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

13 In the Matter of the Accusation Against:

Case No. **79/24-20968**

14 **VICTOR MANUEL MARQUEZ, d.b.a.**
15 **RUBIDOUX SMOG**

OAH No.

ACCUSATION

16 **6333 Mission Blvd Suite C**
Jurupa Valley, CA 92509

17 **Automotive Repair Dealer Registration No.**
ARD 300227
18 **Smog Check Test-Only Station License No.**
TC 300227,

19 **-and-**

20 **VICTOR MANUEL MARQUEZ**
21 **9615 Alder Ave**
Fontana, CA 92335

22 **Smog Check Inspector License No. EO**
23 **643082**

24 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 22, 2021, Bureau of Automotive Repair issued Automotive Repair
5 Dealer Registration Number ARD 300227 to Victor Manuel Marquez, dba Rubidoux Smog
6 (Respondent Rubidoux Smog). The Automotive Repair Dealer Registration was in full force and
7 effect at all times relevant to the charges brought herein and will expire on June 30, 2025, unless
8 renewed.

9 3. On or about August 23, 2021, Bureau of Automotive Repair issued Smog Check, Test
10 Only, Station License Number TC 300227 to Victor Manuel Marquez, dba Rubidoux Smog. The
11 Smog Check, Test Only, Station License was in full force and effect at all times relevant to the
12 charges brought herein and will expire on June 30, 2025, unless renewed.

13 4. Respondent is also certified as a STAR Station. The certification was issued on
14 October 21, 2021, and will remain active unless the ARD registration and/or Smog Check Station
15 license is revoked, canceled, licenses become delinquent, or the certification is invalidated. On or
16 about November 25, 2024, the STAR certification was suspended.

17 5. On or about May 10, 2021, Bureau of Automotive Repair issued Smog Check
18 Inspector License Number EO 643082 to Victor Manuel Marquez (Respondent Marquez). The
19 Smog Check Inspector License was in full force and effect at all times relevant to the charges
20 brought herein and will expire on January 31, 2027, 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 Code¹ provides that the Director may
25 revoke an ARD registration.

26
27
28 ¹ 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.

- ...
- (c) Violates any of the regulations adopted by the director pursuant to this chapter.
- (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

...

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

...

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

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

...

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

...

REGULATORY PROVISIONS

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

...

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

...

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

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

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

...

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

• • •

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

• • •

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.

COST RECOVERY

18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

VID DATA REVIEW

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

1 DMV renewal information. The printer provides a Vehicle Inspection Report (“VIR”) containing
2 inspection results for motorists and a Smog Check Certificate of Compliance number for passing
3 vehicles.

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

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

- 13 • Engine speed in revolutions per minute (RPM)
- 14 • Throttle position as measured by a throttle position sensor (TPS) mounted onto
15 the throttle shaft. Measured in a percentage of opening from 0% at idle and near
16 or up to 100% at full throttle.
- 17 • Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
18 connected to an intake manifold source, measured in kilo pascals (kpa). Typical
19 readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum,
20 25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at
21 sea level.
- 22 • Mass air flow as measured by a mass air flow sensor (MAF) mounted in the
23 engine’s air intake tract. Measured in grams per second (gps).²
- 24 • Ignition timing is set by the vehicle PCM based on engine speed and load, and is
25 measured in degrees Before Top Dead Center (BTDC).

26
27 ² Not all vehicles include both MAP and MAF parameters. Many vehicles will have either
28 MAP or MAF parameters separately.

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

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

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

21 25. The VID contains registration data from Department of Motor Vehicles ("DMV")
22 plus emission standards, vehicle smog check inspections, smog check stations and technicians,
23 and Certificates of Compliance. The VID receives the passing smog check results immediately
24 following the inspection. During the vehicle registration process, the DMV accesses the VID to
25 verify that the vehicle has been tested and certified. The Bureau can also access the VID to view
26 test data on smog check inspections performed at any Smog Check Station, or search for, retrieve,
27 and print a test record for a particular vehicle which has been tested. The EIS or OIS, depending
28 on the test type, also prints a Vehicle Inspection Report ("VIR"), which is a physical record of the

1 test results and shows the Certificate of Compliance number that was issued if the vehicle passed
2 the smog inspection.

