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

12 In the Matter of the Accusation Against:

Case No. **79/25-11868**

13 **GABRIEL FRANCO dba**
14 **Z SMOG**
1290 W 9th Street
Upland, CA 91786

OAH No.

ACCUSATION

15 **Automotive Repair Dealer Registration No.**
16 **ARD 286422; Smog Check, Test Only,**
17 **Station License No. TC 286422**

18 **Mailing Address:**
4264 Lockhaven Ln
Riverside, CA 92505

19 **-and-**

20 **GABRIEL FRANCO**
21 **4264 Lockhaven Ln**
22 **Riverside, CA 92505**

23 **Smog Check Inspector License Number EO**
24 **638808**

25 Respondents.
26
27
28

1 **PARTIES**

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

4 2. On or about March 30, 2017, Bureau of Automotive Repair issued Automotive Repair
5 Dealer Registration Number ARD 286422 to Gabriel Franco; dba Z Smog (Respondent Z Smog).
6 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
7 charges brought herein and will expire on March 31, 2026, unless renewed.

8 3. On or about April 13, 2017, Bureau of Automotive Repair issued Smog Check, Test-
9 Only License Number TC 286422 to Gabriel Franco; dba Z Smog. The Smog Check, Test-Only
10 License was in full force and effect at all times relevant to the charges brought herein and will
11 expire on March 31, 2026, unless renewed.

12 4. Respondent is also certified as a STAR Station. The certification was issued on July
13 26, 2017, and will remain active unless the ARD registration and/or Smog Check Station license is
14 revoked, canceled, licenses become delinquent, or the certification is suspended.

15 5. On or about December 9, 2015, Bureau of Automotive Repair issued Smog Check
16 Inspector License Number EO 638808 to Gabriel Franco (Respondent Franco). The Smog Check
17 Inspector license was in full force and effect at all times relevant to the charges brought herein
18 and will expire on May 31, 2026, unless renewed.

19 **JURISDICTION**

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

22 7. Section 9884.7 of the Business and Professions Code¹ provides that the Director may
23 revoke an ARD registration.

24 8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
25 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
26

27
28 ¹ All statutory references herein shall be to the Business and Professions Code unless
specifically stated otherwise.

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 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.

...

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

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

4 . . .

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

6 . . .

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

10 (1) Clean plugging, as defined by the department.

11 . . .

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

14 . .

14 **REGULATORY PROVISIONS**

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

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

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

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

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

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

25 . . .

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

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

1 **COST RECOVERY**

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

8 **VID DATA REVIEW**

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

24 20. Data retrieved and recorded during an OIS smog check includes; the eVIN, which is
25 the digitally stored VIN programmed into the vehicle's Powertrain Control Module ("PCM"); the
26 communication protocol, which is the manufacturer/vehicle specific language the PCM uses to
27 relay information; and the number of Parameter Identifications ("PIDs"), which is the number of
28 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).²
- 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.

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

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

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

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

22 26. The smog check technician must sign the VIR under penalty of perjury to indicate
23 that the inspection was done within Bureau guidelines. Smog Check Stations are required by law
24 to maintain a copy of the VIR along with a copy of the repair invoice for three years. The
25 consumer’s VIR serves as a receipt and proof that the VID was updated, and a Certificate of
26 Compliance was issued. Licensed Smog Check Technicians are the only persons authorized by
27 the Bureau to perform official inspections. They are issued a personal access code and a license,
28

1 which are used to gain access to the EIS and OIS to perform smog check inspections.

2 Unauthorized use of another technician's access code or license is prohibited.

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

16 **Clean Plug # 1: 2002 GMC New Sierra C3500**

17 28. Bureau Program Representative David Martin Del Campo (Del Campo) reviewed the
18 OIS Test Data for Z Smog. The review shows that on June 18, 2024, a 2002 GMC New Sierra
19 C3500, CA license 6Y88598, VIN 1GDJC39U32F216875 was tested and smog certificate #
20 TY998380C was issued under licensed Smog Check Inspector # EO 638808, Gabriel Franco.

