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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **NADER MOLAIE SHARIF, DBA AUTO STAR SMOG CHECK AND REPAIR** **23211 Cherry Ave, Ste. C** **Lake Forest, CA 92630** **Automotive Repair Dealer Registration No. ARD 282063** **Smog Check Station License No. RC 282063,** **and** **NADER MOLAIE SHARIF** **P.O. Box 1606** **Tustin, CA 92781** **Smog Check Inspector No. EO 638281,** **Smog Check Repair Technician No. EI 638281,** Respondents.	Case No. 79/17 - 17852 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about November 19, 2015, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 282063 to Nader Molaie Sharif, dba Auto Star Smog Check and Repair (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2018, unless renewed.

3. On or about December 24, 2015, the Bureau of Automotive Repair issued Smog Check Station License Number RC 282063 to Nader Molaie Sharif, dba Auto Star Smog Check and Repair (Respondent). The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2018, unless renewed.

4. On or about June 29, 2015, the Bureau of Automotive Repair issued Smog Check Inspector License Number EO 638281 to Nader Molaie Sharif (Respondent). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2019, unless renewed.

5. On or about September 11, 2017, the Bureau of Automotive Repair issued Smog Check Repair Technician License Number EI 638281 to Nader Molaie Sharif (Respondent). The Smog Check Repair Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2019, unless renewed.

JURISDICTION

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

7. Section 118, subdivision (b) of the Code provides that the suspension, expiration, or cancellation of a license shall not deprive the Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

8. Section 477 of the Code states:

"As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

9. 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.

10. Section 9884.22 of the Code states:

(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny at any time any registration required by this article on any of the grounds for disciplinary action provided in this article. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

. . . .

11. 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.

12. Section 44072.4 of the Health and Safety Code states:

The director may take disciplinary action against any licensee after a hearing as provided in this article by any of the following:

(a) Imposing probation upon terms and conditions to be set forth by the director.

(b) Suspending the license.

(c) Revoking the license.

13. 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.

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14. Section 44072.7 of the Health and Safety Code states:

All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (d) of Section 44072.2, the accusation may be filed within two years after the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation prohibited by that section.

15. Section 44072.8 of the Health and Safety Code states:

When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

STATUTORY PROVISIONS

16. 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.

. . . .

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has,

or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

17. Section 44012 of the Health and Safety Code states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(g) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

(h) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

18. Section 44015(a) and (b) of the Health and Safety Code states:

(a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 44014.5.

(3) A vehicle described in subdivision (c).

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

19. Section 44032 of the Health and Safety Code states:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

20. Section 44035 of the Health and Safety Code states:

(a) A smog check station's license or a qualified smog check technician's qualification may be suspended or revoked by the department, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. The department shall adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses and qualifications and the conduct of the hearings.

(b) The department or its representatives, including quality assurance inspectors, shall be provided access to licensed stations for the purpose of examining property, station equipment, repair orders, emissions equipment

maintenance records, and any emission inspection items, as defined by the department.

21. Section 44059 of the Health and Safety Code states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

22. 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.

. . . .

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed."

23. Section 44072.10 of the Health and Safety Code states:

(a) Notwithstanding Sections 44072 and 44072.4, the director, or the director's designee, pending a hearing conducted pursuant to subdivision (e), may temporarily suspend any smog check station or technician's license issued under this chapter, for a period not to exceed 60 days, if the department determines that the licensee's conduct would endanger the public health, safety, or welfare before the matter could be heard pursuant to subdivision (e), based upon reasonable evidence of any of the following:

(1) Fraud.

(2) Tampering.

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

(4) A pattern or regular practice of violating this chapter or any regulation, standard, or procedure of the department implementing this chapter.

. . . .

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

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

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

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

REGULATORY PROVISIONS

24. California Code of Regulations, title 16, section 3340.24(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.

25. 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.

(b) A licensed technician shall maintain on file with the bureau a correct mailing address pursuant to section 3303.3 of Article 1 of this Chapter.

(c) A licensed technician shall notify the bureau in writing within two weeks of any change of employment.

(d) A licensed technician whose license has expired shall immediately cease to inspect, test, or repair failed vehicles.

26. California Code of Regulations, title 16, section 3340.35(c), states:

(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. The following conditions shall apply:

(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

27. California Code of Regulations, title 16, section 3340.41(c), states:

(c) No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.

28. California Code of Regulations, title 16, section 3340.42, states:

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle are not included in this table then

the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured emissions are less than or equal to the applicable emission standards specified in the applicable table.

