charges brought herein and will expire on
11 April 30, 2026, unless renewed.

12 **STAR Station Certification**

13 4. On or about January 25, 2019, the Bureau certified Cuates Smog Check as a STAR
14 Station. The certification will remain active unless ARD 290269 and/or TC 290269 is
15 revoked, canceled, becomes delinquent, or the certification is suspended.

16 **Oscar Aldaco**

17 **Smog Check Inspector License**

18 5. On or about September 18, 2014, the Bureau issued Smog Check Inspector License
19 Number EO 637324 to Oscar Aldaco (“Respondent Aldaco”). The Smog Check Inspector
20 License was in full force and effect at all times relevant to the charges brought herein and will
21 expire on July 31, 2026, unless renewed.

22 **JURISDICTION**

23 6. Business and Professions Code (“Code”) section 9884.7 provides that the Director
24 may revoke an automotive repair dealer registration.

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

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

9. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY PROVISIONS

10. Section 9884.7 of the Code states:

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

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

• • • •

(4) Any other conduct which constitutes fraud.

• • • •

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

(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.

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

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department 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. 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.

12. Section 44015 of the Health and Safety Code states:

....

(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.

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

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

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

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

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

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

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

....

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

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

16. Section 44072.8 of the Health and Safety Code states:

When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

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

(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, as defined by the department.

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

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

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

6 **REGULATORY PROVISIONS**

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

8

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

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

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

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

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

19

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

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

25

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

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

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

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

(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle are not included in this table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured emissions are less than or equal to the applicable emission standards specified in the applicable table.

(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-year vehicles, except diesel-powered, registered in all program areas of the state, except in those areas of the state where the enhanced program has been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emission standards set forth in this section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or equal to the applicable emissions standards specified in Table III.

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

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

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

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

(c) The bureau may require any combination of the inspection methods in sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and Safety Code section 44014.7 as a means of identifying potential operational problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically

incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle included in the tables described in subsection (a), as applicable. However, the provisions described in section 44017 of the Health and Safety Code may apply.

(4) This subsection applies in all program areas statewide to vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

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

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

COST RECOVERY

24. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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 licentiate 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

25. A Bureau Representative conducted an investigation after a review of Smog Check testing data revealed Respondent Cuates Smog was using an OBDII defeat device to fraudulently test vehicles using the Board Diagnostic Inspection System inspection ("OIS") analyzer.

26. During an OIS inspection, engine operating parameters are retrieved from the vehicle's OBD II system and recorded to the Vehicle Information Database ("VID"). This is accomplished during the functional portion of the OIS Smog Check Inspection by plugging the Data Acquisition Device ("DAD") into the vehicle's Diagnostic Link Connector ("DLC") when prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

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

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

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

29. The Bureau Representative conducted a detailed review of the VID data for the Smog Check inspections performed at Respondent Cuates Smog's facility. The review showed a pattern of vehicles being certified with improbable engine operating parameters not corresponding to normal engine operation. The data collected by the DAD during the OBDII functional test confirmed an OBD defeat device was used instead of the actual vehicle being tested, which constitutes clean plugging. The Bureau Representative included nine (9) vehicles in his report as examples of fraudulent inspections using clean plugging¹.

Fraudulent Inspection No. 1-2001 Chevrolet Silverado C1500

30. A Bureau Representative reviewed the OIS Test Data for Respondent Cuates Smog. The review showed that on or about May 7, 2022, a 2001 Chevrolet Silverado C1500 was tested and Certificate of Compliance Number SQ656644C was issued by Respondent Aldaco.

31. The Dynamic Data Charts for the 2001 Chevrolet Silverado C1500 showed that between timestamp .392 and 142.209, the engine RPM was between 576 RPM and 644 RPM. During this time, the data showed that the throttle was fixed at 0.4% opening, the MAF was fixed at 5.1 gps, and the ignition timing advance for the number 1 cylinder was fixed at 16 degrees BTDC. After timestamp 142.209, the engine RPM ultimately increased to between 1521 RPM and 1580 RPM. From the time the engine RPM increased off idle to the higher RPMs, the data showed that the throttle continued to stay fixed at the same 0.4% opening, the MAF continued to stay fixed at the same 5.1 gps, and the ignition timing advance for the number 1 cylinder continued to stay fixed at the same 16 degrees BTDC.

