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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. 79/22-4358

13 **ERICK IVAN ORELLANA ESTRADA,**  
14 **DBA SUPER NOVA SMOG CHECK**  
15 **3501 Crenshaw Blvd., Unit D**  
**Los Angeles, CA 90016**

**ACCUSATION**

16 **Automotive Repair Dealer Registration No.**  
**ARD 298056**  
17 **Smog Check, Test Only, Station License No.**  
**TC 298056,**

18 **and**

19 **JUDITH ONOFRE**  
20 **418 N. La Brea Ave.**  
**Inglewood, CA 90302**

21 **Smog Check Inspector License No. EO**  
22 **643087**

23 Respondents.  
24

25 **PARTIES**

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

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2. On or about September 22, 2020, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 298056 to Erick Ivan Orellana Estrada, dba Super Nova Smog Check (Respondent Estrada). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2022, unless renewed.

3. On or about December 30, 2020, the Bureau of Automotive Repair issued Smog Check, Test Only, Station License Number TC 298056 to Erick Ivan Orellana Estrada, dba Super Nova Smog Check (Respondent Estrada). The Smog Check, Test Only, Station License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2022, unless renewed.

4. On or about May 12, 2021, the Bureau of Automotive Repair issued Smog Check Inspector License Number EO 643087 to Judith Onofre (Respondent Onofre). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2023, unless renewed.

## JURISDICTION

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

6. Bus. & Prof. Code section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

7. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

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

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

## STATUTORY PROVISIONS

10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

• • • •

(4) Any other conduct that constitutes fraud.

• • • •

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

• • • •

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

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

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

3           13. Section 44015, subdivision (b), of the Health & Saf. Code provides that a certificate  
4 of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section  
5 40012.

6           14. Section 44032 of the Health & Saf. Code provides that qualified technicians shall  
7 perform tests of emissions control devices and systems in accordance with Health & Saf. Code  
8 section 40012.

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

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

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

16           . . . .

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

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

19           16. Health & Saf. Code section 44072.10 states, in pertinent part:

20           . . . .

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

24           . . . .

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

27           ///

28           ///

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

## REGULATORY PROVISIONS

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

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

19. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health & Saf. Code, section 44035 of the Health & Saf. Code, and section 3340.42 of this article.”

20. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check station “shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly.”

21. CCR, title 16, section 3340.41, subdivision (c), states that “[n]o person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.”

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

## COST RECOVERY

23. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licensee found to have committed a violation or

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

3 **DATA REVIEW: CLEAN TANKING**

4 24. The Bureau has become aware of certain methods that some Smog Check stations and  
5 Smog Check inspectors use to fraudulently issue smog certificates to vehicles that may not or will  
6 not pass a Smog Check test on their own, or in some instances, are not even present during the  
7 time the test is performed. "Clean tanking" is one such method, during which the Low Pressure  
8 Fuel Evaporative Test (LPFET) is performed using the LPFET equipment calibration tank instead  
9 of connecting to the subject vehicle's fuel inlet to determine if there is a leak in the system. The  
10 LPFET tests the functionality of the vehicle's Evaporative Emissions Control (EVAP) system by  
11 introducing inert Nitrogen gas into the vehicle's fuel system, which includes the fuel tank, until it  
12 reaches a predetermined pressure and then holds that pressure for a specified period of time to  
13 confirm no leaks are present in the system. As part of this test, the LPFET equipment measures  
14 the "headspace volume" based upon the volume of gas needed to achieve a specified pressure as  
15 the Nitrogen gas is introduced into the vehicle's fuel tank, and records that data to the Vehicle  
16 Information Database (VID). The "headspace volume" is the volume of the vapor space in the  
17 fuel tank above the fuel level. This means a vehicle with a full tank of gas will have a smaller  
18 headspace volume than a vehicle with less fuel in the tank. The LPFET equipment must pass a  
19 calibration test every 3 days to verify its ability to properly measure the volume of Nitrogen gas  
20 introduced during a test and the pressure readings. In order to pass the calibration test, the  
21 amount of Nitrogen gas introduced to the calibration tank during the test must be within the 1.5 to  
22 2.5 gallon headspace volume range. If the LPFET equipment fails a calibration test, the LPFET  
23 tester is locked and the station is not able to perform the LPFET test until the unit passes.