(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-year vehicles, except diesel-powered, registered in all program areas of the state, except in those areas of the state where the enhanced program has been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emission standards set forth in this section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or equal to the applicable emissions standards specified in Table III.

(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer. The OBD test failure criteria are specified in section 3340.42.2.

(b) In addition to subsection (a), all vehicles subject to the smog check program shall receive the following:

(1) A visual inspection of emission control components and systems to verify the vehicle's emission control systems are properly installed.

(2) A functional inspection of emission control systems as specified in the Smog Check Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper operation.

"(c) The bureau may require any combination of the inspection methods in sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and Safety Code section 44014.7 as a means of identifying potential operational problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle included in the tables described in subsection (a), as applicable. However, the provisions described in section 44017 of the Health and Safety Code may apply.

(4) This subsection applies in all program areas statewide to vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

29. California Code of Regulations, title 16, section 3373, states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

30. California Code of Regulations, title 16, section 3395.4, states:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of Administrative Hearing, the Bureau of Automotive Repair shall consider the disciplinary guidelines entitled 'Guidelines for Disciplinary Penalties and Terms of Probation' [March 2016] which are hereby incorporated by reference. The 'Guidelines for Disciplinary Penalties and Terms of Probation' are advisory. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Bureau of Automotive Repair in its sole discretion determines that the facts of the particular case warrant such deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

COSTS

31. Section 125.3 of the Code provides, in pertinent part, that a 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.

CLEAN PLUGGING

32. At all times alleged in this Accusation, Respondents were acting in the course and within the scope of their duties as a technician, employee, partner, officer, or member of Auto Star Smog Check and Repair.

33. The On-Board Diagnostics – Generation II (OBD II) communication protocol describes the specified communication "language" used by the OBD II system electronic control unit to communicate to scan tools and other devices such as the On-Board Diagnostic Inspection System (OIS). The communication protocol is programmed into the OBD II system electronic control unit during manufacture and does not change.

34. Parameter Identifications (PID) are data points reported by the OBD II system electronic control unit to the scan tool or OIS. Examples of PIDs are engine speed (RPM), vehicle speed, engine temperature, and other input and output values utilized by the OBD II system electronic control unit. The PID count is the number of data points reported by the OBD II system electronic control unit and is programmed during manufacture.

35. The Vehicle Identification Number (VIN) that is physically present on all vehicles is also required to be programmed into the vehicle's OBD II on 2005 and newer vehicles, and on many occasions was programmed into the OBD II system electronic control unit in earlier model-years. This electronically programmed VIN, also known as the "eVIN," is captured by BAR during a Smog Check, and should match the physical VIN on the vehicle.

36. During a Bureau representative's review of Respondents' certified test results from June 16, 2016 to October 9, 2017, Respondent Sharif inspected and certified five (5) vehicles identified below that had deviations in eVIN reporting, incorrect vehicle communication protocol, and/or incorrect PID count. These deviations indicate that the vehicles receiving smog certificates

were fraudulently tested during the smog check inspection by a method known as Clean Plugging.[1] A detailed explanation of each fraudulent smog check is as follows:

a. Clean Plug #1

OIS Test Data indicates that on June 16, 2016, a 2011 Ford F150, VIN 1FTMF1CM1BKD98556, was tested by and smog certificate QC486168C was issued under licensed Smog Check Inspector EO 638281, Nader Molaie Sharif. The OIS Test Data for the 2011 Ford F150 showed the eVIN was transmitted as 1FTPX12594NB76319, the communication protocol was transmitted as ICAN11bt5, and the PID count was 27. Similar Vehicle OIS Test Data for 2011 Ford F150 vehicles show they transmit the correct eVIN, they have expected communication protocol ICAN11bt5, and they transmit a PID count of 44.

Additional review of the OIS Test Data found this 2011 Ford F150, VIN 1FTMF1CM1BKD98556, was tested on October 4, 2017 at a different smog check facility. OIS Test Detail from this inspection shows the vehicle transmitted the correct eVIN, had the expected communication protocol ICAN11bt5, and transmitted a PID count of 44.

The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected to the 2011 Ford 150 being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Additionally, the OIS Test Data shows that a 2004 Ford F150, VIN 1FTPX12594NB76319 was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2011 Ford F150. The 2004 Ford F150 was certified under Nader Molaie Sharif at Auto Star Smog Check and Repair on the same day, June 16, 2016, as the fraudulent inspection of the 2011 Ford F150. The OIS Test Data transmitted for the 2004 Ford F150 matches the OIS Test Data for the fraudulent inspection of the 2011 Ford F150 for the eVIN, Protocol, and PID count.

