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

12 In the Matter of the Accusation Against:

Case No. 77/24-3305

13 **JB TEST ONLY CORPORATION, Jocelyn**
14 **Rayan Hall,**
15 **PRESIDENT/SECRETARY/TREASURER**
1643 Hammer Ave # C
Norco, CA 92860

ACCUSATION

16 **-and-**

17 **Mailing Address**
18 **5616 Jurupa Ave**
Riverside, CA 92504

19 **Automotive Repair Dealer License Number**
20 **ARD 295534, Smog Check, Test Only**
Station License Number TC 295534

21 **-and-**

22 **JUAN LUIS PONCE**
23 **3880 El Hijo St.**
Riverside, CA 92504

24 **-and-**

25 **Mailing Address**
26 **16795 Desert Willow St**
Victorville, CA 92394

27 **Smog Check Inspector License Number EO**
28 **642230**

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 October 1, 2019, the Bureau of Automotive Repair issued Automotive
5 Repair Dealer Registration Number ARD 295534 to JB Test Only Corporation; Jocelyn Rayan
6 Hall, PRES/SEC/TREAS. (Respondent JB Test Only or Respondents). The Automotive Repair
7 Dealer Registration was in full force and effect at all times relevant to the charges brought herein
8 and will expire on October 31, 2024, unless renewed.

9 3. On or about October 30, 2019, the Bureau of Automotive Repair issued Smog Check,
10 Test-Only, Station License Number TC 295534 to JB Test Only Corporation; Jocelyn Rayan Hall,
11 PRES/SEC/TREAS. The Smog Check, Test-Only, Station License was in full force and effect at
12 all times relevant to the charges brought herein and will expire on October 31, 2024, unless
13 renewed.

14 4. Respondent is also certified as a STAR Station. The certification was issued on
15 January 16, 2020, and will remain active unless the ARD registration and/or Smog Check Station
16 license is revoked, canceled, licenses become delinquent or the certification is invalidated.

17 5. On or about September 16, 2019, the Bureau of Automotive Repair issued Smog
18 Check Inspector License Number EO 642230 to Juan Luis Ponce¹ (Respondent Ponce or
19 Respondents). The Smog Check Inspector License was in full force and effect at all times
20 relevant to the charges brought herein and will expire on March 31, 2025, unless renewed.

21 **JURISDICTION**

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

24 7. Section 9884.7 of the Business and Professions Code² provides that the Director may
25 revoke an ARD registration.

26 ¹ At all times alleged herein, Respondent Juan Luis Ponce was acting as an employee of
27 Respondent JB Test Only and committed the acts alleged herein in the course and scope of his
employment at Respondent JB Test Only.

28 ² All statutory references herein shall be to the Business and Professions Code unless
specifically stated otherwise.

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

5 9. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
6 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
7 the Motor Vehicle Inspection Program.

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

12 **STATUTORY PROVISIONS**

13 11. Section 9884.7 of the Code states:

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

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

23 ...

24 (4) Any other conduct which constitutes fraud.

25 ...

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

28 12. 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. . . .

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

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

5 13. Section 44072.10 of the Health and Safety Code states, in pertinent part:

6 . . .

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

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

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

14 **REGULATORY PROVISIONS**

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

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

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

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

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

25 16. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

26

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

17. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions
test methods and procedures which apply to all vehicles inspected in the State of California.

26 **COST RECOVERY**

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

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 **VID DATA REVIEW**

6 19. Beginning March 9, 2015, California's Smog Check Program was updated to require
7 the use of an On-Board Diagnostic Inspection System ("OIS"). OIS is the Smog Check
8 equipment required in all areas of the State when inspecting most model-year 2000 and newer
9 gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a
10 certified Data Acquisition Device ("DAD"), computer, bar code scanner, and printer. The DAD
11 is an On Board Diagnostic ("OBD") scan tool that, when requested by the California OIS
12 software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it
13 supports is requested by the California OIS software and will be retrieved. The DAD connects
14 between the OIS computer and the vehicle's DLC. The California OIS software requires a
15 continuous Internet connection when performing a Smog Check inspection and the OIS software
16 communicates with BAR's central database through the Internet connection. The bar code
17 scanner is used to input technician information, the vehicles identification number ("VIN"), and
18 DMV renewal information. The printer provides a Vehicle Inspection Report ("VIR") containing
19 inspection results for motorists and a Smog Check Certificate of Compliance number for passing
20 vehicles.