32. During the entire period the dynamic data was collected, the only parameter that changed was the engine RPM. The throttle position, the MAF, and the ignition timing advance readings remained unchanged even though the engine RPM was increased. These readings were not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data proved the DAD was not connected as intended, to the 2001 Chevrolet Silverado C1500

¹ Clean Plugging" refers to the use of another vehicle's properly functioning On Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog compliance and/or not present for testing.

1 being certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

2 **Fraudulent Inspection No. 2-2004 Chevrolet Silverado C1500**

3 33. A Bureau Representative reviewed the OIS Test Data for Respondent Cuates Smog.
4 The review showed that on or about May 7, 2022, a 2004 Chevrolet Silverado C1500 was tested
5 and Certificate of Compliance Number SQ656647C was issued by Respondent Aldaco.

6 34. The Dynamic Data Charts for the 2004 Chevrolet Silverado C1500 showed that
7 between timestamp .379 and 20.064, the engine RPM was between 536 RPM and 589 RPM.
8 During this time, the data showed that the throttle was fixed at 12.2% opening, the MAF was
9 fixed at 5.79 gps, and the ignition timing advance for the number 1 cylinder was fixed at 20
10 degrees BTDC. After timestamp 20.064, the engine RPM ultimately increased to between 1707
11 RPM and 1829 RPM. From the time the engine RPM increased from off idle to the higher RPMs,
12 the throttle continued to stay fixed at the same 12.2% opening, the MAF continued to stay fixed at
13 the same 5.79 gps, and the ignition timing advance for the number 1 cylinder continued to stay
14 fixed at the same 20 degrees BTDC.

15 35. During the entire period the dynamic data was collected, the only parameter that
16 changed was the engine RPM. The throttle position, MAF, and the ignition timing advance
17 readings remained unchanged even though the engine RPM was increased. These readings were
18 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
19 Data proved the DAD was not connected as intended, to the 2004 Chevrolet Silverado C1500
20 being certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

21 **Fraudulent Inspection No. 3-2001 GMC Yukon**

22 36. A Bureau Representative reviewed the OIS Test Data for Respondent Cuates Smog.
23 The review showed that on or about May 7, 2022, a 2001 GMC Yukon was tested and Certificate
24 of Compliance Number SQ656648C was issued by Respondent Aldaco.

25 37. The Dynamic Data Charts for the 2001 GMC Yukon showed that between timestamp
26 .370 and 32.774, engine RPM was between 506 RPM and 574 RPM. During this time, the data
27 showed that the throttle was fixed at 0.0% opening, the MAF was fixed at 6.79 gps, and the
28 ignition timing advance for the number 1 cylinder was fixed at 13 degrees BTDC. After

1 timestamp 32.774, the engine RPM ultimately increased to between 1864 RPM and 1925 RPM.
2 From the time the engine RPM increased from off idle to the higher RPMs, the throttle continued
3 to stay fixed at the same 0.0% opening, the MAF continued to stay fixed at the same 6.79 gps,
4 and the ignition timing advance for the number 1 cylinder continued to stay fixed at the same 13
5 degrees BTDC.

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

12 **Fraudulent Inspection No. 4-2003 Chevrolet Silverado C1500**

13 39. A Bureau Representative reviewed the OIS Test Data for Respondent Cuates Smog.
14 The review showed that on or about May 7, 2022, a 2003 Chevrolet Silverado C1500 was tested
15 and Certificate of Compliance Number IP722355C was issued by Respondent Aldaco.

