

1 ROB BONTA
Attorney General of California
2 ERIN M. SUNSERI
Supervising Deputy Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9431
7 Facsimile: (619) 645-2061
E-mail: Gregory.Salute@doj.ca.gov
8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. **79/24-14130**

13 **JOSE MANUEL ARRIAGA CABRERA**
14 **dba MI CASITA SMOG CHECK**
11061 Whitford Ave
Riverside, CA 92505

FIRST AMENDED ACCUSATION

15 **Automotive Repair Dealer No. ARD 303589**
16 **Smog Check, Test-Only License No.**
TC303589,

17 **JOSE MANUEL ARRIAGA CABRERA**
18 **8518 Trey Ave**
Riverside, CA 92503

19 **Smog Check Inspector License No. EO**
20 **644037,**

21 **and**

22 **JAVIER IGNACIO MENDEZ**
23 **6210 Crest Ave**
Riverside, CA 92503

24 **Smog Check Inspector License No. EO**
25 **644213**

26 Respondents.
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28

1 **PARTIES**

2 1. Patrick Dorais (Complainant) brings this First Amended Accusation solely in his
3 official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer
4 Affairs.

5 2. On or about August 25, 2022, Bureau of Automotive Repair issued Automotive
6 Repair Dealer Number ARD 303589 to Mi Casita Smog Check (Respondent Mi Casita Smog
7 Check or Respondents). The Automotive Repair Dealer was in full force and effect at all times
8 relevant to the charges brought herein and will expire on August 31, 2025, unless renewed.

9 3. On or about January 13, 2023, Bureau of Automotive Repair issued Smog Check,
10 Test-Only License Number TC303589 to Respondent Mi Casita Smog Check. The Smog Check,
11 Test-Only License was in full force and effect at all times relevant to the charges brought herein
12 and will expire on January 22, 2026, unless renewed.

13 4. On or about November 21, 2022, Bureau of Automotive Repair issued Smog Check
14 Inspector License Number EO 644037 to Jose Manuel Arriaga Cabrera (Respondent Cabrera or
15 Respondents). The Smog Check Inspector License was in full force and effect at all times
16 relevant to the charges brought herein and will expire on April 30, 2027, unless renewed.

17 5. On or about March 13, 2023, Bureau of Automotive Repair issued Smog Check
18 Inspector License Number EO 644213 to Javier Ignacio Mendez¹ (Respondent Mendez or
19 Respondents). The Smog Check Inspector License was in full force and effect at all times
20 relevant to the charges brought herein. The license expired on December 31, 2024, and has not
21 been renewed.

22 **JURISDICTION**

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

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26
27 ¹ At all times alleged herein, Respondent Javier Ignacio Mendez was acting as an
28 employee of Respondent Mi Casita Smog Check and committed the acts alleged herein in the
course and scope of his employment at Respondent Mi Casita Smog Check.

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

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

9. Section 44002 of the Health and Safety Code 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.

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

STATUTORY PROVISIONS

11. Section 490 of the Code states, in pertinent part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

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

12. Section 9884.7 of the Code states:

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

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

...

(4) Any other conduct which constitutes fraud.

...

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

13. 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. . . .

(b) Is convicted of any crime substantially related to the qualifications, functions, or duties of the licenseholder in question.

(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

....

14. 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. . . .

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

3 **REGULATORY PROVISIONS**

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

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

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

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

10 (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
11 Safety Code, and section 3340.42 of this article. . . .”

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

13

14 (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
15 procedures specified in section 3340.42 of this article and has all the required
emission control equipment and devices installed and functioning correctly. . . .

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

18 **COST RECOVERY**

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

25 **VID DATA REVIEW**

26 20. Beginning March 9, 2015, California’s Smog Check Program was updated to require
27 the use of an On-Board Diagnostic Inspection System (“OIS”). OIS is the Smog Check
28 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 DMV renewal information. The printer provides a Vehicle Inspection Report (“VIR”) containing inspection results for motorists and a Smog Check Certificate of Compliance number for passing vehicles.

