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

13 In the Matter of the Accusation Against:

Case No. 79/24-14133

14 **SHUKRAN QAQISH, DBA FRANKS**
15 **SMOG TEST ONLY**
16 **9611 Magnolia Avenue, Unit A**
17 **Riverside, CA 92503**

ACCUSATION

18 **Automotive Repair Dealer Registration No.**
19 **ARD 235887**
20 **Smog Check Test-Only Station No. TC**
21 **235887,**

22 **and**

23 **ELIAS FARES ZAIT**
24 **4740 Crest Avenue**
25 **Riverside, CA 92503**

26 **Smog Check Inspector License No. EO**
27 **635593**

28 Respondents

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 30, 2004, Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 235887 to Shukran Qaqish, dba Franks Smog Test Only (Respondent Franks Smog Test Only). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2025, unless renewed.

3. On or about January 17, 2008, Bureau of Automotive Repair issued Smog Check Test-Only Station Number TC 235887 to Shukran Qaqish, dba Franks Smog Test Only (Respondent Qaqish) The Smog Check, Test-Only License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2025, unless renewed.

4. Respondent is also certified as a STAR Station. The certification was issued on January 29, 2013, and will remain active unless the ARD registration and/or Smog Check Station license is revoked, canceled, licenses become delinquent, or the certification is invalidated.

5. On or about June 6, 2013, Bureau of Automotive Repair issued Smog Check Inspector License Number EO 635593 to Elias Fares Zait¹ (Respondent Zait). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2025, unless renewed.

JURISDICTION

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

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.

¹ At all times alleged herein, Respondent Elias Fares Zait was acting as an employee of Respondent Franks Smog Test Only and committed the acts alleged herein in the course and scope of his employment at Respondent Franks Smog Test Only.

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

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 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.

12. Section 44072.2 of the Health and Safety Code states:

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

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

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

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

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

...

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

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

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

REGULATORY PROVISIONS

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

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

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

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

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

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

....

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

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

COST RECOVERY

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

renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

VID DATA REVIEW

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

20. 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.

21. 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).

22. 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.

23. 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.

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

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

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

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

26 27. Respondents have engaged in numerous acts or omissions constituting violations of
27 the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*) and Motor
28 Vehicle Inspection Program (Health and Safety Code section 44000 *et seq.*) through their practice

of “clean plugging.”⁴ Respondent’s OIS Test Data available on the State database indicates that Respondents are involved in fraudulent smog inspection activities. A Bureau representative initiated an investigation based on information transmitted to the VID for smog check inspections performed by Respondents. The investigation revealed that the data related to certain vehicles 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

28. Bureau Program Representative Steve Koch (Koch) reviewed the OIS Test Data for Franks Smog Test Only. The review indicates on January 16, 2023, a 2001 Toyota Camry Solara SE, CA license 7YOP863, VIN 2T1CG22P11C464968 (2001 Solara), was tested and smog certificate # IR726286C was issued under licensed Smog Check Technician #EO635593, Zait.

29. The Dynamic OBDII PID Chart for the 2001 Solara shows between time stamp 147 and 18607 engine speed is steady at approximately 625 RPM. During this time the throttle is fixed at 13.3% opening, the MAP is fixed at 31 kPa, and the ignition timing advance for #1 cylinder is fixed at 7 degrees BTDC. After time stamp 18607 the engine speed accelerates to approximately 1700 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 13.3% opening, the MAP is fixed at the same 31 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 7 degrees BTDC.

30. During the entire 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

⁴ “Clean plugging” refers to the use of another vehicle’s properly functioning On Board Diagnostic, generation II, (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 and/or not present for testing.

characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the Data Acquisition Device was not connected to the 2001 Solara being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #2

31. Koch reviewed the OIS Test Data for Franks Smog Test Only. The review indicates on January 30, 2023, a 2001 Dodge RAM 1500, CA license 8E53210, VIN 3B7HC13Z41M296472 (2001 RAM), was tested and smog certificate # IR785064C was issued under licensed Smog Check Technician #EO635593, Zait.