16 40. The Dynamic Data Charts for the 2003 Chevrolet Silverado C1500 showed that
17 between timestamp .394 and 22.279, the engine RPM was between 536 RPM and 596 RPM.
18 During this time, the data showed that the throttle was fixed at 11.8% opening, the MAF was
19 fixed at 4.57 gps, and the ignition timing advance for the number 1 cylinder was fixed at 19.5
20 degrees BTDC. After timestamp 22.279, the engine RPM ultimately increased to between 1387
21 RPM and 1947 RPM. From the time the engine RPM increased from off idle to the higher RPMs,
22 the throttle continued to stay fixed at the same 11.8% opening, the MAF continued to stay fixed at
23 the same 4.57 gps, and the ignition timing advance for the number 1 cylinder continued to stay
24 fixed at the same 19.5 degrees BTDC.

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

1 Data proved the DAD was not connected as intended, to the 2003 Chevrolet Silverado C1500
2 being certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

3 **Fraudulent Inspection No. 5-2000 Chevrolet Blazer**

4 42. A Bureau Representative reviewed the OIS Test Data for Respondent Cuates Smog.
5 The review showed that on or about May 9, 2022, a 2000 Chevrolet Blazer was tested and
6 Certificate of Compliance Number IP722357C was issued by Respondent Aldaco.

7 43. The Dynamic Data Charts for the 2000 Chevrolet Blazer showed that between
8 timestamp .384 and 26.286, the engine RPM was between 660 RPM and 781 RPM. During this
9 time, the data showed that the throttle was fixed at 0.0% opening, the MAF was fixed at 4.85
10 gps, and the ignition timing advance for the number 1 cylinder was fixed at 25 degrees BTDC.
11 After timestamp 26.286, the engine RPM ultimately increased to between 1419 RPM and 1493
12 RPM. From the time the engine RPM increased from off idle to the higher RPMs, the throttle
13 continued to stay fixed at the same 0.0% opening, the MAF continued to stay fixed at the same
14 4.85 gps, and the ignition timing advance for the number 1 cylinder continued to stay fixed at the
15 same 25 degrees BTDC.

16 44. During the entire period the dynamic data was collected, the only parameter that
17 changed was the engine RPM. The throttle position, the MAF, and the ignition timing advance
18 readings remained unchanged even though the engine RPM was increased. These readings were
19 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
20 Data proved the DAD was not connected as intended, to the 2000 Chevrolet Blazer being
21 certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

22 **Subsequent Passing Test-2000 Chevrolet Blazer**

23 45. On or about July 22, 2024, a Smog Check inspection was performed on the 2000
24 Chevrolet Blazer at another, unrelated Smog Check station. The review showed that the vehicle
25 was tested and Smog Certificate Number UA703362C was issued. The Dynamic data collected
26 during the test showed the expected change in the throttle, MAF, and ignition timing advance
27 parameters. The readings were consistent with normal engine operation.

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1 **Fraudulent Inspection No. 6-2003 Lexus IS 300**

2 46. A Bureau Representative reviewed the OIS Test Data for Respondent Cuates Smog.
3 The review showed that on or about July 25, 2023, a 2003 Lexus IS 300 was tested and
4 Certificate of Compliance Number TK325797C was issued by Respondent Aldaco.

5 47. The Dynamic Data Charts for the 2003 Lexus IS 300 showed that between timestamp
6 .979 and 88.648, the engine RPM was between 730 RPM and 787 RPM. During this time, the
7 data showed that the throttle was at 12.5% opening, the MAF was fixed at 2.82 gps, and the
8 ignition timing advance for the number 1 cylinder was fixed at 11 degrees BTDC. After
9 timestamp 88.648, the engine RPM ultimately increased then decreased where it then stabilized to
10 between 1742 RPM and 1806 RPM. From the time the engine RPM increased from off idle to the
11 higher RPMs, the throttle continued to stay at the same 12.5% opening, the MAF continued to
12 stay fixed at the same 2.82 gps, and the ignition timing advance for the number 1 cylinder
13 continued to stay fixed at the same 11 degrees BTDC.