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

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

- Engine speed in revolutions per minute (RPM)
- Throttle position as measured by a throttle position sensor (TPS) mounted onto the throttle shaft. Measured in a percentage of opening from 0% at idle and near or up to 100% at full throttle.
- Manifold absolute pressure as measured by a manifold air pressure sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum,

25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at sea level.

- Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air intake tract. Measured in grams per second (gps).³
- Ignition timing is set by the vehicle PCM based on engine speed and load, and is measured in degrees Before Top Dead Center (BTDC).

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

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

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

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

1 26. The VID contains registration data from Department of Motor Vehicles (“DMV”)
2 plus emission standards, vehicle smog check inspections, smog check stations and technicians,
3 and Certificates of Compliance. The VID receives the passing smog check results immediately
4 following the inspection. During the vehicle registration process, the DMV accesses the VID to
5 verify that the vehicle has been tested and certified. The Bureau can also access the VID to view
6 test data on smog check inspections performed at any Smog Check Station, or search for, retrieve,
7 and print a test record for a particular vehicle which has been tested. The EIS or OIS, depending
8 on the test type, also prints a Vehicle Inspection Report (“VIR”), which is a physical record of the
9 test results and shows the Certificate of Compliance number that was issued if the vehicle passed
10 the smog inspection.

11 27. The smog check technician must sign the VIR under penalty of perjury to indicate
12 that the inspection was done within Bureau guidelines. Smog Check Stations are required by law
13 to maintain a copy of the VIR along with a copy of the repair invoice for three years. The
14 consumer’s VIR serves as a receipt and proof that the VID was updated, and a Certificate of
15 Compliance was issued. Licensed Smog Check Technicians are the only persons authorized by
16 the Bureau to perform official inspections. They are issued a personal access code and a license,
17 which are used to gain access to the EIS and OIS to perform smog check inspections.
18 Unauthorized use of another technician’s access code or license is prohibited.

19 28. Respondents have engaged in numerous acts or omissions constituting violations of
20 the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*) and Motor
21 Vehicle Inspection Program (Health and Safety Code section 44000 *et seq.*) through their practice
22 of “clean plugging.”⁴ Respondent’s OIS Test Data available on the State database indicates that
23 Respondents are involved in fraudulent smog inspection activities. A Bureau representative
24 initiated an investigation based on information transmitted to the VID for smog check inspections
25 performed by Respondents. The investigation revealed that the data related to certain vehicles

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.

certified by Respondents contained a pattern of unmistakable discrepancies between the information transmitted during the inspections and documented information known about the vehicles at issue. Specifically, the representative compared the data received from the certified vehicles to data from vehicles of the same year, make, and model and determined that the data from at least ten (10) of the certified vehicles were fraudulently tested by Respondents during the smog inspection using the “clean plugging” method as follows:

Fraudulent Inspection #1 (Cabrera)

29. Bureau representative Steve Koch (Koch) reviewed the OIS Test Data for Mi Casita Smog Check. The review indicates on June 2, 2023, a 2004 Honda Civic LX, (No Plate) VIN 2HGES16534H594241 (2004 Civic), was tested and smog certificate # TI376059C was issued under licensed Smog Check Technician #EO644037, Cabrera.

30. The Dynamic data and PID Charts for the 2004 Civic shows between time stamp 110 and 22300 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at 9.4% opening, the MAP is fixed at 28 kPa, and the ignition timing advance for #1 cylinder is fixed at 8 degrees BTDC. After time stamp 22300 the engine speed increases to approximately 2000 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 9.4% opening, the MAP is fixed at the same 28 kPa, and the ignition timing advance for #1 cylinder is fixed at the same 8 degrees BTDC.