21 29. The Dynamic Data Charts for the 2002 GMC New Sierra C3500 shows that between
22 time stamp 351 and 19492, the engine RPM begins around 900 then drops and is steady at around
23 800 RPM. During this time, the data shows that the throttle is fluctuating between 7.1% and
24 11.8% opening, the MAP is fluctuating between 32 kPa and 45 kPa, and the MAF is fluctuating
25 between 5.66 gps and 7.33 gps. After time stamp 19492, the engine RPM is increased and then

26 ³ "Clean plugging" refers to the use of another vehicle's properly functioning On Board
27 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic
28 readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that
are not in smog compliance and/or not present for testing.

1 held steady at around 1500 RPM. From the time the engine RPM increases from off idle to the
2 higher RPMs, the data shows that the throttle is fluctuating between 7.1% and 11.4% opening, the
3 MAP is fluctuating between 35 kPa to 43 kPa, and the MAF rises from 6.42 gps to 6.90 gps then
4 ultimately drops to 5.51 gps.

5 30. The idle and elevated engine RPMs along with the improbable throttle positions,
6 MAP, and MAF readings are not characteristic or expected for normal engine operation. The
7 throttle position readings are expected to be stable at idle and increase with the elevated engine
8 RPM, not fluctuate. The MAF readings are expected to be stable at idle and increase with the
9 elevated engine RPM, not fluctuate or drop to a value less than idle. The MAP readings are
10 expected to be stable at idle and decrease with the elevated engine RPM, not fluctuate. These
11 readings are not characteristic or expected for normal engine operation. The discrepancies in the
12 OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected as required to
13 the 2002 GMC New Sierra C3500 being certified, causing the issuance of a fraudulent Smog
14 Certificate of Compliance.

15 **Clean Plug # 2: 2001 Chevrolet Silverado C1500**

16 31. Del Campo reviewed the OIS Test Data for Z Smog. The review shows that on June
17 20, 2024, a 2001 Chevrolet Silverado C1500, CA license 6R51704, VIN 2GCEC19V711405831
18 was tested and smog certificate # TY998389C was issued under licensed Smog Check Inspector #
19 EO 638808, Gabriel Franco.

20 32. The Dynamic Data Charts for the 2001 Chevrolet Silverado C1500 shows that
21 between time stamp 342 and 17714, the engine RPM begins around 250 then rises and is steady at
22 around 575 RPM. During this time, the data shows that the throttle is fluctuating between 7.1%
23 and 11.8% opening, the MAP is fluctuating between 32 kPa to 45 kPa, and the MAF is
24 fluctuating between 3.1 gps and 4.77 gps. After time stamp 17714, the engine RPM is increased
25 and then held steady at around 1575 RPM. From the time the engine RPM increases from off idle
26 to the higher RPMs, the data shows that the throttle rises from 6.3% to 11.4% then ultimately
27 drop to 6.7%, the MAP is fluctuating between 33 kPa and 45 kPa, and the MAF is fluctuating
28 between 2.75 gps and 4.72 gps.

33. The idle and steady elevated engine RPMs along with the improbable throttle positions, MAP, and MAF readings are not characteristic or expected for normal engine operation. The throttle position readings are expected to be stable at idle and increase with the elevated engine RPM, not fluctuate, rise and drop unexpectedly, or drop to a value less than idle. The MAF readings are expected to be stable at idle and increase with the elevated engine RPM, not fluctuate or drop to a value less than idle. The MAP readings are expected to be stable at idle and decrease with the elevated engine RPM, not fluctuate. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected as required to the 2001 Chevrolet Silverado C1500 being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Clean Plug # 3: 2003 GMC Sonoma

34. Del Campo reviewed the OIS Test Data for Z Smog. The review shows that on June 22, 2024, a 2003 GMC Sonoma, CA license 7E47287, VIN 1GTCS19XX38109407 was tested and smog certificate # TY998395C was issued under licensed Smog Check Inspector # EO 638808, Gabriel Franco.