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

26 21. During an OIS inspection, engine operating parameters are retrieved from the
27 vehicle's OBD II system and recorded to the VID. This is accomplished during the functional
28

1 portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when
2 prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- 3 • Engine speed in revolutions per minute (RPM)
- 4 • Throttle position as measured by a throttle position sensor (TPS) mounted onto
5 the throttle shaft. Measured in a percentage of opening from 0% at idle and near
6 or up to 100% at full throttle.
- 7 • Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
8 connected to an intake manifold source, measured in kilo pascals (kpa). Typical
9 readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum,
10 25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at
11 sea level.
- 12 • Mass air flow as measured by a mass air flow sensor (MAF) mounted in the
13 engine's air intake tract. Measured in grams per second (gps).³
- 14 • Ignition timing is set by the vehicle PCM based on engine speed and load, and is
15 measured in degrees Before Top Dead Center (BTDC).

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

26 ³ Not all vehicles include both MAP and MAF parameters. Many vehicles will have either
27 MAP or MAF parameters separately.
28

1 23. During an OIS Smog Check inspection, along with other visual and functional
2 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
3 with the engine idling and, when requested by the OIS analyzer, and an elevated or increased
4 engine speed.

5 24. If the vehicle passes the visual, functional and tailpipe tests, it passes the overall
6 inspection and a Certificate of Compliance is issued and transmitted electronically to the Vehicle
7 Information Database (“VID”). These Certificates of Compliance are purchased in blocks of fifty
8 (50) through the EIS or OIS from the VID, using a pre-arranged electronic bank account debit
9 system or by check, via mail, from Bureau Headquarters in Sacramento. Each Certificate of
10 Compliance has a unique control number so that it can be tracked to determine which Smog
11 Check Station purchased the Certificate of Compliance and to which vehicle it was issued.

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

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

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

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

3 27. Respondents have engaged in numerous acts or omissions constituting violations of
4 the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*) and Motor
5 Vehicle Inspection Program (Health and Safety Code section 44000 *et seq.*) through their practice
6 of "clean plugging."⁴ Respondent Ponce's OIS Test Data available on the State database
7 indicates that Respondent Ponce is involved in fraudulent smog inspection activities. A Bureau
8 representative initiated an investigation based on information transmitted to the VID for smog
9 check inspections performed by Respondent Ponce. The investigation revealed that the data
10 related to certain vehicles certified by Respondent Ponce contained a pattern of unmistakable
11 discrepancies between the information transmitted during the inspections and documented
12 information known about the vehicles at issue. Specifically, the representative compared the data
13 received from the certified vehicles to data from vehicles of the same year, make, and model and
14 determined that the data from at least ten (10) of the certified vehicles were fraudulently tested by
15 Respondent Ponce during the smog inspection using the "clean plugging" method as follows:

16 **Fraudulent Inspection #1:**

17 28. Bureau Program representative Steve Koch (Koch) reviewed the OIS Test Data for JB
18 Test Only Corporation. The review indicates on February 10, 2023, a 2007 Chevrolet Express
19 G3500, CA license 04947X2, VIN 1GCHG35UX71212565 (2007 Express), was tested and smog
20 certificate # TC973059C was issued under licensed Smog Check Technician #EO642230, Ponce.

21 29. The Dynamic PID Chart for the 2007 Express shows between time stamp 354 and
22 29360 engine speed is steady at approximately 725 RPM. During this time the throttle is fixed
23 at 10.2% opening, the MAF is fixed at 4.32 gps, MAP is fixed at 34 kPa, and the ignition
24 timing advance for #1 cylinder is fixed at 15 degrees BTDC. After time stamp 29360 the
25

26 ⁴ "Clean plugging" refers to the use of another vehicle's properly functioning On Board
27 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic
28 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 engine speed accelerates to approximately 1800 RPM between time stamp 32766 and 47722.
2 From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the
3 same 10.2% opening, the MAF is fixed at the same 4.32 gps, MAP is fixed at the same 34 kPa
4 and the ignition timing advance for #1 cylinder is also still fixed at the same 15 degrees BTDC.

