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7

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

12 In the Matter of the Accusation Against:

Case No. 79/21-6700

13 **IVAN A. MALDONADO dba LA CADENA**
14 **SMOG CHECK**
494 S. La Cadena Dr.
15 Colton, CA 92324

ACCUSATION

16 **Automotive Repair Dealer Registration No.**
ARD 294690
17 **Smog Check, Test Only, Station License No.**
TC 294690

18 **and**

19 **DAMIAN ALBERTO LOPEZ**
175 E. Easton #H66
20 Rialto, CA 92376

21 **Smog Check Inspector License No. EO**
22 **640867**

23 **and**

24 **JOSE GERARDO VARELA-CHAIDEZ**
807 South K St.
25 San Bernardino, CA 92410

26 **Smog Check Inspector License No. EO**
27 **642865**

28 Respondents.

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 2. On or about June 24, 2019, the Bureau of Automotive Repair issued Automotive
5 Dealer Repair Dealer Registration Number ARD 294690 to Ivan A. Maldonado, dba La Cadena
6 Smog Check (Respondent Maldonado). The Automotive Dealer Repair Dealer Registration was
7 in full force and effect at all times relevant to the charges brought herein and will expire on June
8 30, 2024, unless renewed.

9 3. On or about July 19, 2019, the Bureau of Automotive Repair issued Smog Check,
10 Test Only, Station License Number TC 294690 to Ivan A. Maldonado, dba La Cadena Smog
11 Check (Respondent Maldonado). The Smog Check, Test Only, Station License was in full force
12 and effect at all times relevant to the charges brought herein and will expire on June 30, 2024,
13 unless renewed.

14 4. On or about January 14, 2020, the Bureau of Automotive Repair certified La Cadena
15 Smog Check as a STAR Station. The certification will remain active unless the Automotive
16 Repair Dealer registration and/or Smog Check Test Only Station License is revoked, canceled,
17 licenses become delinquent, or the certification is invalidated.

18 5. On or about January 27, 2021, the Bureau of Automotive Repair issued Smog Check
19 Inspector License Number EO 642865 to Jose Gerardo Varela-Chaidez (Respondent Varela-
20 Chaidez). The Smog Check Inspector License was in full force and effect at all times relevant to
21 the charges brought herein and will expire on January 31, 2025, unless renewed.

22 6. On or about January 22, 2018, the Bureau of Automotive Repair issued Smog Check
23 Inspector License Number EO 640867 to Damian Alberto Lopez (Respondent Lopez). The Smog
24 Check Inspector License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on July 31, 2025, unless renewed.

26 **JURISDICTION**

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

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

2

3 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
4 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,
5 engaged in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it.

6 14. Bus. & Prof. Code section 477 provides, in pertinent part, that “Board” includes
7 “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,”
8 “program,” and “agency.” “License” includes certificate, registration or other means to engage in
9 a business or profession regulated by the Bus. & Prof. Code.

10 15. Section 44012 of the Health & Saf. Code provides, in pertinent part, that tests at smog
11 check stations shall be performed in accordance with procedures prescribed by the department.

12 16. Section 44015, subdivision (b), of the Health & Saf. Code provides that a certificate
13 of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section
14 44012.

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

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

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

20

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

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

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

25

26 (c) The department shall revoke the license of any smog check technician or
27 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
28 the following:

1 (a) All Smog Check inspections shall be performed in accordance with
requirements and procedures prescribed in the following:

2 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is
3 hereby incorporated by reference. This manual shall be in effect until subparagraph
(2) is implemented.

4 (2) Smog Check Manual, dated 2013, which is hereby incorporated by
5 reference. This manual shall become effective on or after January 1, 2013.

6 26. Section 1.1.0 of the Smog Check Inspection Manual states, in pertinent part:

7 “The access code is assigned by BAR and is unique to each technician. Each technician
8 must maintain the security of his or her access code. Disclosure of one’s access code or use of
9 another technician’s access code or license information is prohibited. If the security of your
10 access code has been compromised, or you suspect another person is using your access code, you
11 must contact your local BAR field office immediately to have the access code changed.”

12 **COST RECOVERY**

13 27. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
14 the administrative law judge to direct a licentiate found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
16 and enforcement of the case.

17 **UNDERCOVER OPERATION - MAZDA**

18 28. Bureau Documentation Lab Representative, J.H. documented a 1993 Mazda Protege
19 (Mazda), to fail a properly performed smog check inspection for excessive tailpipe emissions due
20 to a modification he created in the vehicle’s oxygen sensor circuit and a defective TWC he
21 installed. As part of the documentation, he determined all the required emissions components on
22 the vehicle. Prior to documenting the vehicle to fail a properly performed Smog Check
23 inspection, and with all the required components in place and properly connected, he performed
24 both loaded mode Acceleration Simulation Mode (ASM) and Two Speed Idle (TSI) Smog Check
25 inspections using the BAR97 Emission Inspection System (EIS). The Mazda passed both
26 inspections.