3 26. The smog check technician must sign the VIR under penalty of perjury to indicate
4 that the inspection was done within Bureau guidelines. Smog Check Stations are required by law
5 to maintain a copy of the VIR along with a copy of the repair invoice for three years. The
6 consumer's VIR serves as a receipt and proof that the VID was updated, and a Certificate of
7 Compliance was issued. Licensed Smog Check Technicians are the only persons authorized by
8 the Bureau to perform official inspections. They are issued a personal access code and a license,
9 which are used to gain access to the EIS and OIS to perform smog check inspections.
10 Unauthorized use of another technician's access code or license is prohibited.

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

24 ///

25 ///

26 ³ "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.

Fraudulent Inspection #1

28. Bureau Program Representative Steve Koch (Koch) reviewed the OIS Test Data for Rubidoux Smog. The review indicates on January 19, 2023, a 2001 Chevrolet Tahoe K1500, CA license 6ZRZ828, VIN 1GNEK13T01R121532 (2001 Tahoe), was tested and smog check certificate # TC500450C was issued under licensed Smog Check Technician #EO643082, Marquez.

29. The Dynamic OBD Data and Dynamic Data Charts for the 2001 Tahoe shows between time stamp 54 and 19513 engine speed is steady at approximately 650 RPM. During this time the throttle is fixed at 0% opening, the MAF is fixed at 5.03 gps, the MAP is fixed at 34 kPa, and the ignition timing advance for #1 cylinder is fixed at 19 degrees BTDC. After time stamp 19513 the engine speed accelerates to approximately 1900 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 5.03 gps, the MAP is fixed at the same 34 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 19 degrees BTDC.

30. 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 Data Acquisition Device was not connected to the 2001 Tahoe being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Previous Failing Tests: 2001 Tahoe

31. Two previous failing tests were performed on the 2001 Tahoe. The most recent failing test was performed by Marquez at Rubidoux Smog on January 13, 2023. The 2001 Tahoe failed the test for an illuminated MIL, incomplete OBDII readiness monitor, and confirmed OBDII DTCs P0161 and P0430. No Dynamic OBDII PID data was collected during the test. The earlier failing test was performed at another station on September 11, 2022. The 2001 Tahoe failed the test for incomplete OBDII readiness monitors. The vehicle had a confirmed OBDII DTC P0161. No Dynamic OBDII PID data was collected during the test.

1 **Later Passing Test: 2001 Tahoe**

2 32. A later passing test was performed on the 2001 Tahoe at another station on October
3 14, 2024. The Dynamic PID OBDII data shows the expected change in the throttle, MAF, MAP,
4 and ignition timing advance parameters as characteristic or expected for normal engine operation.

5 **Fraudulent Inspection #2**

6 33. Koch reviewed the OIS Test Data for Rubidoux Smog. The review indicates on
7 January 27, 2023, a 2001 Toyota 4Runner SR5, CA license 4POJ679, VIN JT3GN86R310191620
8 (2001 4Runner), was tested and smog check certificate # TC710296C was issued under licensed
9 Smog Check Technician #EO643082, Marquez.

10 34. The Dynamic OBD Data and Dynamic Data Charts for the 2001 4Runner shows
11 between time stamp 149 and 19029 engine speed is steady at approximately 700 RPM. During
12 this time the throttle is fixed at 12.5% opening, the MAF is fixed at 3.89 gps, and the ignition
13 timing advance for #1 cylinder is fixed at 15 degrees BTDC. After time stamp 19029 the engine
14 speed accelerates to approximately 1750 RPM. From the time the engine RPM increases off idle
15 to the higher RPMs, the throttle is fixed at the same 12.5% opening, the MAF is fixed at the same
16 3.89 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 15 degrees
17 BTDC.

18 35. During the entire period the dynamic data was collected, the only parameter that
19 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
20 remained unchanged even though the engine speed was increased. These readings are not
21 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
22 prove the Data Acquisition Device was not connected to the 2001 4Runner being certified,
23 causing the issuance of a fraudulent Smog Check Certificate of Compliance.

24 **Previous Failing Tests: 2001 4Runner**

25 36. Two previous failing tests were performed on the 2001 4Runner. The most recent
26 failing test was performed by Marquez at Rubidoux Smog on January 25, 2023. The 2001
27 4Runner failed the test for incomplete OBDII readiness monitor. The vehicle had a pending
28 OBDII DTC P0420. No Dynamic OBDII PID data was collected during the test. The earlier

1 failing test was performed at another station on October 23, 2022. The 2001 4Runner failed the
2 test for an illuminated MIL, incomplete OBDII readiness monitors, and confirmed DTC P0128.
3 No Dynamic OBDII PID data was collected during the test.