5 30. During the entire period the dynamic data was collected, the only parameter that
6 changed was engine RPM. The throttle position, MAF, MAP and ignition timing advance
7 readings remained unchanged even though the engine speed was increased. These readings are
8 not characteristic or expected for normal engine operation. The discrepancies in the OIS
9 Test Data prove the OIS was not connected to the 2007 Express being certified, causing the
10 issuance of a fraudulent Smog Check Certificate of Compliance.

11 **Fraudulent Inspection #2:**

12 31. Koch reviewed the OIS Test Data for JB Test Only Corporation. The review indicates
13 on February 10, 2023, a 2001 Honda Passport EX, CA license 4PPS366, VIN
14 4S6CK58W514407435 (2001 Passport), was tested and smog certificate # TC973062C was
15 issued under licensed Smog Check Technician #EO642230, Ponce.

16 32. The Dynamic PID Chart for the 2001 Passport shows between time stamp 365 and
17 28135 engine speed is steady at approximately 725 RPM. During this time the throttle is fixed
18 at 0% opening, the MAF is fixed at 4.16 gps, MAP is fixed at 37 kPa, and the ignition timing
19 advance for #1 cylinder is fixed at 17 degrees BTDC. After time stamp 28135, the engine speed
20 accelerates to approximately 2050 RPM. From the time the engine RPM increases off idle to the
21 higher RPMs, the throttle is fixed at the same 0% opening, the MAF is fixed at the same 4.16 gps,
22 MAP is fixed at the same 37 kPa and the ignition timing advance for #1 cylinder is also still fixed
23 at the same 17 degrees BTDC.

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

1 Data prove the OIS was not connected to the 2001 Passport being certified, causing the issuance
2 of a fraudulent Smog Check Certificate of Compliance.

3 **Fraudulent Inspection #3:**

4 34. Koch reviewed the OIS Test Data for JB Test Only Corporation. The review indicates
5 on February 20, 2023, a 2004 Hyundai Santa Fe GLS, CA license 5KDK525, VIN
6 KM8SC13D44U756588 (2004 Santa Fe), was tested and smog certificate # TC973094C was
7 issued under licensed Smog Check Technician #EO642230, Ponce.

8 35. The Dynamic PID Chart for the 2004 Santa Fe shows between time stamp 809 and
9 22845 engine speed is steady at approximately 850 RPM. During this time the throttle is fixed
10 at 5.5% opening, the MAF is fixed at 0 gps, and the ignition timing advance for #1 cylinder is
11 fixed at 6 degrees BTDC. After time stamp 22845, the engine speed accelerates to approximately
12 1500 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is
13 fixed at the same 5.5% opening, the MAF is fixed at the same 0 gps, and the ignition timing
14 advance for #1 cylinder is also still fixed at the same 6 degrees BTDC.

15 36. During the entire period the dynamic data was collected, the only parameter that
16 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
17 remained unchanged even though the engine speed was increased. These readings are not
18 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
19 prove the OIS was not connected to the 2004 Santa Fe being certified, causing the issuance of a
20 fraudulent Smog Check Certificate of Compliance.

21 **Previous Failing Test: 2004 Santa Fe**

22 37. A failing test was performed on the 2004 Santa Fe at another station on September 9,
23 2022. The 2004 Santa Fe failed the inspection for an illuminated MIL, confirmed DTCs P0701
24 and P0174, and incomplete OBDII readiness monitors. The dynamic data collected during the
25 inspection showed the expected change in the throttle, MAF, and ignition timing advance
26 parameters as characteristic or expected for normal engine operation.

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28 ///

Fraudulent Inspection #4:

38. Koch reviewed the OIS Test Data for JB Test Only Corporation. The review indicates on February 20, 2023, a 2003 Lexus ES 300, CA license 5BSA629, VIN JTHBF30G036003745 (2003 ES 300), was tested and smog certificate # TC973099C was issued under licensed Smog Check Technician #EO642230, Ponce.