31. During the period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, 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 DAD was not connected to the 2004 Civic being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Previous Failing Test: 2004 Civic

32. A previous failing test was performed on the 2004 Civic at another station on May 10, 2023. The 2004 Civic failed the test for an illuminated MIL, stored diagnostic trouble codes

1 P0134 and P0135, and incomplete OBDII readiness monitors. No dynamic data was collected
2 during the inspection.

3 **Fraudulent Inspection #2 (Mendez)**

4 33. Koch reviewed the OIS Test Data for Mi Casita Smog Check. The review indicates
5 on June 2, 2023, a 2004 Dodge Neon SRT-4, (No Plate) VIN 1B3ES66S54D518326 (2004
6 Neon), was tested and smog certificate # TI376060C was issued under licensed Smog Check
7 Technician #EO644213, Mendez.

8 34. The Dynamic data and PID Charts for the 2004 Neon shows between time stamp 45
9 and 24814 engine speed is steady at approximately 750 RPM. During this time the throttle is
10 fixed at 16.1% opening, the MAP is fixed at 33 kPa, and the ignition timing advance for #1
11 cylinder is fixed at 12 degrees BTDC. After time stamp 24814 the engine speed increases to
12 approximately 1775 RPM. From the time the engine RPM increases off idle to the higher RPMs,
13 the throttle is fixed at the same 16.1% opening, the MAP is fixed at the same 33 kPa, and the
14 ignition timing advance for #1 cylinder is fixed at the same 12 degrees BTDC.

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

21 **Fraudulent Inspection #3 (Cabrera)**

22 36. Koch reviewed the OIS Test Data for Mi Casita Smog Check. The review indicates
23 on June 14, 2023, a 2004 Infiniti G35, (No Plate) VIN JNKCV54E24M813385 (2004 G35), was
24 tested and smog certificate # TI376079C was issued under licensed Smog Check Technician
25 #EO644037, Cabrera.

26 37. The Dynamic data and PID Charts for the 2004 G35 shows between time stamp 182
27 and 22951 engine speed is steady at approximately 675 RPM. During this time the throttle is
28 fixed at 0% opening, the MAF is fixed at 7.72 gps, and the ignition timing advance for #1

1 cylinder is fixed at 15 degrees BTDC. After time stamp 22951 the engine speed increases to
2 approximately 1250 RPM and then increases again to approximately 1650 RPM. From the time
3 the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0%
4 opening, the MAF is fixed at the same 7.72 gps, and the ignition timing advance for #1 cylinder is
5 fixed at the same 15 degrees BTDC.

6 38. During the period the dynamic data was collected, the only parameter that changed
7 was engine RPM. The throttle position, MAF, and ignition timing advance readings remained
8 unchanged even though the engine speed was increased. These readings are not characteristic or
9 expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS
10 DAD was not connected to the 2004 G35 being certified, causing the issuance of a fraudulent
11 Smog Certificate of Compliance.

12 **Fraudulent Inspection #4 (Cabrera)**

13 39. Koch reviewed the OIS Test Data for Mi Casita Smog Check. The review indicates
14 on September 1, 2023, a 2003 Lexus GS 300, (No Plate) VIN JT8BD69S130190639 (2003 GS
15 300), was tested and smog certificate # IV179995C was issued under licensed Smog Check
16 Technician #EO644037, Cabrera.

17 40. The Dynamic data and PID Charts for the 2003 GS 300 shows between time stamp
18 135 and 22858 engine speed is steady at approximately 775 RPM. During this time the throttle is
19 fixed at 13.7% opening, the MAF is fixed at 4.34 gps, and the ignition timing advance for #1
20 cylinder is fixed at 12.5 degrees BTDC. After time stamp 22858 the engine speed increases to
21 approximately 2475 RPM and then decelerates to approximately 1900 RPM. From the time the
22 engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 13.7%
23 opening, the MAF is fixed at the same 4.34 gps, and the ignition timing advance for #1 cylinder is
24 fixed at the same 12.5 degrees BTDC.

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

1 DAD was not connected to the 2003 GS 300 being certified, causing the issuance of a fraudulent
2 Smog Certificate of Compliance.

3 **Fraudulent Inspection #5 (Cabrera)**

4 42. Koch reviewed the OIS Test Data for Mi Casita Smog Check. The review indicates
5 on October 4, 2023, a 2004 GMC Yukon XL K1500, CA license 7LSS495, VIN
6 1GKFK16ZX4J256778 (2004 Yukon XL), was tested and smog certificate # TM905847C was
7 issued under licensed Smog Check Technician #EO644037, Cabrera.