32. The Dynamic OBDII PID Chart for the 2001 RAM shows between time stamp 232 and 17584 engine speed is steady at approximately 700 RPM. During this time the throttle is fixed at 11.8% opening, the MAP is fixed at 32 kPa, and the ignition timing advance for #1 cylinder is fixed at 19 degrees BTDC. After time stamp 17584 the engine speed accelerates to approximately 2075 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 11.8% opening, the MAP is fixed at the same 32 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 19 degrees BTDC.

33. During the entire 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 Data Acquisition Device was not connected to the 2001 RAM being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #3

34. Koch reviewed the OIS Test Data for Franks Smog Test Only. The review indicates on February 6, 2023, a 2005 Subaru Legacy Outback 2.5I, CA license 8FSY511, VIN 4S4BP61C257364785 (2005 Legacy), was tested and smog certificate # IR998236C was issued under licensed Smog Check Technician #EO635593, Zait.

35. The Dynamic OBDII PID Chart for the 2005 Legacy shows between time stamp 209 and 17099 engine speed is steady at approximately 700 RPM. During this time the throttle is

1 fixed at 14.5% opening, the MAF is fixed at 3.1 gps, MAP is fixed at 33 kPa, and the ignition
2 timing advance for #1 cylinder is fixed at 14.5 degrees BTDC. After time stamp 17099 the engine
3 speed accelerates to approximately 1500 RPM. From the time the engine RPM increases off idle
4 to the higher RPMs, the throttle is fixed at the same 14.5% opening, the MAF is fixed at the same
5 3.1 gps, the MAP is fixed at the same 33 kPa, and the ignition timing advance for #1 cylinder is
6 also still fixed at the same 14.5 degrees BTDC.

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

13 **Fraudulent Inspection #4**

14 37. Koch reviewed the OIS Test Data for Franks Smog Test Only. The review indicates
15 on February 7, 2023, a 2005 Toyota Scion XB, CA license SRPHSUP, VIN
16 JTLKT324550182453 (2005 XB), was tested and smog certificate # IR998245C was issued under
17 licensed Smog Check Technician #EO635593, Zait.

18 38. The Dynamic OBDII PID Chart for the 2005 XB shows between time stamp 151 and
19 17107 engine speed is steady at approximately 700 RPM. During this time the throttle is fixed at
20 11% opening, the MAF is fixed at 3.92 gps, and the ignition timing advance for #1 cylinder is
21 fixed at 2.5 degrees BTDC. After time stamp 17107 the engine speed accelerates to
22 approximately 1625 RPM. From the time the engine RPM increases off idle to the higher RPMs,
23 the throttle is fixed at the same 11% opening, the MAF is fixed at the same 3.92 gps, and the
24 ignition timing advance for #1 cylinder is also still fixed at the same 2.5 degrees BTDC.

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

1 prove the Data Acquisition Device was not connected to the 2005 XB being certified, causing the
2 issuance of a fraudulent Smog Check Certificate of Compliance.

3 **Fraudulent Inspection #5**

4 40. Koch reviewed the OIS Test Data for Franks Smog Test Only. The review indicates
5 on April 19, 2023, a 2005 Nissan Sentra 1.8, CA license 5MQG409, VIN 3N1CB51D35L563658
6 (2005 Sentra), was tested and smog certificate # TG315299C was issued under licensed Smog
7 Check Technician #EO635593, Zait.