14 48. During the entire period the dynamic data was collected, the only parameter that
15 changed was the engine RPM. The throttle position, the MAF, and the ignition timing advance
16 readings remained unchanged even though the engine RPM was increased. These readings were
17 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
18 Data proved the DAD was not connected as intended, to the 2003 Lexus IS 300 being certified,
19 which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

20 **Fraudulent Inspection No. 7-2004 Lexus IS 300**

21 49. A Bureau Representative reviewed the OIS Test Data for Respondent Cuates Smog.
22 The review showed that on or about July 27, 2023, a 2004 Lexus IS 300 was tested and
23 Certificate of Compliance Number TM004953C was issued by Respondent Aldaco.

24 50. The Dynamic Data Charts for the 2004 Lexus IS 300 showed that between timestamp
25 153.678 and 324.223, the engine RPM was between 736 RPM and 800 RPM. During this time,
26 the data showed that the throttle was at 12.2% opening, the MAF was fixed at 3.39 gps, and the
27 ignition timing advance for the number 1 cylinder was fixed at 9 degrees BTDC. After timestamp
28 324.223, the engine RPM ultimately increased then decreased where it then stabilized to between

1 1330 RPM and 1358 RPM. From the time the engine RPM increased from off idle to the higher
2 RPMs, the throttle continued to stay at the same 12.2% opening, the MAF continued to stay fixed
3 at the same 3.39 gps, and the ignition timing advance for the number 1 cylinder continued to stay
4 fixed at the same 9 degrees BTDC.

5 51. During the entire period the dynamic data was collected, the only parameter that
6 changed was the engine RPM. The throttle position, the MAF, and the ignition timing advance
7 readings remained unchanged even though the engine RPM was increased. These readings were
8 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
9 Data proved the DAD was not connected as intended, to the 2004 Lexus IS 300 being certified,
10 which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

11 **Fraudulent Inspection No. 8-2003 Toyota Camry LE**

12 52. A Bureau Representative reviewed the OIS Test Data for Respondent Cuates Smog.
13 The review showed that on or about July 29, 2023, a 2003 Toyota Camry LE was tested and
14 Certificate of Compliance Number TM004965C was issued by Respondent Aldaco.

15 53. The Dynamic Data Charts for the 2003 Toyota Camry LE showed that between
16 timestamp 66.893 and 89.079, the engine RPM was between approximately 644 RPM and 704
17 RPM. During this time, the data showed that the throttle was at 14.5% opening, the MAF was
18 fixed at 2.04 gps, and the ignition timing advance for the number 1 cylinder was fixed at 13
19 degrees BTDC. After timestamp 89.079, the engine RPM ultimately increased to between 2298
20 RPM and 2368 RPM. From the time the engine RPM increased from off idle to the higher RPMs,
21 the throttle continued to stay at the same 14.5% opening, the MAF continued to stay fixed at the
22 same 2.04 gps, and the ignition timing advance for the number 1 cylinder continued to stay fixed
23 at the same 13 degrees BTDC.

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

1 Data proved the DAD was not connected as intended, to the 2003 Toyota Camry LE being
2 certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

3 **Prior Failing Test-2003 Toyota Camry LE**

4 55. On or about April 6, 2023, a Smog Check inspection was performed on the 2003
5 Toyota Camry LE at another, unrelated Smog Check station. The review showed that the vehicle
6 was tested and failed the Smog Check inspection due to the fact that the vehicle's on-board
7 computer system had not completed the emission system's self-checks. The Dynamic data
8 collected during the test showed the expected change in the throttle, MAF, and ignition timing
9 advance parameters. The readings were consistent with normal engine operation.

10 **Fraudulent Inspection No. 9-2007 Nissan Frontier Crew Cab LE**

11 56. A Bureau Representative reviewed the OIS Test Data for Respondent Cuates Smog.
12 The review showed that on or about July 31, 2023, a 2007 Nissan Frontier Crew Cab LE was
13 tested and Certificate of Compliance Number TM004968C was issued by Respondent Aldaco.