27 29. Representative J.H. then modified the Mazda’s Oxygen Sensor (O2S) circuit to the
28 engine control module, causing high hydrocarbon (HC) and carbon monoxide (CO) tail pipe

1 emissions. Representative J.H. also marked and installed a defective TWC, not capable of
2 reducing tail pipe emissions. Representative J.H. installed tamper indicators to detect removal of
3 the TWC and right side center console panel, which covered the O2S circuit modification. He
4 again performed TSI and ASM Smog Check Inspections. Each inspection included a functional
5 LPFET. The vehicle failed both inspections due to high tail pipe emissions exceeding gross
6 polluter limits. He performed a road test to ensure the vehicle operated properly. The odometer
7 reading was 183,653 miles.

8 30. On December 23, 2021, with an odometer reading of 183,653 miles, Representative
9 J.H. released custody of the Mazda to the Bureau's Program Representative. The odometer
10 reading was still 183,653 miles. On December 27, 2021, the Operator took custody of the Mazda,
11 with an odometer reading of 183,653 miles. The Operator was informed that the Mazda should
12 fail a Smog Check inspection for excessive tailpipe emissions. The Operator drove the Mazda to
13 La Cadena Smog Check and to request a smog inspection. He arrived at La Cadena Smog Check
14 at approximately 1015 hours. The odometer reading advanced to 183,660 miles.

15 31. When the Operator arrived at the station, he met with Respondent Lopez and
16 informed him he had another car for him to test that previously failed. Respondent Lopez asked
17 the Operator if the light on the car was on. The Operator informed him it wasn't. Respondent
18 Lopez questioned the Operator about how he knew the car failed. The Operator informed
19 Respondent Lopez it was checked at another station and failed. While talking with Respondent
20 Lopez, Respondent Varela-Chaidez approached both of them. Respondent Lopez instructed
21 Respondent Varela-Chaidez to check the vehicle's plate. The Operator observed Respondent
22 Varela-Chaidez use his cell phone to look up the vehicle test history on the Bureau's website.
23 Respondent Varela-Chaidez informed Respondent Lopez that the car was clean. Respondent
24 Lopez informed the Operator that he could test the car and asked him to wait in the office, which
25 he did.

26 32. While waiting in the office, Respondent Lopez approached the Operator and asked
27 him what he normally charged him for the other tests. The Operator informed Respondent Lopez
28 \$250.00. Respondent Lopez acknowledged he could do the test for that price. While the Operator

1 waited in the office, he couldn't see the test being performed. Approximately 20 minutes later,
2 Respondent Varela-Chaidez entered the office and gave the Operator an invoice to complete,
3 which he did. The Operator signed the document, but never received a copy. After the test was
4 completed, Respondent Varela-Chaidez entered the office and informed the Operator the test was
5 done. The Operator approached Respondent Lopez to pay him, and Respondent Lopez pointed to
6 Respondent Varela-Chaidez, signaling for the Operator to pay Respondent Varela-Chaidez. The
7 Operator handed Respondent Varela-Chaidez \$260.00 cash and he received \$10.00 change.
8 Respondent Varela-Chaidez handed the Operator the VIR for the test on the Mazda. The Operator
9 never received any type of invoice.

10 33. The Operator left the station at approximately 1127 hours. The odometer reading was
11 183,660 miles. The Program Representative followed him in another vehicle back to the staging
12 location, arriving at 1140 hours. The odometer reading advanced to 183,666 miles. The Program
13 Representative took custody of the Mazda.

14 34. The Operator gave the Program Representative a VIR for the inspection on the
15 Mazda. The VIR indicated that the inspection was performed by Respondent Varela-Chaidez and
16 Certificate of Compliance #SK574864C was issued.

17 35. The Program Representative accessed and printed the BAR97 Test Detail from the
18 VID and confirmed the VIR information that the Mazda passed the smog check inspection and
19 was issued Certificate of Compliance # SK574864C by Respondent Varela-Chaidez.