8 41. The Dynamic OBDII PID Chart for the 2005 Sentra shows between time stamp 178
9 and 18135 engine speed is steady at approximately 700 RPM. During this time the throttle is
10 fixed at 3.9% opening, the MAF is fixed at 5.2 gps, and the ignition timing advance for #1
11 cylinder is fixed at 8 degrees BTDC. After time stamp 18135 the engine speed accelerates to
12 approximately 1800 RPM. From the time the engine RPM increases off idle to the higher RPMs,
13 the throttle is fixed at the same 3.9% opening, the MAF is fixed at the same 5.2 gps, and the
14 ignition timing advance for #1 cylinder is also still fixed at the same 8 degrees BTDC.

15 42. During the entire period the dynamic data was collected, the only parameter that
16 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
17 remained unchanged even though the engine speed was increased. These readings are not
18 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
19 prove the Data Acquisition Device was not connected to the 2005 Sentra being certified, causing
20 the issuance of a fraudulent Smog Check Certificate of Compliance.

21 **Fraudulent Inspection #6**

22 43. Koch reviewed the OIS Test Data for Franks Smog Test Only. The review indicates
23 on April 27, 2023, a 2004 Chevrolet Avalanche C1500, CA license DODAHS, VIN
24 3GNEC12T14G271863 (2004 Avalanche), was tested and smog certificate # TG623298C was
25 issued under licensed Smog Check Technician #EO635593, Zait.

26 44. The Dynamic OBDII PID Chart for the 2004 Avalanche shows between time stamp
27 39 and 17181 engine speed is steady at approximately 650 RPM. During this time the throttle is
28 fixed at 3.9% opening, the MAF is fixed at 5.07 gps, MAP is fixed at 35 kPa, and the ignition

1 timing advance for #1 cylinder is fixed at 17 degrees BTDC. After time stamp 17181 the engine
2 speed accelerates to approximately 1775 RPM. From the time the engine RPM increases off idle
3 to the higher RPMs, the throttle is fixed at the same 3.9% opening, the MAF is fixed at the same
4 5.07 gps, the MAP is fixed at the same 35 kPa, and the ignition timing advance for #1 cylinder is
5 also still fixed at the same 17 degrees BTDC.

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

12 **Fraudulent Inspection #7**

13 46. Koch reviewed the OIS Test Data for Franks Smog Test Only. The review indicates
14 on October 21, 2023, a 2005 Honda Odyssey EX, CA license 8NMA841, VIN
15 5FNRL38465B010287 (2005 Odyssey), was tested and smog certificate # IX343422C was issued
16 under licensed Smog Check Technician #EO635593, Zait.

17 47. The Dynamic OBDII PID Chart for the 2005 Odyssey shows between time stamp 165
18 and 16201 engine speed is steady at approximately 650 RPM. During this time the throttle is
19 fixed at 18% opening, MAP is fixed at 97 kPa, and the ignition timing advance for #1 cylinder is
20 fixed at 0 degrees BTDC. After time stamp 16201 the engine speed accelerates to approximately
21 1775 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is
22 fixed at the same 18% opening, the MAP is fixed at the same 97 kPa, and the ignition timing
23 advance for #1 cylinder is also still fixed at the same 0 degrees BTDC.

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

1 prove the Data Acquisition Device was not connected to the 2005 Odyssey being certified,
2 causing the issuance of a fraudulent Smog Check Certificate of Compliance.

3 **Fraudulent Inspection #8**

4 49. Koch reviewed the OIS Test Data for Franks Smog Test Only. The review indicates
5 on December 1, 2023, a 2007 Honda Accord EX, CA license 5XMA369, VIN
6 1HGCM56837A011138 (2007 Accord), was tested and smog certificate # IX584620C was issued
7 under licensed Smog Check Technician #EO635593, Zait.