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[1] To "clean plug" a vehicle, the technician uses another vehicle's properly functioning OBD II system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance to vehicles that are not in smog compliance or not present during the certified test.

b. Clean Plug #2

OIS Test Data indicates that on July 25, 2016, a 2006 Honda Odyssey EXL, VIN 5FNRL38736B447479, was tested by and smog certificate ZH176947C was issued under licensed Smog Check Inspector EO 638281, Nader Molaie Sharif. The OIS Test Data for the 2006 Honda Odyssey EXL showed the eVIN was transmitted as 5TFDV58128X072480, the communication protocol was transmitted as ICAN11bt5, and the PID count was 47. Similar Vehicle OIS Test Data for 2006 Honda Odyssey EXL vehicles show they transmit the correct eVIN, they have expected communication protocol I914, and they transmit a PID count of 24.

Additional review of the OIS Test Data found this 2006 Honda Odyssey EXL, VIN 5FNRL38736B447479, was tested on June 16, 2016 at a different smog check facility. OIS Test Detail from this inspection shows the vehicle transmitted the correct eVIN, had the expected communication protocol I914, and transmitted a PID count of 24.

The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected to the 2006 Honda Odyssey EXL being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Additionally, the OIS Test Data shows that a 2008 Toyota Tundra Crewmax Limited, VIN 5TFDV58128X072480 was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2006 Honda Odyssey EXL. The 2008 Toyota Tundra Crewmax Limited was certified under Nader Molaie Sharif at Auto Star Smog Check and Repair on the same day, July 25, 2016, as the fraudulent inspection of the 2006 Honda Odyssey EXL. The OIS Test Data transmitted for the 2008 Toyota Tundra Crewmax Limited matches the OIS Test Data for the fraudulent inspection of the 2006 Honda Odyssey EXL for the eVIN, Protocol, and PID count.

c. Clean Plug #3

OIS Test Data indicates that on October 22, 2016, a 2008 Infiniti EX35/Journey, VIN JNKAJ09E78M305899, was tested by and smog certificate QG083750C was issued under licensed Smog Check Inspector EO 638281, Nader Molaie Sharif. The OIS Test Data for the 2008 Infiniti EX35/Journey showed the eVIN was transmitted as JTHBK262572048419, the communication protocol was transmitted as ICAN11bt5, and the PID count was 48/17. Similar

Vehicle OIS Test Data for 2008 Infiniti EX35/Journey vehicles show they transmit the correct eVIN, they have expected communication protocol ICAN11bt5, and they transmit a PID count of 43.

Additional review of the OIS Test Data found this 2008 Infiniti EX35/Journey, VIN JNKAJ09E78M305899, was tested on September 26, 2014. OIS Test Detail from this inspection shows the vehicle transmitted the correct eVIN, had the expected communication protocol ICAN11bt5, and transmitted a PID count of 43.

The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected to the 2008 Infiniti EX35/Journey being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Additionally, the OIS Test Data shows that a 2007 Lexus IS250, VIN JTHBK262572048419 was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2008 Infiniti EX35/Journey. The 2007 Lexus IS250 was certified under Nader Molaie Sharif at Auto Star Smog Check and Repair on April 21, 2017. The OIS Test Data transmitted for the 2007 Lexus IS250 matches the OIS Test Data for the fraudulent inspection of the 2008 Infiniti EX35/Journey for the eVIN, Protocol, and PID count.

d. Clean Plug #4

OIS Test Data indicates that on February 4, 2017, a 2008 Honda Odyssey EXL, VIN 5FNRL38768B071458, was tested by and smog certificate ZP089673C was issued under licensed Smog Check Inspector EO 638281, Nader Molaie Sharif. The OIS Test Data for the 2008 Honda Odyssey EXL showed the eVIN was transmitted as 1HGCM56775A065756, the communication protocol was transmitted as I914, and the PID count was 21. Similar Vehicle OIS Test Data for 2008 Honda Odyssey EXL vehicles show they transmit the correct eVIN, they have expected communication protocol ICAN29bt5, and they transmit a PID count of 44/19.

Additional review of the OIS Test Data found this 2008 Honda Odyssey EXL, VIN 5FNRL38768B071458, was tested earlier on February 4, 2017. OIS Test Detail from this inspection shows the vehicle transmitted the correct eVIN, had the expected communication protocol ICAN29bt5, and transmitted a PID count of 44/19.