39. The Dynamic PID Chart for the 2003 ES 300 shows between time stamp 888 and 24641 engine speed is steady at approximately 700 RPM. During this time the throttle is fixed at 14.5% opening, the MAF is fixed at 3.98 gps, and the ignition timing advance for #1 cylinder is fixed at 17 degrees BTDC. After time stamp 24641, the engine speed accelerates in steps to approximately 1800 RPM between time stamp 25502 and 45714. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 14.5% opening, the MAF is fixed at the same 3.98 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 17 degrees BTDC.

40. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2003 ES 300 being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Fraudulent Inspection #5:

41. Koch reviewed the OIS Test Data for JB Test Only Corporation. The review indicates on February 20, 2023, a 2004 Chevrolet Silverado K1500, CA license 35695H3, VIN 2GCEK13T441404036 (2004 Silverado), was tested and smog certificate # TE303654C was issued under licensed Smog Check Technician #EO642230, Ponce.

42. The Dynamic PID Chart for the 2004 Silverado shows between time stamp 363 and 22824 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at 4.3% opening, the MAF is fixed at 5.81 gps, and the ignition timing advance for #1 cylinder is fixed at 17.5 degrees BTDC. After time stamp 22824, the engine speed accelerates in steps to

1 approximately 1650 RPM between time stamp 23539 and 38726. From the time the engine RPM
2 increases off idle to the higher RPMs, the throttle is fixed at the same 4.3% opening, the MAF is
3 fixed at the same 5.81 gps, and the ignition timing advance for #1 cylinder is also still fixed at the
4 same 17.5 degrees BTDC.

5 43. During the entire period the dynamic data was collected, the only parameter that
6 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
7 remained unchanged even though the engine speed was increased. These readings are not
8 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
9 prove the OIS was not connected to the 2004 Silverado being certified, causing the issuance of a
10 fraudulent Smog Check Certificate of Compliance.

11 **Fraudulent Inspection #6:**

12 44. Koch reviewed the OIS Test Data for JB Test Only Corporation. The review indicates
13 on February 21, 2023, a 2004 Nissan Xterra XE, CA license 5LPZ253, VIN
14 5N1ED28TX4C676444 (2004 Xterra), was tested and smog certificate # TE303657C was issued
15 under licensed Smog Check Technician #EO642230, Ponce.

16 45. The Dynamic PID Chart for the 2004 Xterra shows between time stamp 950 and
17 19822 engine speed is steady at approximately 800 RPM. During this time the throttle is fixed
18 at 0% opening, the MAF is fixed at 5.44 gps, and the ignition timing advance for #1 cylinder is
19 fixed at 15 degrees BTDC. After time stamp 19822, the engine speed accelerates to
20 approximately 1800 RPM. From the time the engine RPM increases off idle to the higher RPMs,
21 the throttle is fixed at the same 0% opening, the MAF is fixed at the same 5.44 gps, and the
22 ignition timing advance for #1 cylinder is also still fixed at the same 15 degrees BTDC.

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

Previous Failing Test: 2004 Xterra

47. A failing test was performed on the 2004 Xterra at another station on November 21, 2022. The 2004 Santa Fe failed the inspection for an incomplete OBDII readiness monitor. The dynamic data collected during the inspection showed the expected change in the throttle, MAF, and ignition timing advance parameters as characteristic or expected for normal engine operation.

Fraudulent Inspection #7:

48. Koch reviewed the OIS Test Data for JB Test Only Corporation. The review indicates on February 21, 2023, a 2003 Pontiac Grand Am GT, CA license 8DWZ904, VIN 1G2NW52E43C275968 (2003 Grand Am), was tested and smog certificate # TE303660C was issued under licensed Smog Check Technician #EO642230, Ponce.

49. The Dynamic PID Chart for the 2003 Grand Am shows between time stamp 366 and 26252 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at 0% opening, the MAF is fixed at 4.78 gps, MAP is fixed at 35 kPa, and the ignition timing advance for #1 cylinder is fixed at 21.5 degrees BTDC. After time stamp 26252 the engine speed accelerates to approximately 1450 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0% opening, the MAF is fixed at the same 4.78 gps, MAP is fixed at the same 35 kPa and the ignition timing advance for #1 cylinder is also still fixed at the same 21.5 degrees BTDC.