4 **Later Passing Test: 2001 4Runner**

5 37. A later passing test was performed at another station on March 15, 2024. The
6 Dynamic PID OBDII data shows the expected change in the throttle, MAF, and ignition timing
7 advance parameters as characteristic or expected for normal engine operation.

8 **Fraudulent Inspection #3**

9 38. Koch reviewed the OIS Test Data for Rubidoux Smog. The review indicates on
10 February 6, 2023, a 2004 Volkswagen Jetta GL, CA license 8HLT313, VIN
11 3VWRA69M64M005538 (2004 Jetta), was tested and smog check certificate # IT087410C was
12 issued under licensed Smog Check Technician #EO643082, Marquez.

13 39. The Dynamic OBD Data and Dynamic Data Charts for the 2004 Jetta shows between
14 time stamp 143 and 19010 engine speed is steady at approximately 775 RPM. During this time
15 the throttle is fixed at 12.5% opening, the MAF is fixed at 2.75 gps, and the ignition timing
16 advance for #1 cylinder is fixed at 9.5 degrees BTDC. After time stamp 19010 the engine speed
17 accelerates to approximately 1750 RPM. From the time the engine RPM increases off idle to the
18 higher RPMs, the throttle is fixed at the same 12.5% opening, the MAF is fixed at the same 2.75
19 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 9.5 degrees
20 BTDC.

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

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Previous Failing Tests: 2004 Jetta

41. Two previous failing tests were performed on the 2004 Jetta. The most recent failing test was performed by Marquez at Rubidoux Smog on February 4, 2023. The 2004 Jetta failed the test for incomplete OBDII readiness monitor. The vehicle had a pending OBDII DTC P2181. No Dynamic OBDII PID data was collected during the test. The earlier failing test was performed at another station on January 31, 2022. The 2004 Jetta failed the test for an illuminated MIL and confirmed DTC P2181. No Dynamic OBDII PID data was collected during the test.

Fraudulent Inspection #4

42. Koch reviewed the OIS Test Data for Rubidoux Smog. The review indicates on February 10, 2023, a 2003 Toyota Camry LE, CA license 5ACY167, VIN JTDBF32K930098389 (2003 Camry), was tested and smog check certificate # IT087442C was issued under licensed Smog Check Technician #EO643082, Marquez.

43. The Dynamic OBD Data and Dynamic Data Charts for the 2003 Camry shows between time stamp 104 and 18317 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at 15.7% opening, the MAF is fixed at 2.6 gps, and the ignition timing advance for #1 cylinder is fixed at 16 degrees BTDC. After time stamp 18317 the engine speed accelerates to approximately 1750 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 15.7% opening, the MAF is fixed at the same 2.6 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 16 degrees BTDC.

44. 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 Data Acquisition Device was not connected to the 2003 Camry being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

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Previous Failing Tests: 2003 Camry

45. Two previous failing tests were performed on the 2003 Camry. The most recent failing test was performed by Marquez at Rubidoux Smog on February 7, 2023. The 2003 Camry failed the test for incomplete OBDII readiness monitor. The vehicle also had a confirmed OBDII DTC P2241 and a pending OBDII DTC P0442. No Dynamic OBDII PID data was collected during the test. The earlier failing test was performed at another station on January 23, 2023. The 2003 Camry failed the test for incomplete OBDII readiness monitors. The vehicle also had a confirmed OBDII DTC P2241 and a pending OBDII DTC P0442. No Dynamic OBDII PID data was collected during the test.

Fraudulent Inspection #5

46. Koch reviewed the OIS Test Data for Rubidoux Smog. The review indicates on March 17, 2023, a 2000 Nissan Quest, CA license 8GUJ386, VIN 4N2XN11T1YD833967 (2000 Quest), was tested and smog check certificate # IT598990C was issued under licensed Smog Check Technician #EO643082, Marquez.

47. The Dynamic OBD Data and Dynamic Data Charts for the 2000 Quest shows between time stamp 101 and 19291 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at 0% opening, the MAF is fixed at 5.62 gps, the MAP is fixed at 30 kPa, and the ignition timing advance for #1 cylinder is fixed at 7 degrees BTDC. After time stamp 19291 the engine speed accelerates to approximately 1850 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0% opening, the MAF is fixed at the same 5.62 gps, the MAP is fixed at the same 30 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 7 degrees BTDC.