8 43. The Dynamic data and PID Charts for the 2004 Yukon XL shows between time stamp
9 31 and 20480 engine speed is steady at approximately 550 RPM. During this time the throttle is
10 fixed at 9% opening, the MAF is fixed at 4.87 gps, the MAP is fixed at 34 kPa, and the ignition
11 timing advance for #1 cylinder is fixed at 16.5 degrees BTDC. After time stamp 20480 the engine
12 speed increases to approximately 1800 RPM. From the time the engine RPM increases off idle to
13 the higher RPMs, the throttle is fixed at the same 9% opening, the MAF is fixed at the same 4.87
14 gps, the MAP is fixed at the same 34 kPa, and the ignition timing advance for #1 cylinder is fixed
15 at the same 16.5 degrees BTDC.

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

22 **Fraudulent Inspection #6 (Cabrera)**

23 45. Koch reviewed the OIS Test Data for Mi Casita Smog Check. The review indicates
24 on December 5, 2023, a 2002 Chevrolet Avalanche C1500, (no plate), VIN
25 3GNEC13T52G116289 (2002 Avalanche), was tested and smog certificate # TO950494C was
26 issued under licensed Smog Check Technician #EO644037, Cabrera.

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46. The Dynamic data and PID Charts for the 2002 Avalanche shows between time stamp 32 and 20565 engine speed is steady at approximately 650 RPM. During this time the throttle is fixed at 15.7% opening, the MAF is fixed at 0 gps, the MAP is fixed at 101 kPa, and the ignition timing advance for #1 cylinder is fixed at 0 degrees BTDC. After time stamp 20565 the engine speed increases to approximately 1450 RPM until time stamp 35922, then increases again to approximately 1700 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 0 gps, the MAP is fixed at the same 101 kPa, and the ignition timing advance for #1 cylinder is fixed at the same 0 degrees BTDC.

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

Previous Failing Test: 2002 Avalanche

48. A previous failing test was performed on the 2002 Avalanche at another station on November 22, 2023, in the city of Bakersfield, CA. The 2002 Avalanche failed the test for incomplete OBDII readiness monitors. The Dynamic OBDII PID data shows the expected change in the throttle, MAF, MAP and ignition timing advance parameters as characteristic or expected for normal engine operation.

Fraudulent Inspection #7 (Mendez)

49. Koch reviewed the OIS Test Data for Mi Casita Smog Check. The review indicates on January 25, 2024, a 2002 Chevrolet Silverado C3500, CA license 8Z16558, VIN 1GBJC34U92F110284 (2002 Silverado), was tested and smog certificate # TQ110598C was issued under licensed Smog Check Technician #EO644213, Mendez.

50. The Dynamic data and PID Charts for the 2002 Silverado shows between time stamp 34 and 21351 engine speed is steady at approximately 875 RPM. During this time the throttle is

1 fixed at 0% opening, the MAF is fixed at 0 gps, the MAP is fixed at 101 kPa, and the ignition
2 timing advance for #1 cylinder is fixed at 0 degrees BTDC. After time stamp 21351 the engine
3 speed increases to approximately 1550 RPM. From the time the engine RPM increases off idle to
4 the higher RPMs, the throttle is fixed at the same 0% opening, the MAF is fixed at the same 0
5 gps, the MAP is fixed at the same 101 kPa, and the ignition timing advance for #1 cylinder is
6 fixed at the same 0 degrees BTDC.

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

13 **Fraudulent Inspection #8 (Mendez)**

14 52. Koch reviewed the OIS Test Data for Mi Casita Smog Check. The review indicates
15 on March 12, 2024, a 2001 Volkswagen Jetta Wolfsburg, (no plate), VIN
16 3VWPD29M91M191613 (2001 Jetta), was tested and smog certificate # TU017016C was issued
17 under licensed Smog Check Technician #EO644213, Mendez.