35. The Dynamic Data Charts for the 2003 GMC Sonoma shows that between time stamp 340 and 21017, the engine RPM is steady at around 775 RPM. During this time, the data shows that the throttle is fluctuating between 7.1% and 11.8% opening, the MAP is fluctuating between 32 kPa to 45 kPa, and the MAF is fluctuating between 3.1 gps and 4.77 gps. After time stamp 21017, the engine RPM is increased and then held steady at around 1800 RPM. From the time the engine RPM increases from off idle to the higher RPMs, the data shows that the throttle is fluctuating between 7.5% to 11.8% opening, the MAP is fluctuating between 33 kPa to 45 kPa, and the MAF is fluctuating between 2.87 gps and 4.84 gps.

36. The steady idle and steady elevated engine RPMs along with the improbable throttle positions, MAP, and MAF readings are not characteristic or expected for normal engine operation. The throttle position readings are expected to be stable at idle and increase with the elevated engine RPM, not fluctuate. The MAF readings are expected to be stable at idle and increase with the elevated engine RPM, not fluctuate or drop to a value less than idle. The MAP

1 readings are expected to be stable at idle and decrease with the elevated engine RPM, not
2 fluctuate. These readings are not characteristic or expected for normal engine operation. The
3 discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not
4 connected as required to the 2003 GMC Sonoma being certified, causing the issuance of a
5 fraudulent Smog Certificate of Compliance.

6 **Clean Plug # 4: 2003 Mercedes-Benz C 230K Sport Coupe**

7 37. Del Campo reviewed the OIS Test Data for Z Smog. The review shows that on June
8 27, 2024, a 2003 Mercedes-Benz C 230K Sport Coupe, CA license 7JGG783, VIN
9 WDBRN40JX3A384696 was tested and smog certificate # IZ785416C was issued under licensed
10 Smog Check Inspector # 638808, Gabriel Franco.

11 38. The Dynamic Data Charts for the 2003 Mercedes-Benz C 230K Sport Coupe shows
12 that between time stamp 832 and 19541, the engine RPM is steady at around 625 RPM. During
13 this time, the data shows that the throttle is at 4.7% opening, the MAP rises from 36 kPa to 46
14 kPa, and the MAF rises from 3.55 gps to 4.77 gps. After time stamp 19541, the engine RPM is
15 increased and then held steady at around 1630 RPM. From the time the engine RPM increases
16 from off idle to the higher RPMs, the data shows that the throttle is at 0.0% opening, the MAP
17 drops from 46 kPa to 40 kPa, and the MAF drops from 5.06 gps to 2.8 gps.

18 39. The steady idle and steady elevated engine RPMs along with the improbable throttle
19 position, MAP, and MAF readings are not characteristic or expected for normal engine operation.
20 The throttle position readings are expected to be stable at idle and increase with the elevated
21 engine RPM, not drop unexpectedly or drop to a value less than idle. The MAF readings are
22 expected to be stable at idle and increase with the elevated engine RPM, not drop unexpectedly or
23 drop to a value less than idle. The MAP readings are expected to be stable at idle and decrease
24 with the elevated engine RPM, not rise and drop unexpectedly. These readings are not
25 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
26 prove the OIS Data Acquisition Device (DAD) was not connected as required to the 2003
27 Mercedes-Benz C 230K Sport Coupe being certified, causing the issuance of a fraudulent Smog
28 Certificate of Compliance.

Clean Plug # 5: 2004 Chevrolet Suburban C1500

40. Del Campo reviewed the OIS Test Data for Z Smog. The review shows that on June 27, 2024, a 2004 Chevrolet Suburban C1500, CA license 5VSL804, VIN 3GNEC16T04G211180 was tested and smog certificate # IZ785424C was issued under licensed Smog Check Inspector # 638808, Gabriel Franco.

41. The Dynamic Data Charts for the 2004 Chevrolet Suburban C1500 shows that between time stamp 350 and 20546, the engine RPM is steady at around 700 RPM. During this time, the data shows that the throttle drops from 18.0% gradually down to 15.3% opening, the MAP is fluctuating between 32 kPa and 45 kPa, and the MAF rises from 5.4 gps to 7.31 gps before slightly dropping and rising to 7.44 gps. After time stamp 20546, the engine RPM is increased and then held steady at around 1575 RPM. From the time the engine RPM increases from off idle to the higher RPMs, the data shows that the throttle drops from 16.9% to 12.9% opening, the MAP drops from 40 kPa to 34 kPa then rises to 46 kPa, and the MAF is varying between 7.1 gps and 7.45 gps before dropping from 7.39 gps to 5.98 gps.