20 36. On December 28, 2021, the Program Representative released custody of the Mazda to
21 Representative J.H. The odometer reading was 183,666 miles. On December 29, 2021,
22 Representative J.H. re-inspected the Mazda. He performed an ASM Smog Check inspection,
23 which included a functional LPFET. The Mazda failed the Emissions Test portion of the inspection
24 for exceeding gross polluter limits. The odometer advanced to 183,667 miles. Representative J.H.
25 found the TWC that he installed on the Mazda and the tamper indicator still in place. He found the
26 tamper indicator he placed on the right-side center console panel, covering the O2S circuit
27 modification was also intact. Representative J.H. concluded that between December 23, 2021, and
28 December 29, 2021, in its documented condition, the Mazda was not in a

1 condition to pass a properly performed California Smog Check inspection due to high emissions
2 exceeding gross polluter limits.

3 37. After reviewing the information and evidence for this undercover operation, the
4 Program Representative determined that on December 27, 2021, La Cadena Smog Check and
5 Respondent Varela-Chaidez, fraudulently issued a Certificate of Compliance to the Mazda that
6 was not in compliance with the laws and regulations pertaining to California emissions standards.

7 38. The undercover operation as described in paragraphs 28 through 38, indicate that the
8 vehicle was issued a fraudulent Smog Check Certificate of Compliance by using the method
9 known as clean piping.¹

10 **DATA REVIEW – CLEAN PLUGGING**

11 39. On March 9, 2015, the Bureau implemented a policy change requiring the use of an
12 On-Board Diagnostic Inspection System (OIS) in testing of 2000 model year and newer gas
13 powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer
14 diesel powered vehicles 14,000 GVW and under. The OIS Bureau Test Data lists differences in
15 Vehicle Identification Numbers (VIN) for vehicles that have received smog inspections, in
16 addition to communication Protocol and Parameter ID (PID) differences with vehicles that have
17 been certified correctly that are the same make and model vehicles.

18 40. During an OIS inspection, engine operating parameters are retrieved from the
19 vehicle's OBD II system and recorded to the VID. This is accomplished during the functional
20 portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when
21 prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- 22 • Engine speed in revolutions per minute (RPM)
- 23 • Throttle position as measured by a throttle position sensor (TPS) mounted onto the throttle
24 shaft. Measured in a percentage of opening from 0% at idle and near or up to 100% at full
25 throttle.

26
27 ¹ "Clean piping" refers to the use of the emission sample of a known clean vehicle to
28 substitute for the emissions of a vehicle that will not pass a smog inspection or is not present at
the time of the test.

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

5 • Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air
6 intake tract. Measured in grams per second (gps).

7 Not all vehicles include both MAP and MAF parameters. Many vehicles will have either
8 MAP or MAF parameters separately.

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

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

24 43. The Bureau's Program Representative conducted a detailed review of the VID data
25 for the Smog Check inspections performed at Respondent La Cadena Smog Check. The review
26 showed a pattern of vehicles being certified with improbable engine operating parameters not
27 corresponding to normal engine operation. The data collected by the DAD during the OBDII
28 functional test confirmed an OBD defeat device was used instead of the actual vehicle being

1 tested, which constitutes clean plugging.² The following ten vehicles were fraudulently inspected
 2 using clean plugging and give fraudulent smog certificates.

3	4	5	6	7
Test Date	Vehicle Certified & VIN #	Certificate No. #	Technician	Dynamic PID Information
10/20/22	2002 Chevrolet S Truck S10 VIN # 1GCCS19W728175788	IR364036C	Respondent Varela-Chaidez	See paragraphs 44-45
10/25/22	2001 Volkswagon Jetta GLS VIN # 3VWSD29M01M030822	IR472936C	Respondent Varela-Chaidez	See paragraph 46
11/7/22	2001 Ford F150 Supercrew VIN # 1FTRW07L31KA20741	SY910629C	Respondent Varela-Chaidez	See paragraph 47
11/8/22	2003 Ford F150 VIN # 1FTRX17253NB93396	SY986057C	Respondent Varela-Chaidez	See paragraph 48
11/14/22	2003 Infiniti QX4 VIN # JNRDR09X93W252144	TA090378C	Respondent Varela-Chaidez	See paragraph 49
1/14/23	2005 Toyota Corolla Matrix XRS VIN # 2T1KY32E45C432681	TC587951C	Respondent Lopez	See paragraph 50
	2004 Hyundai Santa Fe GLS		Respondent Lopez	See paragraph 51