18 53. The Dynamic data and PID Charts for the 2001 Jetta shows between time stamp 110
19 and 46719 engine speed is steady at approximately 825 RPM. During this time the throttle is
20 fixed at 4.7% opening, the MAF is fixed at 0 gps, and the ignition timing advance for #1 cylinder
21 is fixed at 0 degrees BTDC. After time stamp 46719 the engine speed increases to approximately
22 1200 RPM and then increases again to approximately 1600 RPM. From the time the engine RPM
23 increases off idle to the higher RPMs, the throttle is fixed at the same 4.7% opening, the MAF is
24 fixed at the same 0 gps, and the ignition timing advance for #1 cylinder is fixed at the same 0
25 degrees BTDC.

26 54. During the period the dynamic data was collected, the only parameter that changed
27 was engine RPM. The throttle position, MAF, and ignition timing advance readings remained
28 unchanged even though the engine speed was increased. These readings are not characteristic or

1 expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS
2 DAD was not connected to the 2001 Jetta being certified, causing the issuance of a fraudulent
3 Smog Certificate of Compliance.

4 **Fraudulent Inspection #9 (Mendez)**

5 55. Koch reviewed the OIS Test Data for Mi Casita Smog Check. The review indicates
6 on March 13, 2024, a 2003 Toyota Corolla CE, (no plate), VIN 1NXBR32E73Z152553 (2003
7 Corolla), was tested and smog certificate # TU017020C was issued under licensed Smog Check
8 Technician #EO644213, Mendez.

9 56. The Dynamic data and PID Charts for the 2003 Corolla shows between time stamp
10 123 and 23630 engine speed is steady at approximately 750 RPM. During this time the throttle is
11 fixed at 13.3% opening, the MAF is fixed at .4 gps, and the ignition timing advance for #1
12 cylinder is fixed at 5 degrees BTDC. After time stamp 23630 the engine speed increases to
13 approximately 1200 RPM and then increases again to approximately 1575 RPM. From the time
14 the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 13.3%
15 opening, the MAF is fixed at the same .4 gps, and the ignition timing advance for #1 cylinder is
16 fixed at the same 5 degrees BTDC.

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

23 **Fraudulent Inspection #10 (Mendez)**

24 58. Koch reviewed the OIS Test Data for Mi Casita Smog Check. The review indicates
25 on March 13, 2024, a 2005 Chevrolet Silverado K1500, (no plate), VIN 1GCEK14T55Z109065
26 (2005 Silverado), was tested and smog certificate # TU017022C was issued under licensed Smog
27 Check Technician #EO644213, Mendez.

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59. The Dynamic data and PID Charts for the 2005 Silverado shows between time stamp 35 and 20849 engine speed is steady at approximately 875 RPM. During this time the throttle is fixed at 19.6% opening, the MAF is fixed at 0 gps, the MAP is fixed at 101 kPa, and the ignition timing advance for #1 cylinder is fixed at 0 degrees BTDC. After time stamp 20849 the engine speed increases to approximately 1600 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 19.6% opening, the MAF is fixed at the same 0 gps, the MAP is fixed at the same 101 kPa, and the ignition timing advance for #1 cylinder is fixed at the same 0 degrees BTDC.

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

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements - Respondent Mi Casita Smog Check)

61. Respondent Mi Casita Smog Check's registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(1), in that Respondents made or authorized statements which they knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondents certified that the vehicles set forth above in paragraphs 29-60, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents conducted the inspections on those vehicles using the clean plugging method in order to issue smog certificates of compliance, and did not test or insect the vehicles as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud - Respondent Mi Casita Smog Check)

62. Respondent Mi Casita Smog Check's registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(4), in that Respondent Mi Casita Smog Check's

1 employees committed acts which constitute fraud by issuing electronic certificates of compliance
2 for the vehicles set forth above in paragraphs 29-60, without performing bona fide inspections of
3 the emission control devices and systems on those vehicles, thereby depriving the People of the
4 State of California of the protection afforded by the Motor Vehicle Inspection Program.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with the Motor Vehicle Inspection Program –**
7 **Respondent Mi Casita Smog Check)**

8 63. Respondent Mi Casita Smog Check's smog station license is subject to disciplinary
9 action pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with
10 Health and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth
11 above in paragraphs 29-60, Respondents failed to comply with the following sections of the
12 Health and Safety Code:

13 (a) **Section 44012**: Respondent Mi Casita Smog Check's employees failed to ensure that
14 the emission control tests were performed on the vehicles, in accordance with procedures
15 prescribed by the department.