48. 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 Data Acquisition Device was not connected to the 2000 Quest being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

1 **Fraudulent Inspection #6**

2 49. Koch reviewed the OIS Test Data for Rubidoux Smog. The review indicates on
3 March 20, 2023, a 2004 Nissan Titan XE, CA license 7S72977, VIN 1N6AA06A24N576549
4 (2004 Titan), was tested and smog check certificate # IT598996C was issued under licensed
5 Smog Check Technician #EO643082, Marquez.

6 50. The Dynamic OBD Data and Dynamic Data Charts for the 2004 Titan shows between
7 time stamp 124 and 17995 engine speed is steady at approximately 700 RPM. During this time
8 the throttle is fixed at 0% opening, the MAF is fixed at 4.77 gps, and the ignition timing advance
9 for #1 cylinder is fixed at 16 degrees BTDC. After time stamp 17995 the engine speed accelerates
10 to approximately 2050 RPM. From the time the engine RPM increases off idle to the higher
11 RPMs, the throttle is fixed at the same 0% opening, the MAF is fixed at the same 4.77 gps, and
12 the ignition timing advance for #1 cylinder is also still fixed at the same 16 degrees BTDC.

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

19 **Previous Failing Test: 2004 Titan**

20 52. A failing test was performed on the 2004 Titan by Marquez at Rubidoux Smog on
21 March 16, 2023. The 2004 Titan failed the test for an illuminated MIL, incomplete OBDII
22 readiness monitors, and confirmed OBDII DTCs P1273 and P1283. No Dynamic OBDII PID data
23 was collected during the test.

24 **Fraudulent Inspection #7**

25 53. Koch reviewed the OIS Test Data for Rubidoux Smog. The review indicates on
26 March 22, 2023, a 2003 BMW Z4 2.5, CA license GRLRCR, VIN 4USBT334X3LS44011 (2003
27 Z4), was tested and smog check certificate # TE630603C was issued under licensed Smog Check
28 Technician #EO643082, Marquez.

1 54. The Dynamic OBD Data and Dynamic Data Charts for the 2003 BMW Z4 shows
2 between time stamp 119 and 17744 engine speed is steady at approximately 750 RPM. During
3 this time the throttle is fixed at 0% opening, the MAF is fixed at 2.93 gps, and the ignition timing
4 advance for #1 cylinder is fixed at 0 degrees BTDC. After time stamp 17744 the engine speed
5 accelerates to approximately 2050 RPM. From the time the engine RPM increases off idle to the
6 higher RPMs, the throttle is fixed at the same 0% opening, the MAF is fixed at the same 2.93 gps,
7 and the ignition timing advance for #1 cylinder is also still fixed at the same 0 degrees BTDC.

8 55. During the entire period the dynamic data was collected, the only parameter that
9 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
10 remained unchanged even though the engine speed was increased. These readings are not
11 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
12 prove the Data Acquisition Device was not connected to the 2003 BMW Z4 being certified,
13 causing the issuance of a fraudulent Smog Check Certificate of Compliance.

14 **Fraudulent Inspection #8**

15 56. Koch reviewed the OIS Test Data for Rubidoux Smog. The review indicates on
16 March 24, 2023, a 2001 GMC New Sierra C1500, CA license 8D46305, VIN
17 2GTEC19V911230515 (2001 New Sierra), was tested and smog certificate # TE630615C was
18 issued under licensed Smog Check Technician #EO643082, Marquez.

19 57. The Dynamic OBD Data and Dynamic Data Charts for the 2001 New Sierra shows
20 between time stamp 35 and 17893 engine speed is steady at approximately 350 RPM. During this
21 time the throttle is fixed at 0% opening, the MAF is fixed at 4.27 gps, the MAP is fixed at 36 kPa,
22 and the ignition timing advance for #1 cylinder is fixed at 19 degrees BTDC. After time stamp
23 17893 the engine speed accelerates to approximately 1750 RPM. From the time the engine RPM
24 increases off idle to the higher RPMs, the throttle is fixed at the same 0% opening, the MAF is
25 fixed at the same 4.27 gps, the MAP is fixed at the same 36 kPa, and the ignition timing advance
26 for #1 cylinder is also still fixed at the same 19 degrees BTDC.