27 ² Clean plugging refers to the use of another vehicle's properly functioning On Board
 28 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	1/17/23	VIN # KM8SC13E94U710277	TC587978C		
2					
3	1/17/23	2002 Chevrolet Tahoe C1500 VIN # 1GNEC13T32R251402	TC587982C	Respondent Lopez	See paragraph 52
4					
5					
6					
7	1/20/23	2002 BMW 330 CI VIN # WBABN53472JU28177	TC683335C	Respondent Lopez	See paragraph 53
8					
9					
10	1/21/23	2003 Jeep Grand Cherokee Laredo VIN # 1J4GW48S83C603849	TC683345C	Respondent Lopez	See paragraph 54
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44. The Dynamic PID Chart for the 2002 Chevrolet S Truck S10 (2002 S10), with VIN # 1GCCS19W728175788 shows between time stamp 379 and 32511 engine speed is steady at approximately 750 RPMs. During this time the throttle is fixed a 0% opening, the MAF is fixed at 6.07 grams/sec, MAP is fixed at 38kPa, and the ignition timing advance for #1 cylinder is fixed at 11.5 degrees BTDC. After time stamp 32511 the engine speed begins to accelerate. Between time stamp 33690 and 49192 the engine speed is held at an increased level of approximately 2000 RPMs. 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 6.07 grams/sec, MAP is fixed at 38kPa and the ignition timing advance for #1 cylinder is also still fixed at the same 11.5 degrees BTDC.

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During the 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

1 DAD was not connected to the 2002 S10 being certified, causing the issuance of a fraudulent
2 Smog Certificate of Compliance.

3 45. There were three previously failing tests were performed on the 2002 S10. The vehicle
4 failed the OBDII functional portion of each inspection. On October 18, 2022, at La Cadena Smog
5 Check under the license of Respondent Lopez, the 2002 S10 failed the inspection for an
6 illuminated MIL and confirmed DTC P0420. The Dynamic PID Chart for the data collected
7 during the failed October 18, 2022, inspection on the 2002 S10 shows between time stamp 2677
8 and 31439 engine speed is steady at approximately 700 RPMs. During this time the throttle
9 reading varies from between 0% and 4% opening, the MAF reading varies from 6.0 to 11.0
10 grams/sec, MAP reading varies from 39kPa to 41kPa, and the ignition timing advance for #1
11 cylinder varies from 10.5 to 32 degrees BTDC. After time stamp 31439 the engine speed begins
12 to accelerate. Between time stamp 33781 and 48590 the engine speed is held at an increased level
13 of approximately 1700 to 1900 RPMs. From the time the engine RPM increases off idle to the
14 higher RPMs, the throttle position increases, the MAF increases, MAP decreases, and the ignition
15 timing advance for #1-cylinder advances as expected and is characteristic or expected for normal
16 engine operation.

17 There were two earlier failing tests were performed at other smog check stations. The test
18 performed on June 1, 2022, failed the OBDII functional inspection for incomplete OBDII
19 readiness monitors. No dynamic data was collected during the inspection. The test performed on
20 August 25, 2021, failed the OBDII functional inspection for incomplete OBDII readiness
21 monitors and had a confirmed DTC P0300. No dynamic data was collected during the inspection.

22 46. The Dynamic PID Chart for the 2001 Volkswagen Jetta GLS with VIN#
23 3VWSD29M01M030822 (2001 Jetta) shows between time stamp 875 and 20365 engine speed is
24 steady at approximately 800 RPMs. During this time the throttle is fixed a 0.4% opening, the
25 MAF is fixed at 0 grams/sec, and the ignition timing advance for #1 cylinder is fixed at 12
26 degrees BTDC. After time stamp 20365 the engine speed begins to accelerate. Between time
27 stamp 23018 and 38916 the engine speed is held at an increased level of approximately 1600
28 RPMs. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed

1 at the same 0.4% opening, the MAF is fixed at the same 0 grams/sec, and the ignition timing
2 advance for #1 cylinder is also still fixed at the same 12 degrees BTDC.

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

9 47. The Dynamic PID Chart for the 2001 Ford F150 Supercrew, CA license with VIN#
10 1FTRW07L31KA20741 (2001 F150), shows between time stamp 458 and 28127 engine speed is
11 steady at approximately 750 RPMs. During this time the throttle is fixed at 21.2% opening, the
12 MAF is fixed at 5.22 grams/sec, and the ignition timing advance for #1 cylinder is fixed at 18
13 degrees BTDC. After time stamp 28127 the engine speed begins to accelerate. Between time
14 stamp 30521 and 47370 the engine speed is held at an increased level of approximately 1875
15 RPMs. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed
16 at the same 21.2% opening, the MAF is fixed at the same 5.22 grams/sec, and the ignition timing
17 advance for #1 cylinder is also still fixed at the same 18 degrees BTDC.

18 During the period the dynamic data was collected, the only parameter that changed was
19 engine RPM. The throttle position, MAF, and ignition timing advance readings remained
20 unchanged even though the engine speed was increased. These readings are not characteristic or
21 expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS
22 DAD was not connected to the 2001 F150 being certified, causing the issuance of a fraudulent
23 Smog Certificate of Compliance.