The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected to the 2008 Honda Odyssey EXL being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Additionally, the OIS Test Data shows that a 2005 Honda Accord EX, VIN 1HGCM56775A065756 was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2008 Honda Odyssey EXL. The 2005 Honda Accord EX was certified at a different smog check facility on February 4, 2017. The OIS Test Data transmitted for the 2005 Honda Accord EX matches the OIS Test Data for the fraudulent inspection of the 2008 Honda Odyssey EXL for the eVIN, Protocol, and PID count.

e. Clean Plug #5

OIS Test Data indicates that on October 9, 2017, a 2007 Honda Odyssey EXL, VIN 5FNRL38717B105045, was tested by and smog certificate HH127275C was issued under licensed Smog Check Inspector EO 638281, Nader Molaie Sharif. The OIS Test Data for the 2007 Honda Odyssey EXL showed the eVIN was transmitted as 5FNRL5H66BB095057, the communication protocol was transmitted as ICAN29bt5, and the PID count was 44. Similar Vehicle OIS Test Data for 2007 Honda Odyssey EXL vehicles show they transmit the correct eVIN, they have expected communication protocol ICAN29bt5, and they transmit a PID count of 44/19.

Additional review of the OIS Test Data found this 2007 Honda Odyssey EXL, VIN 5FNRL38717B105045, was tested on September 30, 2017 at a different smog check facility. OIS Test Detail from this inspection shows the vehicle transmitted the correct eVIN, had the expected communication protocol ICAN29bt5, and transmitted a PID count of 44/19.

The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected to the 2007 Honda Odyssey EXL being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Additionally, the OIS Test Data shows that a 2011 Honda Odyssey EXL, VIN 5FNRL5H66BB095057 was the vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2007 Honda Odyssey EXL. The 2011 Honda Odyssey EXL was certified

under Nader Molaie Sharif at Auto Star Smog Check and Repair on the same day, October 9, 2017, as the fraudulent inspection of the 2007 Honda Odyssey EXL. The OIS Test Data transmitted for the 2011 Honda Odyssey EXL matches the OIS Test Data for the fraudulent inspection of the 2007 Honda Odyssey EXL for the eVIN, Protocol, and PID count.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statement)

37. Complainant re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

38. Respondent Sharif's Automotive Repair Dealer Registration is subject to disciplinary action under section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which Respondent knew or in the exercise of reasonable care should have known to be untrue or misleading.

39. Respondent certified that the vehicles listed in paragraph 36, subparagraphs a. through e. above had passed inspection and were in compliance with all applicable laws and regulations when, in fact and in truth, Respondent inspected the vehicles using the clean plugging method to issue fraudulent certificates of compliance.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

40. Complainant re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

41. Respondent Sharif's Automotive Repair Dealer Registration is subject to disciplinary action under section 9884.7, subdivision (a)(4), in that Respondent committed fraud by certifying that the vehicles listed in paragraph 36, subparagraphs a. through e. above had passed inspection and were in compliance with all applicable laws and regulations when, in fact and in truth, Respondent inspected the vehicles using the clean plugging method to issue fraudulent certificates of compliance.

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THIRD CAUSE FOR DISCIPLINE

(Violations of Motor Vehicle Inspection Program)

42. Complainant re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

43. Respondent Sharif's Smog Check Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of the Health and Safety Code:

a. **Section 44012**: Respondent failed to perform the tests of the emission control systems and devices on the vehicles listed in paragraph 36, subparagraphs a. through e. above, in accordance with procedures prescribed by the Department.

b. **Section 44015, subd. (a) and (b)**: Respondent issued a certificate of compliance for the vehicles listed in paragraph 36, subparagraphs a. through e. above, without properly testing and inspecting them to determine if they were in compliance with Health & Safety Code section 44012.

c. **Section 44035**: Respondent failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct by failing to properly perform a smog inspection on the vehicles listed in paragraph 36, subparagraphs a. through e. above, or certifying that such tests had been performed, when in fact they were never performed.

d. **Section 44059:** Respondent willfully made false statements and entries with regard to material matters when he issued a certificate of compliance for the vehicles listed in paragraph 36, subparagraphs a. through e. above, without properly testing and inspecting them to determine if they were in compliance with Health & Safety Code section 44012.

FOURTH CAUSE FOR DISCIPLINE

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

44. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.