14 57. The Dynamic Data Charts for the 2007 Nissan Frontier Crew Cab LE showed that
15 between timestamp 1.082 and 139.342, the engine RPM was between 713 RPM and 774 RPM.
16 During this time, the data showed that the throttle was at 3.9% opening, the MAF was fixed at
17 6.43 gps, and the ignition timing advance for the number 1 cylinder was fixed at 11 degrees
18 BTDC. After timestamp, 139.342, the engine RPM ultimately increased then decreased where it
19 then stabilized to between 1818 RPM and 1864 RPM. From the time the engine RPM increased
20 from off idle to the higher RPMs, the throttle continued to stay at the same 3.9% opening, the
21 MAF continued to stay fixed at the same 6.43 gps, and the ignition timing advance for the number
22 1 cylinder continued to stay fixed at the same 11 degrees BTDC.

23 58. During the entire period the dynamic data was collected, the only parameter that
24 changed was the engine RPM. The throttle position, the MAF, and the ignition timing advance
25 readings remained unchanged even though the engine RPM was increased. These readings were
26 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
27 Data proved the DAD was not connected as intended, to the 2007 Nissan Frontier Crew Cab LE
28 being certified, which caused the issuance of a fraudulent Smog Check Certificate of Compliance.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 59. Respondent Cuates Smog's Automotive Repair Registration is subject to discipline
4 pursuant to Code section 9884.7, subdivision (a)(1) and California Code of Regulations, title 16,
5 section 3373, in that between May 7, 2022, through July 31, 2023, Respondent Cuates Smog
6 made or authorized statements which he knew or in the exercise of reasonable care should have
7 known to be untrue or misleading, as follows: Respondent Cuates Smog certified that vehicles 1
8 through 9, set forth above, had passed inspection and were in compliance with applicable laws
9 and regulations. Respondent Cuates Smog conducted the inspections on the vehicles using the
10 clean plugging method by substituting or using different vehicles or another source during the
11 OBD II functional tests to issue smog certificates of compliance for the nine (9) vehicles and did
12 not test or inspect the nine (9) vehicles as required by Health and Safety Code section 44012.
13 Complainant refers to, and by this reference incorporates, the allegations set forth above in
14 paragraphs 25 through 58, as though fully set forth.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 60. Respondent Cuates Smog's Automotive Repair Registration is subject to discipline
18 pursuant to Code section 9884.7, subdivision (a)(4), in that between May 7, 2022, through July
19 31, 2023, Respondent Cuates Smog committed acts that constitute fraud by issuing electronic
20 smog certificates of compliance for vehicles 1 through 9, set forth above, without performing
21 bona fide inspections of the emission control devices and systems on those vehicles, thereby
22 depriving the People of the State of California of the protection afforded by the Motor Vehicle
23 Inspection Program. Complainant refers to, and by this reference incorporates, the allegations set
24 forth above in paragraphs 25 through 58, as though fully set forth.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Material Violation of Automotive Repair Act)**

27 61. Respondent Cuates Smog's Automotive Repair Registration is subject to disciplinary
28 action under Code section 9884.7, subdivision (a)(6), in that between May 7, 2022, through July

31, 2023, regarding vehicles 1 through 9, set forth above, Respondent Cuates Smog failed in a material respect to comply with the provisions of this chapter or regulations adopted pursuant to it by issuing electronic smog certificates of compliance for the nine (9) vehicles without performing bona fide inspections of the emissions 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 25 through 58, as though fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Motor Vehicle Inspection Program)

62. Respondent Cuates Smog's Smog Check, Test Only Station License is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between May 7, 2022, through July 31, 2023, regarding vehicles 1 through 9, set forth above, Respondent Cuates Smog failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent Cuates Smog failed to ensure that the emission control tests were performed on vehicles 1 through 9, in accordance with procedures prescribed by the department.