8 50. The Dynamic OBDII PID Chart for the 2007 Accord shows between time stamp 131
9 and 19351 engine speed is steady at approximately 750 RPM. During this time the throttle is
10 fixed at 13.3% opening, the MAF is fixed at 2.37 gps, MAP is fixed at 26 kPa, and the ignition
11 timing advance for #1 cylinder is fixed at 7 degrees BTDC. After time stamp 19351 the engine
12 speed accelerates to approximately 1700 RPM. From the time the engine RPM increases off idle
13 to the higher RPMs, the throttle is fixed at the same 13.3% opening, the MAF is fixed at the same
14 2.37 gps, the MAP is fixed at the same 26 kPa, and the ignition timing advance for #1 cylinder is
15 also still fixed at the same 7 degrees BTDC.

16 51. During the entire period the dynamic data was collected, the only parameter that
17 changed was engine RPM. The throttle position, MAF, MAP, and ignition timing advance
18 readings remained unchanged even though the engine speed was increased. These readings are
19 not characteristic or expected for normal engine operation. The discrepancies in the OIS Test
20 Data prove the Data Acquisition Device was not connected to the 2007 Accord being certified,
21 causing the issuance of a fraudulent Smog Check Certificate of Compliance.

22 **Fraudulent Inspection #9**

23 52. Koch reviewed the OIS Test Data for Franks Smog Test Only. The review indicates
24 on December 5, 2023, a 2001 Honda Accord Value, CA license 5GTS761, VIN
25 1HGCF86651A059564 (2001 Accord), was tested and smog certificate # IX752854C was issued
26 under licensed Smog Check Technician #EO635593, Zait.

27 53. The Dynamic OBDII PID Chart for the 2001 Accord shows between time stamp 115
28 and 16963 engine speed is steady at approximately 700 RPM. During this time the throttle is

1 fixed at 9.4% opening, MAP is fixed at 41 kPa, and the ignition timing advance for #1 cylinder is
2 fixed at 12 degrees BTDC. After time stamp 16963 the engine speed accelerates to approximately
3 1550 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is
4 fixed at the same 9.4% opening, the MAP is fixed at the same 41 kPa, and the ignition timing
5 advance for #1 cylinder is also still fixed at the same 12 degrees BTDC.

6 54. During the entire period the dynamic data was collected, the only parameter that
7 changed was engine RPM. The throttle position, MAP, and ignition timing advance readings
8 remained unchanged even though the engine speed was increased. These readings are not
9 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
10 prove the Data Acquisition Device was not connected to the 2001 Accord being certified, causing
11 the issuance of a fraudulent Smog Check Certificate of Compliance.

12 **Fraudulent Inspection #10**

13 55. Koch reviewed the OIS Test Data for Franks Smog Test Only. The review indicates
14 on December 18, 2023, a 2006 Toyota Corolla CE, CA license 5RLK032, VIN
15 1NXBR32EX6Z588060 (2006 Corolla), was tested and smog certificate # IX930630C was issued
16 under licensed Smog Check Technician #EO635593, Zait.

17 56. The Dynamic OBDII PID Chart for the 2006 Corolla shows between time stamp
18 12559 and 29810 engine speed is steady at approximately 600 RPM. During this time the throttle
19 is fixed at 15.7% opening, the MAF is fixed at 1.79 gps, and the ignition timing advance for #1
20 cylinder is fixed at 19 degrees BTDC. After time stamp 29810 the engine speed accelerates to
21 approximately 1650 RPM. From the time the engine RPM increases off idle to the higher RPMs,
22 the throttle is fixed at the same 15.7% opening, the MAF is fixed at the same 1.79 gps, and the
23 ignition timing advance for #1 cylinder is also still fixed at the same 19 degrees BTDC.