16 (b) **Section 44015**: Respondent Mi Casita Smog Check's employees issued electronic
17 certificates of compliance for the vehicles, without ensuring that the vehicles were properly tested
18 and inspected to determine if they were in compliance with Health and Safety Code section
19 44012.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program -**
22 **Respondent Mi Casita Smog Check)**

23 64. Respondent Mi Casita Smog Check's smog station license is subject to disciplinary
24 action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the
25 vehicles set forth above in paragraphs 29-60, Respondents failed to comply with the following
26 provisions of the California Code of Regulations, Title 16, as follows:

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

4 (b) **Section 3340.42**: Respondent Mi Casita Smog Check's employees failed to conduct
5 the required smog tests and inspections on those vehicles in accordance with the Bureau's
6 specifications.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud or Deceit - Respondent Mi Casita Smog Check)**

9 65. Respondent Mi Casita Smog Check's smog station license is subject to disciplinary
10 action pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with
11 Health and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth
12 above in paragraphs 29-60, Respondents employees committed acts involving dishonesty, fraud
13 or deceit whereby another was injured by issuing electronic certificates of compliance for those
14 vehicles without performing bona fide inspections of the emission control devices and systems on
15 the vehicles, thereby depriving the People of the State of California of the protection afforded by
16 the Motor Vehicle Inspection Program.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Violations of the Motor Vehicle Inspection Program – Respondent Cabrera)**

19 66. Respondent Cabrera's smog check inspector license is subject to discipline pursuant
20 to Health and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth
21 above in paragraphs 29-31 and 36-47, Respondent Cabrera failed to comply with section 44012 of
22 the Health and Safety Code in a material respect, as follows: Respondent Cabrera failed to
23 perform the emission control tests on those vehicles in accordance with procedures prescribed by
24 the department.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

4 67. Respondent Cabrera's smog check inspector license is subject to discipline pursuant
5 to Health and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth
6 above in paragraphs 29-31 and 36-47, Respondent Cabrera failed to comply with provisions of
7 the California Code of Regulations, title 16, as follows:

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

10 (b) **Section 3340.41, subdivision (c)**: Respondent Cabrera entered false information into
11 the EIS.

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

14 **EIGHTH CAUSE FOR DISCIPLINE**

15 **(Dishonesty, Fraud or Deceit - Respondent Cabrera)**

16 68. Respondent Cabrera's smog check inspector license is subject to discipline pursuant
17 to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and
18 Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
19 paragraphs 29-31 and 36-47, Respondent Cabrera committed acts involving dishonesty, fraud or
20 deceit whereby another was injured by issuing electronic certificates of compliance for those
21 vehicles without performing bona fide inspections of the emission control devices and systems on
22 the vehicles., thereby depriving the People of the State of California of the protection afforded by
23 the Motor Vehicle Inspection Program.

24 **NINTH CAUSE FOR DISCIPLINE**

25 **(Criminal Conviction- Respondents Mi Casita Smog Check and Cabrera)**

26 69. Respondent Mi Casita Smog Check's Automotive Dealer Repair Registration and
27 Smog Station License and Respondent Cabrera's smog check inspector license are both subject to
28 discipline pursuant to Code section 490 and Health & Saf. Code section 44072.2, subdivision (b),

1 in that on or about November 7, 2023, in the criminal proceeding entitled People vs. Jose Manuel
2 Arriaga Cabrera (Riverside County Super. Ct., Case No. RIF2205190), Respondent pled guilty
3 and was convicted of violating Penal Code section 215, subdivision (a) (carjacking), a felony, and
4 Penal Code section 211, (robbery, 2nd degree), a felony, crimes which are substantially related to
5 the qualifications, functions, or duties of an automotive repair dealer and smog check station
6 license holder and/or smog check inspector. On or about December 8, 2023, the imposition of
7 judgment and sentencing was suspended, and Respondent was placed on formal probation for a
8 period of 2 years on various terms and conditions, including that Respondent Cabrera serve 364
9 days in the Riverside County Jail.