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

Fraudulent Inspection #8:

51. Koch reviewed the OIS Test Data for JB Test Only Corporation. The review indicates on February 22, 2023, a 2001 Toyota Sienna LE, CA license 6PLP475, VIN

1 4T3ZF13C31U326910 (2001 Sienna), was tested and smog certificate # TE303663C was issued
2 under licensed Smog Check Technician #EO642230, Ponce.

3 52. The Dynamic PID Chart for the 2001 Sienna shows between time stamp 827 and
4 24764 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed
5 at 10.2% opening, the MAF is fixed at 3.33 gps, and the ignition timing advance for #1 cylinder is
6 fixed at 15 degrees BTDC. After time stamp 24764 the engine speed accelerates in steps to
7 approximately 1800 RPM. From the time the engine RPM increases off idle to the higher RPMs,
8 the throttle is fixed at the same 10.2% opening, the MAF is fixed at the same 3.33 gps, and the
9 ignition timing advance for #1 cylinder is also still fixed at the same 15 degrees BTDC.

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

16 **Previous Failing Test: 2001 Sienna**

17 54. A failing test was performed on the 2001 Sienna at another station on December 22,
18 2021. The 2001 Sienna failed the inspection for an illuminated MIL, confirmed DTCs P0171 and
19 P0174, and an incomplete OBDII readiness monitor.

20 **Fraudulent Inspection #9:**

21 55. Koch reviewed the OIS Test Data for JB Test Only Corporation. The review indicates
22 on February 23, 2023, a 2005 Honda Accord LX, CA license 8YPX020, VIN
23 1HGCM56475A129073 (2005 Accord), was tested and smog certificate # TE303677C was issued
24 under licensed Smog Check Technician #EO642230, Ponce.

25 56. The Dynamic PID Chart for the 2005 Accord shows between time stamp 853 and
26 28096 engine speed is steady at approximately 850 RPM. During this time the throttle is fixed
27 at 9.8% opening, the MAF is fixed at 2.68 gps, and the ignition timing advance for #1 cylinder is
28 fixed at 8.5 degrees BTDC. After time stamp 28096, the engine speed accelerates to

1 approximately 1450 RPM. From the time the engine RPM increases off idle to the higher RPMs,
2 the throttle is fixed at the same 9.8% opening, the MAF is fixed at the same 2.68 gps, and the
3 ignition timing advance for #1 cylinder is also still fixed at the same 8.5 degrees BTDC.

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

10 **Fraudulent Inspection #10:**

11 58. Koch reviewed the OIS Test Data for JB Test Only Corporation. The review indicates
12 on February 23, 2023, a 2005 Chevrolet Silverado C1500, CA license 8Z53229, VIN
13 1GCEC19T45Z231390 (2005 Silverado), was tested and smog certificate # TE303681C was
14 issued under licensed Smog Check Technician #EO642230, Ponce.

15 59. The Dynamic PID Chart for the 2005 Silverado shows between time stamp 379 and
16 70428 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed
17 at 11.4% opening, the MAF is fixed at 5.02 gps, the MAP is fixed at 34 kPa and the ignition
18 timing advance for #1 cylinder is fixed at 17 degrees BTDC. After time stamp 70428 the engine
19 speed accelerates to approximately 1350 RPM. From the time the engine RPM increases off idle
20 to the higher RPMs, the throttle is fixed at the same 11.4% opening, the MAF is fixed at the same
21 5.02 gps, the MAP is fixed at 34 kPa, and the ignition timing advance for #1 cylinder is also still
22 fixed at the same 17 degrees BTDC.

23 60. During the entire period the dynamic data was collected, the only parameter that
24 changed was engine RPM. The throttle position, MAF, MAP, and ignition timing advance
25 readings remained unchanged even though the engine speed was increased. These readings are
26 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
27 Data prove the OIS was not connected to the 2005 Silverado being certified, causing the issuance
28 of a fraudulent Smog Check Certificate of Compliance.