42. The steady idle and steady elevated engine RPMs along with the improbable throttle position, MAP, and MAF readings are not characteristic or expected for normal engine operation. The throttle position readings are expected to be stable at idle and increase with the elevated engine RPM, not drop unexpectedly or drop to a value less than idle. The MAF readings are expected to be stable at idle and increase with the elevated engine RPM, not rise and drop unexpectedly or vary abnormally. The MAP readings are expected to be stable at idle and decrease with the elevated engine RPM, not fluctuate, rise and drop unexpectedly, or rise to a value more than idle. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected as required to the 2004 Chevrolet Suburban C1500 being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

Clean Plug # 6: 2005 Nissan Sentra 1.8

43. Del Campo reviewed the OIS Test Data for Z Smog. The review shows that on July 03, 2024, a 2005 Nissan Sentra 1.8, CA license 6EYH607, VIN 3N1CB51D35L543832 was

1 tested and smog certificate # IZ785438C was issued under licensed Smog Check Inspector #
2 638808, Gabriel Franco.

3 44. The Dynamic Data Charts for the 2005 Nissan Sentra 1.8 shows that between time
4 stamp 957 and 29027, the engine RPM begins around 1000 RPM then drops and is steady at
5 around 725 RPM. During this time, the data shows that the throttle drops from 11.4% to 9.8%
6 opening and the MAF drops from 2.34 gps to 0.69 gps. After time stamp 29027, the engine RPM
7 is increased and then held above 1319 RPM. From the time the engine RPM increases from off
8 idle to the higher RPMs, the data shows that the throttle rises from 6.3% to 11.8% opening and
9 the MAF rises from 0.30 gps to 1.77 gps.

10 45. The idle and elevated engine RPMs along with the improbable throttle positions and
11 MAF readings are not characteristic or expected for normal engine operation. The throttle
12 position readings are expected to be stable at idle and increase with the elevated engine RPM, not
13 drop or rise unexpectedly or drop to a value less than idle. The MAF readings are expected to be
14 stable at idle and increase with the elevated engine RPM, not drop and rise unexpectedly or drop
15 to a value less than idle. These readings are not characteristic or expected for normal engine
16 operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD)
17 was not connected as required to the 2005 Nissan Sentra 1.8 being certified, causing the issuance
18 of a fraudulent Smog Certificate of Compliance.

19 **Clean Plug # 7: 2005 Chevrolet Silverado C3500**

20 46. Del Campo reviewed the OIS Test Data for Z Smog. The review shows that on
21 August 26, 2024, a 2005 Chevrolet Silverado C3500, CA license 70924S1, VIN
22 1GBJC39U35E190233 was tested and smog certificate # JB062780C was issued under licensed
23 Smog Check Inspector # 638808, Gabriel Franco.

24 47. The Dynamic Data Charts for the 2005 Chevrolet Silverado C3500 shows that
25 between time stamp 342 and 17697, the engine RPM starts around 315 RPM then rises and is
26 steady at around 750 RPM. During this time, the data shows that the throttle is fluctuating
27 between 7.1% and 11.8% opening, the MAP is fluctuating between 32 kPa and 45 kPa, and the
28 MAF was fluctuating between 5.66 gps and 7.33 gps. After time stamp 17697, the engine RPM is

1 increased and then held steady at around 1550 RPM. From the time the engine RPM increases
2 from off idle to the higher RPMs, the data shows that the throttle rises slightly from 8.6 to 11.8%
3 before dropping to 7.5% opening, the MAP is fluctuating between 33 kPa and 45 kPa, and the
4 MAF is fluctuating between 5.43 gps to 7.4 gps.