10 **TENTH CAUSE FOR DISCIPLINE**

11 **(Violations of the Motor Vehicle Inspection Program – Respondent Mendez)**

12 70. Respondent Mendez’s smog check inspector license is subject to discipline pursuant
13 to Health and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth
14 above in paragraphs 33-35 and 49-60, Respondent Mendez failed to comply with section 44012 of
15 the Health and Safety Code in a material respect, as follows: Respondent Mendez failed to
16 perform the emission control tests on those vehicles in accordance with procedures prescribed by
17 the department.

18 **ELEVENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
20 **Respondent Mendez)**

21 71. Respondent Mendez’s smog check inspector license is subject to discipline pursuant
22 to Health and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth
23 above in paragraphs 33-35 and 49-60, Respondent Mendez failed to comply with provisions of
24 the California Code of Regulations, title 16, as follows:

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

27 (b) **Section 3340.41, subdivision (c):** Respondent Mendez entered false information into
28 the EIS.

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

3 **TWELFTH CAUSE FOR DISCIPLINE**

4 **(Dishonesty, Fraud or Deceit - Respondent Mendez)**

5 72. Respondent Mendez's smog check inspector license is subject to discipline pursuant
6 to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and
7 Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
8 paragraphs 33-35 and 49-60, Respondent Mendez committed acts involving dishonesty, fraud or
9 deceit whereby another was injured by issuing electronic certificates of compliance for those
10 vehicles without performing bona fide inspections of the emission control devices and systems on
11 the vehicles., thereby depriving the People of the State of California of the protection afforded by
12 the Motor Vehicle Inspection Program.

13 **OTHER MATTERS**

14 73. Pursuant to Business & Professions Code section 9884.7, subdivision (c), the Director
15 may suspend, revoke, or place on probation the registration for all places of business operated in
16 this State by Respondent Mi Casita Smog Check upon a finding that Respondent Mi Casita Smog
17 Check has, or is, engaged in a course of repeated and willful violations of the laws and
18 regulations pertaining to an automotive repair dealer.

19 74. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station
20 License Number TC 303589 issued to Respondent Mi Casita Smog Check is revoked or
21 suspended following a hearing under this article, any additional license issued under Chapter 5,
22 Part 5, Division 26 in the name of said licensee may be likewise revoked or suspended by the
23 Director.

24 75. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
25 Number EO 644037, issued to Respondent Cabrera, is revoked or suspended following a hearing
26 under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name
27 of said licensee may be likewise revoked or suspended by the Director.

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76. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License Number EO 644213, issued to Respondent Mendez, is revoked or suspended following a hearing under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Number ARD 303589, issued to Jose Manuel Arriaga Cabrera dba Mi Casita Smog Check;

2. Revoking or suspending any other Automotive Repair Dealer Registration issued to Respondent Jose Manuel Arriaga Cabrera;

3. Revoking or suspending Smog Check, Test-Only License Number TC 303589, issued to Jose Manuel Arriaga Cabrera dba Mi Casita Smog Check;

4. Revoking or suspending Smog Check Inspector License Number EO 644037, issued to Jose Manuel Arriaga Cabrera;

5. 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 Jose Manuel Arriaga Cabrera;

6. Revoking or suspending Smog Check Inspector License Number EO 644213, issued to Javier Ignacio Mendez;

7. 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 Javier Ignacio Mendez;

8. Ordering Jose Manuel Arriaga Cabrera and Javier Ignacio Mendez 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,

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

DATED: As of digital signature date

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

SD2024803914
Revised First Amended Accusation.docx