b. **Section 44015, subdivision (b):** Respondent Cuates Smog issued electronic smog certificates of compliance for vehicles 1 through 9, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

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

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 25 through 58, as though fully set forth.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant to the**
3 **Motor Vehicle Inspection Program)**

4 63. Respondent Cuates Smog's Smog Check, Test Only Station License is subject to
5 discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between
6 May 7, 2022, through July 31, 2023, regarding vehicles 1 through 9, set forth above, Respondent
7 Cuates Smog failed to comply with provisions of California Code of Regulations, title 16, as
8 follows:

9 a. **Section 3340.24, subdivision (c):** Respondent Cuates Smog falsely or fraudulently
10 issued electronic smog certificates of compliance for those vehicles without performing bona fide
11 inspections of the emission control devices and systems on the vehicles as required by Health and
12 Safety Code section 44012.

13 b. **Section 3340.35, subdivision (c):** Respondent Cuates Smog issued electronic smog
14 certificates of compliance even though those vehicles had not been inspected in accordance with
15 section 3340.42 of that Code.

16 c. **Section 3340.41, subdivision (c):** Respondent Cuates Smog knowingly entered false
17 information into the emissions inspection system for the nine (9) vehicles identified above.

18 d. **Section 3340.42:** Respondent Cuates Smog failed to conduct the required smog tests
19 and inspections on those vehicles in accordance with the Bureau's specifications.

20 Complainant refers to, and by this reference incorporates, the allegations set forth above in
21 paragraphs 25 through 58, as though fully set forth.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(Dishonesty, Fraud or Deceit)**

24 64. Respondent Cuates Smog's Smog Check, Test Only Station License is subject to
25 discipline pursuant to Health and Safety Code sections 44072.2, subdivision (d) in conjunction
26 with 44072.10, subdivision (c), in that between May 7, 2022, through July 31, 2023, regarding
27 vehicles 1 through 9, set forth above, Respondent Cuates Smog committed acts involving
28 dishonesty, fraud or deceit whereby another was injured by issuing electronic smog certificates of

1 compliance for those vehicles without performing bona fide inspections of the emission control
2 devices and systems on the vehicles, thereby depriving the People of the State of California of the
3 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
4 reference incorporates, the allegations set forth above in paragraphs 25 through 58, as though
5 fully set forth.

6 **SEVENTH CAUSE FOR DISCIPLINE**

7 **(Violations of the Motor Vehicle Inspection Program – Respondent Aldaco)**

8 65. Respondent Aldaco's Smog Check Inspector License is subject to disciplinary action
9 under Health and Safety Code section 44072.2, subdivision (a), in that between May 7, 2022,
10 through July 31, 2023, regarding vehicles 1 through 9, set forth above, Respondent Aldaco
11 violated the following Health and Safety Code sections:

12 a. **Section 44012, subdivision (a):** Respondent Aldaco failed to determine that all
13 emission control devices and systems required by law were installed and functioning correctly on
14 the vehicles identified above in accordance with test procedures prescribed by the Bureau.

15 b. **Section 44012, subdivision (f):** Respondent Aldaco failed to perform emission
16 control tests on the vehicles identified above in accordance with procedures prescribed by the
17 Bureau.

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

21 d. **Section 44059:** Respondent Aldaco willfully made false entries for the electronic
22 certificates of compliance by certifying that the vehicles identified above had been inspected as
23 required when, in fact, they had not.

24 Complainant refers to, and by this reference incorporates, the allegations set forth above in
25 paragraphs 25 through 58, as though fully set forth.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant to the**
3 **Motor Vehicle Inspection Program – Respondent Aldaco)**

4 66. Respondent Aldaco's Smog Check Inspector License is subject to discipline pursuant
5 to Health and Safety Code section 44072.2, subdivision (c), in that May 7, 2022, through July 31,
6 2023, regarding vehicles 1 through 9, set forth above, he failed to comply with provisions of
7 California Code of Regulations, title 16, as follows:

8 a. **Section 3340.24, subdivision (c):** Respondent Aldaco falsely or fraudulently issued
9 electronic smog certificates of compliance without performing bona fide inspections of the
10 emission control devices and systems on those vehicles as required by Health and Safety Code
11 section 44012.