24 48. The Dynamic PID Chart for the 2003 Ford F150 with VIN# 1FTRX17253NB93396
25 (2003 F150) shows between time stamp 359 and 77869 engine speed is steady at approximately
26 750 RPMs. During this time the throttle is fixed at 16.1% opening, the MAF is fixed at 5.01
27 grams/sec, and the ignition timing advance for #1 cylinder is fixed at 17 degrees BTDC. After
28 time stamp 77869 the engine speed begins to accelerate. Between time stamp 78619 and 95060 the

1 engine speed is held at an increased level of approximately 1550 RPMs. From the time the engine
2 RPM increases off idle to the higher RPMs, the throttle is fixed at the same 16.1% opening, the
3 MAF is fixed at the same 5.01 grams/sec, and the ignition timing advance for #1 cylinder is also
4 still fixed at the same 17 degrees BTDC.

5 During the period the dynamic data was collected, the only parameter that changed was
6 engine RPM. The throttle position, MAF, and ignition timing advance readings remained
7 unchanged even though the engine speed was increased. These readings are not characteristic or
8 expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS
9 DAD was not connected to the 2003 F150 being certified, causing the issuance of a fraudulent
10 Smog Certificate of Compliance.

11 49. The Dynamic PID Chart for the 2003 Infiniti QX4 with VIN#
12 JNRDR09X93W252144 (2003 QX4), shows between time stamp 954 and 40894 engine speed is
13 steady at approximately 700 RPM. During this time the throttle is fixed at 0% opening, the MAF
14 is fixed at 5.95 grams/sec, and the ignition timing advance for #1 cylinder is fixed at 9 degrees
15 BTDC. After time stamp 40894 the engine speed begins to accelerate. Between time stamp 42877
16 and 60899 the engine speed is held at an increased level of approximately 1900 RPMs. From the
17 time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0%
18 opening, the MAF is fixed at the same 5.95 grams/sec, and the ignition timing advance for #1
19 cylinder is also still fixed at the same 9 degrees BTDC.

20 During the period the dynamic data was collected, the only parameter that changed was
21 engine RPM. The throttle position, MAF, and ignition timing advance readings remained
22 unchanged even though the engine speed was increased. These readings are not characteristic or
23 expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS
24 DAD was not connected to the 2003 QX4 being certified, causing the issuance of a fraudulent
25 Smog Certificate of Compliance.

26 50. The Dynamic PID Chart for the 2005 Toyota Corolla Matrix XRS with VIN#
27 2T1KY32E45C432681 (2005 Corolla) shows between time stamp 893 and 34311 engine speed is
28 steady at approximately 775 RPM. During this time the throttle is fixed at 10.6% opening, the

1 MAF is fixed at 2.4 grams/sec, and the ignition timing advance for #1 cylinder is fixed at 7.5
2 degrees BTDC. After time stamp 34311 the engine speed slightly dips and begins to accelerate.
3 Between time stamp 40593 and 57501 the engine speed is held at an increased level of
4 approximately 1700 RPM. From the time the engine RPM increases off idle to the higher RPMs,
5 the throttle is fixed at the same 10.6% opening, the MAF is fixed at the same 2.4 grams/sec, and
6 the ignition timing advance for #1 cylinder is also still fixed at the same 7.5 degrees BTDC.

7 During the period the dynamic data was collected, the only parameter that changed was
8 engine RPM. The throttle position, MAF, and ignition timing advance readings remained
9 unchanged even though the engine speed was increased. These readings are not characteristic or
10 expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS
11 DAD was not connected to the 2005 Corolla being certified, causing the issuance of a fraudulent
12 Smog Certificate of Compliance.

13 51. The Dynamic PID Chart for the 2004 Hyundai Santa Fe GLS, with VIN#
14 KM8SC13E94U710277 (2004 Santa Fe), shows between time stamp 993 and 40440 engine speed
15 is steady at approximately 825 RPM. During this time the throttle is fixed at 6.3% opening, the
16 MAF is fixed at 4.74 grams/sec, and the ignition timing advance for #1 cylinder is fixed at 12
17 degrees BTDC. After time stamp 40440 the engine speed begins to accelerate. Between time
18 stamp 46181 and 61417 the engine speed is held at an increased level of approximately 2100
19 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at
20 the same 6.3% opening, the MAF is fixed at the same 4.74 grams/sec, and the ignition timing
21 advance for #1 cylinder is also still fixed at the same 12 degrees BTDC.