1 **DISCIPLINARY CONSIDERATIONS**

2 **Station Inspection August 20, 2020:**

3 61. By way of aggravation, Complainant alleges that on August 20, 2020, Koch
4 conducted an inspection at JB Test Only Corporation to discuss Smog Check testing data.
5 Licensed Inspector Ponce certified two (2) Nissan Skyline vehicles (1993 Skyline GTR VIN:
6 FPY32000919 - July 15, 2020 and 1992 Nissan Skyline VIN: HCR32268253 - June 19, 2020)
7 that were not certified for use in the United States and considered grey-market vehicles. Ponce
8 entered false information into the BAR97 analyzer for both tests that the vehicles had federally
9 certified emissions systems. The vehicles were required to first be inspected by the CA Smog
10 Check Referee to determine if they were emissions compliant and have a BAR label attached.
11 Koch documented the inspection and informed Ponce to follow all Smog Check testing
12 procedures using the most current Smog Check Procedures manual and Smog Check Reference
13 Guide published by the Bureau. Koch informed Ponce that failure to perform proper inspections
14 was grounds for action against his station and technician licenses.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements - Respondent JB Test Only)**

17 62. Respondent JB Test Only's registration is subject to disciplinary action pursuant to
18 section 9884.7, subdivision (a)(1), in that on and between February 10, 2023, and February 23,
19 2023, Respondent Ponce made or authorized statements which he knew or in the exercise of
20 reasonable care should have known to be untrue or misleading, as follows: Respondent Ponce
21 certified that the vehicles set forth above in paragraphs 28-61, had passed inspection and were in
22 compliance with applicable laws and regulations. In fact, Respondent Ponce conducted the
23 inspections on those vehicles using the clean plugging method in order to issue smog certificates
24 of compliance, and did not test or inspect the vehicles as required by Health and Safety Code
25 section 44012.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud - Respondent JB Test Only)**

3 63. Respondent JB Test Only's registration is subject to disciplinary action pursuant to
4 section 9884.7, subdivision (a)(4), in that on and between February 10, 2023, and February 23,
5 2023, Respondent JB Test Only's employee Respondent Ponce committed acts which constitute
6 fraud by issuing electronic certificates of compliance for the vehicles set forth above in
7 paragraphs 28-61, without performing bona fide inspections of the emission control devices and
8 systems on those vehicles, thereby depriving the People of the State of California of the
9 protection afforded by the Motor Vehicle Inspection Program.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with the Motor Vehicle Inspection Program –**
12 **Respondent JB Test Only)**

13 64. Respondent JB Test Only's smog station license is subject to disciplinary action
14 pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health
15 and Safety Code section 44072.10 subdivision (c), in that on and between February 10, 2023, and
16 February 23, 2023, regarding the vehicles set forth above in paragraphs 28-61, Respondent JB
17 Test Only failed to comply with the following sections of the Health and Safety Code:

18 (a) **Section 44012**: Respondent JB Test Only's employee Respondent Ponce failed to
19 ensure that the emission control tests were performed on the vehicles, in accordance with
20 procedures prescribed by the department.

21 (b) **Section 44015**: Respondent JB Test Only's employee Respondent Ponce issued
22 electronic certificates of compliance for the vehicles, without ensuring that the vehicles were
23 properly tested and inspected to determine if they were in compliance with Health and Safety
24 Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program -**
3 **Respondent JB Test Only)**

4 65. Respondent JB Test Only's smog station license is subject to disciplinary action
5 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on and between
6 February 10, 2023, and February 23, 2023, regarding the vehicles set forth above in paragraphs
7 28-61, Respondent Ponce failed to comply with the following provisions of the California Code
8 of Regulations, Title 16, as follows:

9 (a) **Section 3340.35, subdivision (c)**: Respondent JB Test Only's employee Respondent
10 Ponce issued electronic certificates of compliance even though those vehicles had not been
11 inspected in accordance with section 3340.42, Title 16, of the California Code of Regulations.