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45. Respondent Sharif's Smog Check Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply with the following sections of Title 16, California Code of Regulations:

a. **Section 3340.24, subdivision (c):** Respondent falsely and fraudulently issued certificates of compliance for the vehicles listed in paragraph 36, subparagraphs a. through e. above, without properly testing and inspecting them to determine if they were in compliance with Health & Safety Code section 44012.

b. **Section 3340.35, subdivision (c)**: Respondent failed to inspect and test the vehicles listed in paragraph 36, subparagraphs a. through e. above, in accordance with the procedures specified in section 3340.42 of the Regulations and failed to ensure that the vehicles had all the required emission control equipment and devices installed and functioning correctly.

c. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the Emissions Inspection System false information about the vehicles listed in paragraph 36, subparagraphs a. through e. above, providing results for smog inspections which were not actually performed.

d. **Section 3340.42**: Respondent failed to conduct the required smog tests on the vehicles listed in paragraph 36, subparagraphs a. through e. above, in accordance with the Bureau's specifications.

e. **Section 3340.42.2(c)(7)**: Respondent failed to conduct OBD inspections for the vehicles listed in paragraph 36, subparagraphs a. through e. above, within the Bureau's specifications in that the OBD system data was inappropriate for the vehicle being tested.

f. **Section 3340.42.2(c)(8)**: Respondent failed to conduct OBD inspections for the vehicles listed in paragraph 36, subparagraphs a. through e. above, within the Bureau's specifications in that the OBD system data did not match the original equipment manufacturer or an Air Resources Board exempted OBD software configuration.

g. **Section 3373**: Respondent withheld and inserted in the certificates of compliance issued for the vehicles listed in paragraph 36, subparagraphs a. through e. above, statements and information which caused the certificates to be false or misleading, or had the tendency or effect to mislead or deceive the public.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud and Deceit)

46. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.

47. Respondent Sharif's Smog Check Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicles listed in paragraph 36, subparagraphs a. through e. above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violation of Motor Vehicle Inspection Program)

48. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.

49. Respondent Sharif's Smog Check Inspector License and Smog Check Repair Technician License are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012**: Respondent failed to perform the tests of the emission control systems and devices on the vehicles listed in paragraph 36, subparagraphs a. through e. above, in accordance with procedures prescribed by the Department.

b. **Section 44059:** Respondent willfully made false statements and entries with regard to material matters when he issued a certificate of compliance for the vehicles listed in paragraph 36, subparagraphs a. through e. above, without properly testing and inspecting them to determine if they were in compliance with Health & Safety Code section 44012.

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SEVENTH CAUSE FOR DISCIPLINE

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

50. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.

51. Respondent Sharif's Smog Check Inspector License and Smog Check Repair Technician License are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c) in that Respondent failed to comply with the following sections of Title 16, California Code of Regulations:

a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the vehicles listed in paragraph 36, subparagraphs a. through e. above, in accordance with sections 44012 and 44035 of the Health and Safety Code, and section 3340.42 of the Regulations

b. **Section 3340.41, subdivision (c)**: Respondent knowingly entered into the Emissions Inspection System false information about the vehicles listed in paragraph 36, subparagraphs a. through e. above, providing results for smog inspections which were not actually performed.

c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the vehicles listed in paragraph 36, subparagraphs a. through e. above, in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

52. Complainant re-alleges and incorporates by reference the allegations set forth above in the foregoing paragraphs.

53. Respondent Sharif's Smog Check Inspector License and Smog Check Repair Technician License are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance for the vehicles listed in paragraph 36, subparagraphs a. through e. above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

54. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke or place on probation the Automotive Repair Dealer Registration for all places of business operated in this State by Respondent Sharif upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

55. Under Health & Safety Code section 44072.8, if Respondent Sharif's Smog Check Station License is revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent Sharif.

56. Under Health and Safety Code section 44072.8, if Respondent Sharif's Smog Check Inspector License and Smog Check Repair Technician License are revoked or suspended, any additional license issued under the Motor Vehicle Inspection Program in the name of Respondent Sharif 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 Consumer Affairs issue a decision:

1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration No. ARD 282063, issued to Respondent Nader Molaie Sharif, dba Auto Star Smog Check and Repair;

2. Revoking, suspending or placing on probation any other automotive repair dealer registration in the name of Respondent Nader Molaie Sharif;

3. Revoking, suspending or placing on probation Smog Check Station License No. RC 282063, issued to Respondent Nader Molaie Sharif, dba Auto Star Smog Check and Repair;

4. Revoking, suspending or placing on probation Smog Check Inspector License Number EO 638281, and Smog Check Repair Technician License No. EI 638281, issued to Respondent Nader Molaie Sharif;

5. Revoking, suspending or placing on probation any other license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent Nader Molaie Sharif;

6. Ordering Respondent Nader Molaie Sharif 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,

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

DATED: May 22, 2018

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

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