24 25. On March 23, 2022, the Bureau conducted a review of Super Nova Smog Check's  
25 BAR-97 Smog Check inspection records from the VID for vehicles that received an LPFET test  
26 during the period of October 1, 2021 through March 22, 2022. The review showed a total of 276  
27 LPFET tests passed. Of those 276 LPFET tests, 46.74% had a calculated headspace volume  
28 within the 1.5 to 2.5 gallon range, the same range the LPFET calibration tank is required to

maintain, resulting in 129 possible fraudulent certifications issued by Super Nova Smog. VID data show that of certified vehicles statewide that received an LPFET test during the same period of time [164,143 passing inspections], just 14.06% reported a calculated headspace volume within the 1.5 to 2.5 gallon range. After adjusting for the statewide percentage of expected headspace volume results in this range, the data show that Super Nova Smog issued approximately 90 fraudulent certifications utilizing the clean tanking method.

26. Respondent Onofre performed the 276 vehicle inspections certified by Super Nova Smog with passing LPFET inspections between October 1, 2021 and March 22, 2022, with 46.74% reporting calculated headspace volumes within the 1.5 to 2.5 gallon range, resulting in 129 possible fraudulent certifications. After adjusting for the statewide percentage of expected headspace volume results in this range (14.06%), the data show that Respondent Onofre issued approximately 90 fraudulent certifications utilizing the clean tanking method.

#### **FIRST CAUSE FOR DISCIPLINE**

##### **(Fraud)**

27. Respondent Estrada's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that he committed acts that constitute fraud by issuing electronic certificates of compliance for 90 vehicles, as described above in paragraph 25, without performing bone fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 24 through 26, above, as though set forth fully herein.

#### **SECOND CAUSE FOR DISCIPLINE**

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

28. Respondent Estrada's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he failed in a material respect to comply with the provisions of this chapter or regulations adopted pursuant to it when he issued electronic certificates of compliance for 90 vehicles, as described

1 above in paragraph 25, without performing bona fide inspections of the emission control devices  
2 and systems on those vehicles, thereby depriving the People of the State of California of the  
3 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this  
4 reference incorporates, the allegations contained in paragraphs 24 through 26, above, as though  
5 set forth fully herein.

6 **THIRD CAUSE FOR DISCIPLINE**

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

8 29. Respondent Estrada's Smog Check Test Only Station License is subject to  
9 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he  
10 failed to comply with the following sections of that Code:

11 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
12 performed on 90 vehicles, as described in paragraph 25 above, in accordance with procedures  
13 prescribed by the department.

14 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of  
15 compliance for 90 vehicles, as described in paragraph 25 above, without ensuring that the  
16 vehicles were properly tested and inspected to determine if they were in compliance with Health  
17 & Saf. Code section 44012.

18 Complainant refers to, and by this reference incorporates, the allegations contained in  
19 paragraphs 24 through 26, above, as though set forth fully herein.

20 **FOURTH CAUSE FOR DISCIPLINE**

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

23 30. Respondent Estrada's Smog Check Station License is subject to disciplinary action  
24 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with  
25 provisions of California Code of Regulations, title 16, as follows:

26 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
27 electronic smog certificates of compliance 90 vehicles as described in paragraph 25 above.

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1           b.     **Section 3340.30, subdivision (a):** Respondent failed to inspect and test 90 vehicles,  
2 as described in paragraph 25 above, in accordance with Health & Saf. Code sections 44012 and  
3 44035, and California Code of Regulations, title 16, section 3340.42.

4           c.     **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of  
5 compliance for 90 vehicles, as described in paragraph 25 above, even though those vehicles had  
6 not been inspected in accordance with section 3340.42.

7           d.     **Section 3340.41, subdivision (c):** Respondent knowingly entered false information  
8 into the emissions inspection system for 90 vehicles as described in paragraph 25 above.

9           e.     **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted  
10 on 90 vehicles, as described in paragraph 25 above, were done in accordance with the Bureau's  
11 specifications.

12                 Complainant refers to, and by this reference incorporates, the allegations contained in  
13 paragraphs 24 through 26, above, as though set forth fully herein.

14                                   **FIFTH CAUSE FOR DISCIPLINE**

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

16           31.   Respondent Estrada's Smog Check Station License is subject to disciplinary action  
17 pursuant to Health & Saf. Code sections 44072.10, subdivision (c) and 44072.2, subdivision (d),  
18 in that he committed dishonest, fraudulent, or deceitful acts whereby another was injured by  
19 issuing electronic smog certificates of compliance for 90 vehicles, as described in paragraph 25  
20 above, without performing bona fide inspections of the emission control devices and systems on  
21 the vehicles, thereby depriving the People of the State of California of the protection afforded by  
22 the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates,  
23 the allegations contained in paragraphs 24 through 26, above, as though set forth fully herein.