27 58. During the entire period the dynamic data was collected, the only parameter that
28 changed was engine RPM. The throttle position, MAF, MAP and ignition timing advance

1 readings remained unchanged even though the engine speed was increased. These readings are
2 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
3 Data prove the Data Acquisition Device was not connected to the 2001 New Sierra being
4 certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

5 **Fraudulent Inspection #9**

6 59. Koch reviewed the OIS Test Data for Rubidoux Smog. The review indicates on
7 March 27, 2023, a 2002 Toyota Camry LE, CA license 5LYJ450, VIN JTDBF30K820006545
8 (2002 Camry), was tested and smog check certificate # TE630625C was issued under licensed
9 Smog Check Technician #EO643082, Marquez.

10 60. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Camry shows
11 between time stamp 120 and 18313 engine speed is steady at approximately 600 RPM. During
12 this time the throttle is fixed at 16.5% opening, the MAF is fixed at 2.65 gps, and the ignition
13 timing advance for #1 cylinder is fixed at 20.5 degrees BTDC. After time stamp 18313 the engine
14 speed accelerates to approximately 2175 RPM. From the time the engine RPM increases off idle
15 to the higher RPMs, the throttle is fixed at the same 16.5% opening, the MAF is fixed at the same
16 2.65 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 20.5
17 degrees BTDC.

18 61. During the entire period the dynamic data was collected, the only parameter that
19 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
20 remained unchanged even though the engine speed was increased. These readings are not
21 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
22 prove the Data Acquisition Device was not connected to the 2002 Camry being certified, causing
23 the issuance of a fraudulent Smog Check Certificate of Compliance.

24 **Previous Failing Tests: 2002 Camry**

25 62. Two previous failing tests were performed on the 2002 Camry. The most recent
26 failing test was performed by Marquez at Rubidoux Smog on March 23, 2023. The 2002 Camry
27 failed the test for Tampered: Vacuum lines to sensors/switches, an illuminated MIL, and
28 confirmed OBDII DTCs P0430. No Dynamic OBDII PID data was collected during the test. The

1 earlier failing test was performed on the 2002 Camry at another station on February 20, 2023. The
2 2002 Camry failed the test for incomplete OBDII readiness monitors. The Dynamic PID OBDII
3 data shows the expected change in the throttle, MAF, and ignition timing advance parameters as
4 characteristic or expected for normal engine operation.

5 **Fraudulent Inspection #10**

6 63. Koch reviewed the OIS Test Data for Rubidoux Smog. The review indicates on
7 March 27, 2023, a 2003 Nissan Frontier Crew Cab XE, CA license 7E25867, VIN
8 1N6ED29X73C431277 (2003 Frontier), was tested and smog certificate # TE630629C was issued
9 under licensed Smog Check Technician #EO643082, Marquez.

10 64. The Dynamic OBD Data and Dynamic Data Charts for the 2003 Frontier shows
11 between time stamp 103 and 19032 engine speed is steady at approximately 625 RPM. During
12 this time the throttle is fixed at 0% opening, the MAF is fixed at 5.54 gps, and the ignition timing
13 advance for #1 cylinder is fixed at 6 degrees BTDC. After time stamp 19032 the engine speed
14 accelerates to approximately 1825 RPM. From the time the engine RPM increases off idle to the
15 higher RPMs, the throttle is fixed at the same 0% opening, the MAF is fixed at the same 5.54 gps,
16 and the ignition timing advance for #1 cylinder is also still fixed at the same 6 degrees BTDC.

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

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements - Respondent Rubidoux Smog)**

25 66. Respondent Rubidoux Smog's registration is subject to disciplinary action pursuant to
26 section 9884.7, subdivision (a)(1), in that Respondents made or authorized statements which they
27 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
28 follows: Respondents certified that the vehicles set forth above in paragraphs 28-65, had passed

1 inspection and were in compliance with applicable laws and regulations. In fact, Respondents
2 conducted the inspections on those vehicles using the clean plugging method in order to issue
3 smog certificates of compliance, and did not test or insect the vehicles as required by Health and
4 Safety Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud - Respondent Rubidoux Smog)**

7 67. Respondent Rubidoux Smog's registration is subject to disciplinary action pursuant to
8 section 9884.7, subdivision (a)(4), in that Respondent Rubidoux Smog's employees committed
9 acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set
10 forth above in paragraphs 28-65, without performing bona fide inspections of the emission
11 control devices and systems on those vehicles, thereby depriving the People of the State of
12 California of the protection afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with the Motor Vehicle Inspection Program –**
15 **Respondent Rubidoux Smog)**

16 68. Respondent Rubidoux Smog's smog station license is subject to disciplinary action
17 pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health
18 and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
19 paragraphs 28-65, Respondents failed to comply with the following sections of the Health and
20 Safety Code:

21 (a) **Section 44012**: Respondent Rubidoux Smog's employees failed to ensure that the
22 emission control tests were performed on the vehicles, in accordance with procedures prescribed
23 by the department.