22 During the period the dynamic data was collected, the only parameter that changed was
23 engine RPM. The throttle position, MAF, and ignition timing advance readings remained
24 unchanged even though the engine speed was increased. These readings are not characteristic or
25 expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS
26 DAD was not connected to the 2004 Santa Fe being certified, causing the issuance of a fraudulent
27 Smog Certificate of Compliance.

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1 52. The Dynamic PID Chart for the 2002 Chevrolet Tahoe C1500 with VIN#
2 1GNEC13T32R251402 (2002 Tahoe), shows between time stamp 415 and 36409 engine speed is
3 steady at approximately 575 RPMs. During this time the throttle is fixed at 0% opening, the MAF
4 is fixed at 5.03 grams/sec, and the ignition timing advance for #1 cylinder is fixed at 19.5 degrees
5 BTDC. After time stamp 36409 the engine speed begins to accelerate. Between time stamp 42609
6 and 56551 the engine speed is held at an increased level of approximately 2100 RPM. From the
7 time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0%
8 opening, the MAF is fixed at the same 5.03 grams/sec, and the ignition timing advance for #1
9 cylinder is also still fixed at the same 19.5 degrees BTDC.

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

16 53. The Dynamic PID Chart for the 2002 BMW 330 CI with VIN#
17 WBABN53472JU28177 (2002 330 CI) shows between time stamp 881 and 21321 engine speed
18 is steady at approximately 775 RPM. During this time the throttle is fixed at 0% opening, the
19 MAF is fixed at 8.68 grams/sec, and the ignition timing advance for #1 cylinder is fixed at 3.5
20 degrees BTDC. After time stamp 21321 the engine speed begins to accelerate. Between time
21 stamp 25804 and 41761 the engine speed is held at an increased level of approximately 1950
22 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at
23 the same 0% opening, the MAF is fixed at the same 8.68 grams/sec, and the ignition timing
24 advance for #1 cylinder is also still fixed at the same 3.5 degrees BTDC.

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

1 DAD was not connected to the 2002 330 CI being certified, causing the issuance of a fraudulent
2 Smog Certificate of Compliance.

3 54. The Dynamic PID Chart for the 2003 Jeep Grand Cherokee Laredo with VIN#
4 1J4GW48S83C603849 (2003 Grand Cherokee), shows between time stamp 472 and 31322 engine
5 speed is steady at approximately 675 RPM. During this time the throttle is fixed at 11.8%
6 opening, the MAP is fixed at 34kPa, and the ignition timing advance for #1 cylinder is fixed at
7 10.5 degrees BTDC. After time stamp 31322 the engine speed begins to accelerate. Between time
8 stamp 36523 and 52573 the engine speed is held at an increased level of approximately 1900
9 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at
10 the same 11.8% opening, the MAP is fixed at the same 34kPa, and the ignition timing advance for
11 #1 cylinder is also still fixed at the same 10.5 degrees BTDC.

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

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 55. Respondent Maldonado's Automotive Repair Dealer Registration is subject to
21 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1),
22 in that he made or authorized statements which he knew or in the exercise of reasonable care
23 should have known to be untrue or misleading when he issued an electronic certificate of
24 compliance to a vehicle, certifying that vehicle as being in compliance with applicable laws and
25 regulations when, in fact, that vehicle had not been properly inspected. Respondent did not
26 inspect the vehicle as required by Health and Safety Code section 44012. Complainant refers to,
27 and by this reference incorporates, the allegations contained in paragraphs 28 through 38, above,
28 as though set forth fully here.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 56. Respondent Maldonado’s Automotive Repair Dealer Registration is subject to
4 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4),
5 in that he committed acts that constitute fraud by issuing an electronic smog certificate of
6 compliance for a vehicle, without performing bona fide inspections of the emission control
7 devices and systems on the vehicle, thereby depriving the People of the State of California of the
8 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
9 reference incorporates, the allegations contained in paragraphs 28 through 38, above, as though
10 set forth fully here.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 57. Respondent Maldonado’s Automotive Repair Dealer Registration is subject to
14 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6),
15 in that he failed in a material respect to comply with the provisions of this chapter or regulations
16 adopted pursuant to it when he issued an electronic certificate of compliance to a vehicle, without
17 performing bona fide inspections of the emission control devices and systems on that vehicle,
18 thereby depriving the People of the State of California of the protection afforded by the Motor
19 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
20 allegations contained in in paragraphs 28 through 38, above, as though set forth fully here.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Violations of the Motor Vehicle Inspection Program)**

23 58. Respondent Maldonado’s Smog Check Test Only Station License is subject to
24 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he
25 failed to comply with the following sections of that Code:

26 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
27 performed on vehicles in accordance with procedures prescribed by the department.
28

1 performing bona fide inspections of the emission control devices and systems on the vehicle,
2 thereby depriving the People of the State of California of the protection afforded by the Motor
3 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
4 allegations contained in paragraphs 28 through 38, above, as though set forth fully here.