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

1 prove the Data Acquisition Device was not connected to the 2006 Corolla being certified, causing
2 the issuance of a fraudulent Smog Check Certificate of Compliance.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements - Respondent Franks Smog Test Only)**

5 58. Respondent Franks Smog Test Only's registration is subject to disciplinary action
6 pursuant to section 9884.7, subdivision (a)(1), in that Respondents made or authorized statements
7 which they knew or in the exercise of reasonable care should have known to be untrue or
8 misleading, as follows: Respondents certified that the vehicles set forth above in paragraphs 28-
9 57, had passed inspection and were in compliance with applicable laws and regulations. In fact,
10 Respondents conducted the inspections on those vehicles using the clean plugging method in
11 order to issue smog certificates of compliance, and did not test or inspect the vehicles as required
12 by Health and Safety Code section 44012.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Fraud - Respondent Franks Smog Test Only)**

15 59. Respondent Franks Smog Test Only's registration is subject to disciplinary action
16 pursuant to section 9884.7, subdivision (a)(4), in that Respondent Franks Smog Test Only's
17 employees committed acts which constitute fraud by issuing electronic certificates of compliance
18 for the vehicles set forth above in paragraphs 28-57, without performing bona fide inspections of
19 the emission control devices and systems on those vehicles, thereby depriving the People of the
20 State of California of the protection afforded by the Motor Vehicle Inspection Program.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with the Motor Vehicle Inspection Program –**

23 **Respondent Franks Smog Test Only)**

24 60. Respondent Franks Smog Test Only's smog station license is subject to disciplinary
25 action pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with
26 Health and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth
27 above in paragraphs 28-57, Respondents failed to comply with the following sections of the
28 Health and Safety Code:

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

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

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program - Respondent Franks Smog Test Only)

61. Respondent Franks Smog Test Only's smog station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth above in paragraphs 28-57, Respondents failed to comply with the following provisions of the California Code of Regulations, Title 16, as follows:

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

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit - Respondent Franks Smog Test Only)

62. Respondent Franks Smog Test Only's smog station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in paragraphs 28-57, Respondents employees committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on

1 the vehicles, thereby depriving the People of the State of California of the protection afforded by
2 the Motor Vehicle Inspection Program.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Violations of the Motor Vehicle Inspection Program – Respondent Zait)**

5 63. Respondent Zait’s smog check inspector license is subject to discipline pursuant to
6 Health and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth
7 above in paragraphs 28-57, Respondent Zait failed to comply with section 44012 of the Health
8 and Safety Code in a material respect, as follows: Respondent Zait failed to perform the emission
9 control tests on those vehicles in accordance with procedures prescribed by the department.

10 **SEVENTH CAUSE FOR DISCIPLINE**

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

13 64. Respondent Zait’s smog check inspector license is subject to discipline pursuant to
14 Health and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth
15 above in paragraphs 28-57, Respondent Zait failed to comply with provisions of the California
16 Code of Regulations, title 16, as follows:

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

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

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

23 **EIGHTH CAUSE FOR DISCIPLINE**

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

25 65. Respondent Zait’s smog check inspector license is subject to discipline pursuant to
26 Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety
27 Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
28 paragraphs 28-57, Respondent Zait committed acts involving dishonesty, fraud or deceit whereby

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

5 **OTHER MATTERS**

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

11 67. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station
12 License Number TC 235887 issued to Respondent Franks Smog Test Only is revoked or
13 suspended following a hearing under this article, any additional license issued under Chapter 5,
14 Part 5, Division 26 in the name of said licensee may be likewise revoked or suspended by the
15 Director.

16 68. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
17 Number EO 635593, issued to Respondent Zait, is revoked or suspended following a hearing
18 under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name
19 of said licensee may be likewise revoked or suspended by the Director.

20 **PRAYER**

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

24 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
25 235887, issued to Shukran Qaqish, dba Franks Smog Test Only;

26 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to
27 Respondent Shukran Qaqish;
28

3. Revoking or suspending Smog Check Test-Only Station Number TC 235887, issued to Shukran Qaqish, dba Franks Smog Test Only;

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

5. Revoking or suspending Smog Check Inspector License Number EO 635593, issued to Elias Fares Zait;

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

7. Ordering Shukran Qaqish and Elias Fares Zait to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3 and if placed on probation, the costs of probation monitoring; and,

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

DATED: As of digital signature date

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

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