12 b. **Section 3340.30 subdivision (a):** Respondent Aldaco failed to inspect and test those
13 vehicles in accordance with Health and Safety Code sections 44012.

14 c. **Section 3340.41, subdivision (c):** Respondent Aldaco knowingly entered false
15 information into the emissions inspection system for the nine (9) vehicles identified above.

16 d. **Section 3340.42:** Respondent Aldaco failed to conduct the required smog tests and
17 inspections on those vehicles in accordance with the Bureau's specifications.

18 Complainant refers to, and by this reference incorporates, the allegations set forth above in
19 paragraphs 25 through 58, as though fully set forth.

20 **NINTH CAUSE FOR DISCIPLINE**

21 **(Dishonesty, Fraud, or Deceit – Respondent Aldaco)**

22 67. Respondent Aldaco's Smog Check Inspector License is subject to disciplinary action
23 under Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and
24 Safety Code section 44072.10, subdivision (c), in that May 7, 2022, through July 31, 2023,
25 regarding vehicles 1 through 9, set forth above, Respondent Aldaco committed acts involving
26 dishonesty, fraud, or deceit when he issued electronic smog certificates of compliance for the
27 vehicles without performing bona fide inspections of the emission control devices and systems on
28 those vehicles, thereby depriving the People of the State of California of the protection afforded

1 by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference
2 incorporates, the allegations set forth above in paragraphs 25 through 58, as though fully set forth.

3 **DISCIPLINE CONSIDERATIONS**

4 68. To determine the degree of discipline, if any, to be imposed on Respondent Cuates
5 Smog, Complainant alleges that on or about March 8, 2019, in a prior action, the Bureau issued
6 Citation Number C2019-861 and ordered Respondent to pay a citation penalty of \$1,000.00. That
7 Citation is now final.

8 **OTHER MATTERS**

9 69. Pursuant to Code section 9884.7, subdivision (c), the director may suspend revoke,
10 or place on probation the registrations for all places of business operated in this state by Oscar
11 Aldaco, upon a finding that said Respondent has, or is, engaged in a course of repeated and
12 willful violations of the laws and regulations pertaining to an automotive repair dealer.

13 70. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only
14 Station License No. TC 290269, issued to Oscar Aldaco-Owner dba Cuates Smog Check, is
15 revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Div 26 of the
16 Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the
17 director.

18 71. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
19 License No. EO 637324, issued to Oscar Aldaco, is revoked or suspended, any additional license
20 issued under Chapter 5 of Part 5 of Div 26 of the Health and Safety Code in the name of said
21 licensee may be likewise revoked or suspended by the director.

22 **PRAYER**

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

26 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
27 290269, issued to Oscar Aldaco-Owner dba Cuates Smog Check;

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- 1 2. Revoking, suspending any other automotive repair dealer registration issued to Oscar
2 Aldaco;
- 3 3. Revoking or suspending Smog Check, Test-Only, Station License Number TC
4 290269, issued to Oscar Aldaco-Owner dba Cuates Smog Check;
- 5 4. Revoking or suspending Smog Check Inspector License Number EO 637324, issued
6 to Oscar Aldaco;
- 7 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
8 Division 26 of the Health and Safety Code in the name of Oscar Aldaco;
- 9 6. Ordering Oscar Aldaco-Owner dba Cuates Smog Check and Oscar Aldo to pay the
10 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
11 case, pursuant to Business and Professions Code section 125.3 and if placed on probation, the
12 costs of probation monitoring; and,
- 13 7. Taking such other and further action as deemed necessary and proper.

14
15 DATED: As of digital signature date

16 PATRICK DORAIS
17 Chief
18 Bureau of Automotive Repair
19 Department of Consumer Affairs
20 State of California
21 *Complainant*

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