24 (b) **Section 44015**: Respondent Rubidoux Smog's employees issued electronic
25 certificates of compliance for the vehicles, without ensuring that the vehicles were properly tested
26 and inspected to determine if they were in compliance with Health and Safety Code section
27 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 Rubidoux Smog)**

4 69. Respondent Rubidoux Smog's smog station license is subject to disciplinary action
5 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the
6 vehicles set forth above in paragraphs 28-65, Respondents failed to comply with the following
7 provisions of the California Code of Regulations, Title 16, as follows:

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

11 (b) **Section 3340.42**: Respondent Rubidoux Smog's employees failed to conduct the
12 required smog tests and inspections on those vehicles in accordance with the Bureau's
13 specifications.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Dishonesty, Fraud or Deceit - Respondent Rubidoux Smog)**

16 70. Respondent Rubidoux Smog's smog station license is subject to disciplinary action
17 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
18 and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
19 paragraphs 28-65, Respondents employees committed acts involving dishonesty, fraud or deceit
20 whereby another was injured by issuing electronic certificates of compliance for those vehicles
21 without performing bona fide inspections of the emission control devices and systems on the
22 vehicles, thereby depriving the People of the State of California of the protection afforded by the
23 Motor Vehicle Inspection Program.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(Violations of the Motor Vehicle Inspection Program – Respondent Marquez)**

26 71. Respondent Marquez's smog check inspector license is subject to discipline pursuant
27 to Health and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth
28 above in paragraphs 28-65, Respondent Marquez failed to comply with section 44012 of the

1 Health and Safety Code in a material respect, as follows: Respondent Marquez failed to perform
2 the emission control tests on those vehicles in accordance with procedures prescribed by the
3 department.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
6 **Respondent Marquez)**

7 72. Respondent Marquez's smog check inspector license is subject to discipline pursuant
8 to Health and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth
9 above in paragraphs 28-65, Respondent Marquez failed to comply with provisions of the
10 California Code of Regulations, title 16, as follows:

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

13 (b) **Section 3340.41, subdivision (c)**: Respondent Marquez entered false information
14 into the EIS.

15 (c) **Section 3340.42**: Respondent Marquez failed to conduct the required smog tests and
16 inspections on those vehicles in accordance with the Bureau's specifications.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **(Dishonesty, Fraud or Deceit - Respondent Marquez)**

19 73. Respondent Marquez's smog check inspector license is subject to discipline pursuant
20 to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and
21 Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
22 paragraphs 28-65, Respondent Marquez committed acts involving dishonesty, fraud or deceit
23 whereby another was injured by issuing electronic certificates of compliance for those vehicles
24 without performing bona fide inspections of the emission control devices and systems on the
25 vehicles., thereby depriving the People of the State of California of the protection afforded by the
26 Motor Vehicle Inspection Program.

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1 **OTHER MATTERS**

2 74. Pursuant to Business & Professions Code section 9884.7, subdivision (c), the Director
3 may suspend, revoke, or place on probation the registration for all places of business operated in
4 this State by Respondent Rubidoux Smog upon a finding that Respondent Rubidoux Smog has, or
5 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
6 an automotive repair dealer.

7 75. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station
8 License Number TC 300227 issued to Respondent Rubidoux Smog is revoked or suspended
9 following a hearing under this article, any additional license issued under Chapter 5, Part 5,
10 Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

11 76. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
12 Number EO 643082, issued to Respondent Marquez, is revoked or suspended following a hearing
13 under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name
14 of said licensee may be likewise revoked or suspended by the Director.

15 **PRAYER**

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

19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
20 300227, issued to Victor Manuel Marquez, dba Rubidoux Smog;

21 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to
22 Respondent Victor Manuel Marquez;

23 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
24 300227, issued to Victor Manuel Marquez, dba Rubidoux Smog;

25 4. Revoking or suspending Smog Check Inspector License Number EO 643082, issued
26 to Victor Manuel Marquez;

27 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
28 Division 26 of the Health and Safety Code in the name of Respondent Victor Manuel Marquez;

6. Ordering Victor Manuel Marquez 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,

7. 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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