5 **SEVENTH CAUSE FOR DISCIPLINE**

6 **(Violations of the Motor Vehicle Inspection Program)**

7 61. Respondent Varela- Chaidez' Smog Check Inspector License is subject to
8 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he
9 failed to comply with section 44012 of that Code in a material respect, as follows: Respondent
10 failed to perform the emission control tests on a vehicle in accordance with procedures prescribed
11 by the department. Complainant refers to, and by this reference incorporates, the allegations
12 contained in paragraphs 28 through 38, above, as though set forth fully here.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations Pursuant**
15 **to the Motor Vehicle Inspection Program)**

16 62. Respondent Valera-Chaidez Smog Check Inspector License is subject to disciplinary
17 action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that he failed to
18 comply with provisions of California Code of Regulations, title 16, as follows:

19 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
20 electronic smog certificates of compliance for a vehicle.

21 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the vehicle
22 in accordance with Health and Safety Code sections 44012 and 44035, and California Code of
23 Regulations, title 16, section 3340.42.

24 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
25 into the emissions inspection system for the vehicle.

26 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the vehicle
27 in accordance with the Bureau's specifications.
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1 Complainant refers to, and by this reference incorporates, the allegations contained in
2 paragraphs 28 through 38, above, as though set forth fully here.

3 **NINTH CAUSE FOR DISCIPLINE**

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

5 63. Respondent Valera-Chaidez' Smog Check Inspector License is subject to disciplinary
6 action pursuant to Health and Safety Code sections 44072.2, subdivision (d) and 44072.10,
7 subdivision (c), in that he committed dishonest, fraudulent, or deceitful acts whereby another was
8 injured by issuing electronic smog certificates of compliance for a vehicle, without performing
9 bona fide inspections of the emission control devices and systems on the vehicles, thereby
10 depriving the People of the State of California of the protection afforded by the Motor Vehicle
11 Inspection Program. Complainant refers to, and by this reference incorporates, the allegations
12 contained in paragraphs 28 through 38, above, as though set forth fully here.

13 **TENTH CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 64. Respondent Maldonado's Automotive Repair Dealer Registration is subject to
16 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that he
17 made or authorized statements which he knew or in the exercise of reasonable care should have
18 known to be untrue or misleading, as follows: Respondent certified that the 10 vehicles identified
19 in paragraph 43 above, had passed inspection and were in compliance with applicable laws and
20 regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging
21 methods in that he substituted or used a different vehicle(s) during the OBD II functional tests in
22 order to issue smog certificates of compliance for the vehicles, and did not test or inspect the
23 vehicles as required by Health & Saf. Code section 44012. Complainant refers to, and by this
24 reference incorporates, the allegations contained in paragraphs 39 through 54, as though set forth
25 fully herein.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 65. Respondent Maldonado’s Automotive Repair Dealer Registration is subject to
4 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that he
5 committed acts that constitute fraud by issuing electronic smog certificates of compliance for the
6 10 vehicles identified in paragraph 43 above, without performing bona fide inspections of the
7 emission control devices and systems on the vehicles, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
9 refers to, and by this reference incorporates, the allegations contained in paragraphs 39 through
10 54, as though set forth fully herein.

11 **TWELFTH CAUSE FOR DISCIPLINE**

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

13 66. Respondent Maldonado has subjected his Automotive Repair Dealer Registration to
14 discipline under Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he failed in a
15 “material respect to comply with the provisions of this chapter or regulations adopted pursuant to
16 it” when he issued electronic certificates of compliance for the 10 vehicles identified in paragraph
17 43 above, without performing bona fide inspections of the emission control devices and systems
18 on those vehicles, thereby depriving the People of the State of California of the protection
19 afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference
20 incorporates, the allegations contained in paragraphs 39 through 54, as though set forth fully
21 herein.

22 **THIRTEENTH CAUSE FOR DISCIPLINE**

23 **(Violations of the Motor Vehicle Inspection Program)**

24 67. Respondent Maldonado’s Smog Check Test Station License is subject to disciplinary
25 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to
26 comply with the following sections of that Code:
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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

3 69. Respondent Maldonado’s Smog Check Test Station License is subject to disciplinary
4 action pursuant to Health and Safety Code sections 44072.2, subdivision (d) and 44072.10,
5 subdivision (c), in that he committed dishonest, fraudulent, or deceitful acts whereby another was
6 injured by issuing electronic smog certificates of compliance for the 10 vehicles identified in
7 paragraph 43 above, without performing bona fide inspections of the emission control devices
8 and systems on the vehicles, thereby depriving the People of the State of California of the
9 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
10 reference incorporates, the allegations contained in paragraphs 39 through 54, as though set forth
11 fully herein.