12 (b) **Section 3340.42**: Respondent JB Test Only's employee Respondent Ponce failed to
13 conduct the required smog tests and inspections on those vehicles in accordance with the
14 Bureau's specifications.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud or Deceit - Respondent JB Test Only)**

17 66. Respondent JB Test Only's smog station license is subject to disciplinary action
18 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
19 and Safety Code section 44072.10 subdivision (c), in that on and between February 10, 2023, and
20 February 23, 2023, regarding the vehicles set forth above in paragraphs 28-61, Respondent JB
21 Test Only's employee Respondent Ponce committed acts involving dishonesty, fraud or deceit
22 whereby another was injured by issuing electronic certificates of compliance for those vehicles
23 without performing bona fide inspections of the emission control devices and systems on the
24 vehicles, thereby depriving the People of the State of California of the protection afforded by the
25 Motor Vehicle Inspection Program.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 67. Respondent Ponce’s smog check inspector license is subject to discipline pursuant to
4 Health and Safety Code section 44072.2, subdivision (a), in that on and between February 10,
5 2023, and February 23, 2023, regarding the vehicles set forth above in paragraphs 28-61,
6 Respondent Ponce failed to comply with section 44012 of the Health and Safety Code in a
7 material respect, as follows: Respondent Ponce failed to perform the emission control tests on
8 those vehicles in accordance with procedures prescribed by the department.

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
11 **Respondent Ponce)**

12 68. Respondent Ponce’s smog check inspector license is subject to discipline pursuant to
13 Health and Safety Code section 44072.2, subdivision (c), in that on and between February 10,
14 2023, and February 23, 2023, regarding the vehicles set forth above in paragraphs 28-61,
15 Respondent Ponce failed to comply with provisions of the California Code of Regulations, title
16 16, as follows:

17 (a) **Section 3340.30, subdivision (a)**: Respondent Ponce failed to inspect and test those
18 vehicles in accordance with Health and Safety Code section 44012.

19 (b) **Section 3340.41, subdivision (c)**: Respondent Ponce entered false information into
20 the EIS.

21 (c) **Section 3340.42**: Respondent Ponce failed to conduct the required smog tests and
22 inspections on those vehicles in accordance with the Bureau’s specifications.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(Dishonesty, Fraud or Deceit - Respondent Ponce)**

25 69. Respondent Ponce’s smog check inspector license is subject to discipline pursuant to
26 Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety
27 Code section 44072.10 subdivision (c), in that on and between February 10, 2023, and February
28 23, 2023, regarding the vehicles set forth above in paragraphs 28-61, Respondent Ponce

1 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
2 electronic certificates of compliance for those vehicles without performing bona fide inspections
3 of the emission control devices and systems on the vehicles., thereby depriving the People of the
4 State of California of the protection afforded by the Motor Vehicle Inspection Program.

5 **OTHER MATTERS**

6 70. Pursuant to Business & Professions Code section 9884.7, subdivision (c), the Director
7 may suspend, revoke, or place on probation the registration for all places of business operated in
8 this State by Respondent JB Test Only upon a finding that Respondent JB Test Only has, or is,
9 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
10 automotive repair dealer.

11 71. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station
12 License Number TC 295534 issued to Respondent JB Test Only is revoked or suspended
13 following a hearing under this article, any additional license issued under Chapter 5, Part 5,
14 Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

15 72. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
16 Number EO 642230, issued to Respondent Ponce, is revoked or suspended following a hearing
17 under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name
18 of said licensee may be likewise revoked or suspended by the Director.

19 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 295534, issued to JB Test Only Corporation; Jocelyn Rayan Hall, PRES/SEC/TREAS.;

25 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to
26 Respondent JB Test Only Corporation;

27 3. Revoking or suspending Smog Check, Test-Only, Station License Number TC
28 295534, issued to JB Test Only Corporation; Jocelyn Rayan Hall, PRES/SEC/TREAS.;

4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent JB Test Only Corporation;

5. Revoking or suspending Smog Check Inspector License Number EO 642230, issued to Juan Luis Ponce;

6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent Juan Luis Ponce;

7. Ordering JB Test Only Corporation and Juan Luis Ponce 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,

8. 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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