5 48. The idle and steady elevated engine RPMs along with the improbable throttle
6 positions, MAP, and MAF readings are not characteristic or expected for normal engine
7 operation. The throttle position readings are expected to be stable at idle and increase with the
8 elevated engine RPM, not fluctuate, drop unexpectedly, or drop to a value less than idle. The
9 MAF readings are expected to be stable at idle and increase with the elevated engine RPM, not
10 fluctuate or drop to a value less than idle. The MAP readings are expected to be stable at idle and
11 decrease with the elevated engine RPM, not fluctuate or rise to a value more than idle. These
12 readings are not characteristic or expected for normal engine operation. The discrepancies in the
13 OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected as required to
14 the 2005 Chevrolet Silverado C3500 being certified, causing the issuance of a fraudulent Smog
15 Certificate of Compliance.

16 **Clean Plug # 8: 2004 Pontiac Grand Prix GT**

17 49. Del Campo reviewed the OIS Test Data for Z Smog. The review shows that on
18 September 9, 2024, a 2004 Pontiac Grand Prix GT, CA license 5HGR850, VIN
19 2G2WP522X41157616 was tested and smog certificate # UC881307C was issued under licensed
20 Smog Check Inspector # 638808, Gabriel Franco.

21 50. The Dynamic Data Charts for the 2004 Pontiac Grand Prix GT shows that between
22 time stamp 334 and 19081, the engine RPM is steady at around 750 RPM. During this time, the
23 data shows that the throttle is varying between 2.0% to 4.7% opening, the MAP rises from 42 kPa
24 to 46 kPa before ultimately dropping to 34 kPa, and the MAF is fluctuating between 3.05 gps and
25 4.53 gps. After time stamp 19081, the engine RPM is increased and then held steady at around
26 1650 RPM. From the time the engine RPM increases from off idle to the higher RPMs, the data
27 shows that the throttle is fluctuating between 0.8% to 5.1% opening, the MAP is fluctuating
28 between 33 kPa and 45 kPa, and the MAF is fluctuating between 3.1 gps to 4.51 gps.

1 51. The steady idle and steady elevated engine RPMs along with the improbable throttle
2 positions, MAP, and MAF readings are not characteristic or expected for normal engine
3 operation. The throttle position readings are expected to be stable at idle and increase with the
4 elevated engine RPM, not vary abnormally, fluctuate, or drop to a value less than idle. The MAF
5 readings are expected to be stable at idle and increase with the elevated engine RPM, not fluctuate
6 or drop to a value less than idle. The MAP readings are expected to be stable at idle and decrease
7 with the elevated engine RPM, not rise and drop unexpectedly, fluctuate, or rise to a value more
8 than idle. These readings are not characteristic or expected for normal engine operation. The
9 discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not
10 connected as required to the 2004 Pontiac Grand Prix GT being certified, causing the issuance of
11 a fraudulent Smog Certificate of Compliance.

12 **Clean Plug # 9: 2005 Toyota Highlander**

13 52. Del Campo reviewed the OIS Test Data for Z Smog. The review shows that on
14 October 23, 2024, a 2005 Toyota Highlander, CA license RTF6360, VIN JTEGD21A150108961
15 was tested and smog certificate # UE785263C was issued under licensed Smog Check Inspector #
16 638808, Gabriel Franco.

17 53. The Dynamic Data Charts for the 2005 Toyota Highlander shows that between time
18 stamp 842 and 20556, the engine RPM is steady at around 675 RPM. During this time, the data
19 shows that the throttle drops from 16.9% to 14.9% opening and the MAF rises from 4.23 gps to
20 4.32 gps. After time stamp 20556, the engine RPM is increased and then held steady at around
21 1775 RPM. From the time the engine RPM increases from off idle to the higher RPMs, the data
22 shows that the throttle drops from 16.1% to 14.1% opening and the MAF drops from 4.54 gps to
23 3.89 gps.

24 54. The steady idle and steady elevated engine RPMs along with the improbable throttle
25 positions and MAF readings are not characteristic or expected for normal engine operation. The
26 throttle positions readings are expected to be stable at idle and increase with the elevated engine
27 RPM, not drop unexpectedly or drop to a value less than idle. The MAF readings are expected to
28 be stable at idle and increase with the elevated engine RPM, not drop unexpectedly or drop to a

1 value less than idle. These readings are not characteristic or expected for normal engine
2 operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD)
3 was not connected as required to the 2005 Toyota Highlander being certified, causing the
4 issuance of a fraudulent Smog Certificate of Compliance.