12 **SIXTEENTH CAUSE FOR DISCIPLINE**

13 **(Violations of the Motor Vehicle Inspection Program)**

14 70. Respondent Lopez’ Smog Check Inspector License is subject to disciplinary action
15 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
16 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to
17 perform the emission control tests on the 5 vehicles identified in paragraph 43 above, in
18 accordance with procedures prescribed by the department. Complainant refers to, and by this
19 reference incorporates, the allegations contained in paragraphs 39 through 54, as though set forth
20 fully herein.

21 **SEVENTEENTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations Pursuant**
23 **to the Motor Vehicle Inspection Program)**

24 71. Respondent Lopez’ Smog Check Inspector License is subject to disciplinary action
25 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
26 comply with the following sections of the California Code of Regulations, title 16:

27 **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic
28 smog certificates of compliance for the 5 vehicles identified in paragraph 43 above.

1 **TWENTIETH CAUSE FOR DISCIPLINE**

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

4 74. Respondent Valera-Chaidez' Smog Check Inspector License is subject to disciplinary
5 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed
6 to comply with the following sections of the California Code of Regulations, title 16:

7 **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic
8 smog certificates of compliance for the 5 vehicles identified in paragraph 43 above.

9 **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 5 vehicles
10 identified in paragraph 43 above, in accordance with Health & Saf. Code sections 44012 and
11 44035, and California Code of Regulations, title 16, section 3340.42.

12 **Section 3340.42:** Respondent failed to conduct the required smog tests on the 5 vehicles
13 identified in paragraph 43 above, in accordance with the Bureau's specifications.

14 Complainant refers to, and by this reference incorporates, the allegations contained in
15 paragraphs 39 through 54, as though set forth fully herein.

16 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

18 75. Respondent Valera-Chaidez Smog Check Inspector License is subject to disciplinary
19 action pursuant to Health and Safety Code sections 44072.2, subdivision (d) and 44072.10,
20 subdivision (c), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby
21 another was injured by issuing electronic smog certificates of compliance for the 5 vehicles
22 identified in paragraph 43 above, without performing bona fide inspections of the emission
23 control devices and systems on the vehicles, thereby depriving the People of the State of
24 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
25 refers to, and by this reference incorporates, the allegations contained in paragraphs 39 through
26 54, as though set forth fully herein.

27 **OTHER MATTERS**

28 76. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may

1 suspend, revoke, or place on probation the registration for all places of business operated in this
2 state by Respondent Ivan A. Maldonado upon a finding that he has, or is, engaged in a course of
3 repeated and willful violations of the laws and regulations pertaining to an automotive repair
4 dealer.

5 77. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Station License
6 No. TC 294690, issued to Ivan A. Maldonado dba La Cadena Smog Check is revoked or
7 suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health
8 and Safety Code in the name of said licensee may be likewise revoked or suspended by the
9 director.

10 78. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
11 No. EO 640867 issued to Damian Alberto Lopez is revoked or suspended, any additional license
12 issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said
13 licensee may be likewise revoked or suspended by the director.

14 79. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
15 No. EO 642865 issued to Jose Gerardo Valera-Chaidez is revoked or suspended, any additional
16 license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name
17 of said licensee may be likewise revoked or suspended by the director.

18 **PRAYER**

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

22 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
23 294690, issued to Ivan A. Maldonado, dba La Cadena Smog Check;

24 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
25 294690, issued to Ivan A. Maldonado, dba La Cadena Smog Check;

26 3. Revoking or suspending any other Automotive Repair Dealer Registrations or
27 licenses issued to Ivan A. Maldonado, dba La Cadena Smog Check;

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4. Revoking or suspending Smog Check Inspector License Number EO 642865, issued to Jose Gerardo Varela-Chaidez;

5. Revoking or suspending any other licenses issued to Jose Gerardo Varela-Chaidez;

6. Revoking or suspending Smog Check Inspector License Number EO 640867, issued to Damian Alberto Lopez;

7. Revoking or suspending any other licenses issued to Damian Alberto Lopez;

8. Ordering Ivan A. Maldonado, Jose Gerardo Varela-Chaidez and Damian Alberto Lopez to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and, if placed on probation, the costs of probation monitoring; and,

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

DATED: As of digital signature date

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

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