24                                   **SIXTH CAUSE FOR DISCIPLINE**

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

26           32.   Respondent Onofre Smog Check Inspector License is subject to disciplinary action  
27 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with  
28 the following sections of that code:

1 a. **Section 44032:** Respondent failed to ensure that the emission control tests were  
2 performed on 90 vehicles, as described in paragraph 26 above, in accordance with Health & Saf.  
3 Code section 44012.

4 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of  
5 compliance for 90 vehicles, as described in paragraph 26 above, without ensuring that the  
6 vehicles were properly tested and inspected to determine if they were in compliance with Health  
7 & Saf. Code section 44012.

8 Complainant refers to, and by this reference incorporates, the allegations contained in  
9 paragraphs 24 through 26, above, as though set forth fully herein.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant**  
12 **to the Motor Vehicle Inspection Program)**

13 33. Respondent Onofre's Smog Check Inspector License is subject to disciplinary action  
14 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with  
15 provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
17 electronic smog certificates of compliance for 90 vehicles as described in paragraph 26 above.

18 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test 90 vehicles,  
19 as described in paragraph 26 above, in accordance with Health & Saf. Code sections 44012 and  
20 44035, and California Code of Regulations, title 16, section 3340.42.

21 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information  
22 into the emissions inspection system for 90 vehicles as described in paragraph 26 above.

23 d. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted  
24 on 90 vehicles, as described in paragraph 26 above, were done in accordance with the Bureau's  
25 specifications.

26 Complainant refers to, and by this reference incorporates, the allegations contained in  
27 paragraphs 24 through 26, above, as though set forth fully herein.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 34. Respondent Onofre's Smog Check Inspector License is subject to disciplinary action  
4 pursuant to Health & Saf. Code sections 44072.10, subdivision (c) and 44072.2, subdivision (d),  
5 in that he committed dishonest, fraudulent, or deceitful acts whereby another was injured by  
6 issuing electronic smog certificates of compliance for 90 vehicles, as described in paragraph 26  
7 above, without performing bona fide inspections of the emission control devices and systems on  
8 the vehicles, thereby depriving the People of the State of California of the protection afforded by  
9 the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates,  
10 the allegations contained in paragraphs 24 through 26, above, as though set forth fully herein.

11 **OTHER MATTERS**

12 35. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
13 suspend, revoke, or place on probation the registration for all places of business operated in this  
14 state by Respondent Estrada, upon a finding that he has, or is, engaged in a course of repeated and  
15 willful violations of the laws and regulations pertaining to an automotive repair dealer.

16 36. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License No.  
17 TC 298056, issued to Respondent Estrada, is revoked or suspended, any additional license issued  
18 under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee  
19 may be likewise revoked or suspended by the director.

20 37. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
21 No. EO 643087, issued to Respondent Onofre, is revoked or suspended, any additional license  
22 issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said  
23 licensee may be likewise revoked or suspended by the director.

24 **PRAYER**

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

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- 1           1.     Revoking or suspending Automotive Repair Dealer Registration Number ARD  
2 298056, issued to Erick Ivan Orellana Estrada, dba Super Nova Smog Check;
- 3           2.     Revoking or suspending Smog Check, Test Only, Station License Number TC  
4 298056, issued to Erick Ivan Orellana Estrada, dba Super Nova Smog Check;
- 5           3.     Revoking or suspending Smog Check Inspector License Number EO 643087, issued  
6 to Judith Onofre;
- 7           4.     Revoking or suspending any additional Automotive Repair Dealer Registrations  
8 issued to Erick Ivan Orellana Estrada;
- 9           5.     Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
10 Division 26 of the Health & Saf. Code in the name of Erick Ivan Orellana Estrada;
- 11          6.     Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
12 Division 26 of the Health & Saf. Code in the name of Judith Onofre;
- 13          7.     Ordering Erick Ivan Orellana Estrada and Judith Onofre to pay the Bureau of  
14 Automotive Repair the reasonable costs of the investigation and enforcement of this case,  
15 pursuant to Business and Professions Code section 125.3; and,
- 16          8.     Taking such other and further action as deemed necessary and proper.

17  
18  
19 DATED: As of Digital Signature Date

20 \_\_\_\_\_  
21 PATRICK DORAIS  
22 Chief  
23 Bureau of Automotive Repair  
24 Department of Consumer Affairs  
25 State of California  
26 *Complainant*

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