5 **Clean Plug # 10: 2001 Volvo V70 2.4T**

6 55. Del Campo reviewed the OIS Test Data for Z Smog. The review shows that on
7 November 19, 2024, a 2001 Volvo V70 2.4T, CA license 6YEE532, VIN
8 YV1SW58D511014560 was tested and smog certificate # UG195180C was issued under licensed
9 Smog Check Inspector # 638808, Gabriel Franco.

10 56. The Dynamic Data Charts for the 2001 Volvo V70 2.4T shows that between time
11 stamp 845 and 23126, the engine RPM begins around 1245 RPM than drops and is steady at
12 around 800 RPM. During this time, the data shows that the throttle drops from 5.5% to 0.8%
13 opening and the MAF rises from 4.46 gps to 4.64 gps. After time stamp 23126, the engine RPM is
14 increased and then held steady at around 1675 RPM. From the time the engine RPM increases
15 from off idle to the higher RPMs, the data shows that the throttle rises from 0.0% to 0.8%
16 opening and the MAF rises from 3.5 gps to 4.56 gps.

17 57. The idle and steady elevated engine RPMs along with the improbable throttle
18 positions and MAF readings are not characteristic or expected for normal engine operation. The
19 throttle position readings are expected to be stable at idle and increase with the elevated engine
20 RPM, not drop unexpectedly or drop to a value less than idle. The MAF readings are expected to
21 be stable at idle and increase with the elevated engine RPM, not rise and drop unexpectedly or
22 drop to a value less than idle. These readings are not characteristic or expected for normal engine
23 operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD)
24 was not connected as required to the 2001 Volvo V70 2.4T being certified, causing the issuance
25 of a fraudulent Smog Certificate of Compliance.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements - Respondent Z Smog)**

3 58. Respondent Z Smog's registration is subject to disciplinary action pursuant to section
4 9884.7, subdivision (a)(1), in that Respondents made or authorized statements which they knew
5 or in the exercise of reasonable care should have known to be untrue or misleading, as follows:
6 Respondents certified that the vehicles set forth above in paragraphs 28-57, had passed inspection
7 and were in compliance with applicable laws and regulations. In fact, Respondents conducted the
8 inspections on those vehicles using the clean plugging method in order to issue smog certificates
9 of compliance, and did not test or inspect the vehicles as required by Health and Safety Code
10 section 44012.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud - Respondent Z Smog)**

13 59. Respondent Z Smog's registration is subject to disciplinary action pursuant to section
14 9884.7, subdivision (a)(4), in that Respondent Z Smog's employees committed acts which
15 constitute fraud by issuing electronic certificates of compliance for the vehicles set forth above in
16 paragraphs 28-57, without performing bona fide inspections of the emission control devices and
17 systems on those vehicles, thereby depriving the People of the State of California of the
18 protection afforded by the Motor Vehicle Inspection Program.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with the Motor Vehicle Inspection Program –**
21 **Respondent Z Smog)**

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

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

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

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program -** 9 **Respondent Z Smog)**

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

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

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

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Dishonesty, Fraud or Deceit - Respondent Z Smog)**

21 62. Respondent Z Smog's smog station license is subject to disciplinary action pursuant
22 to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and
23 Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
24 paragraphs 28-57, Respondents employees committed acts involving dishonesty, fraud or deceit
25 whereby another was injured by issuing electronic certificates of compliance for those vehicles
26 without performing bona fide inspections of the emission control devices and systems on the
27 vehicles, thereby depriving the People of the State of California of the protection afforded by the
28 Motor Vehicle Inspection Program.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program – Respondent Franco)**

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

9 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

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

18 (b) **Section 3340.41, subdivision (c)**: Respondent Franco entered false information into
19 the OIS.

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

22 **EIGHTH CAUSE FOR DISCIPLINE**

23 **(Dishonesty, Fraud or Deceit - Respondent Franco)**

24 65. Respondent Franco’s smog check inspector license is subject to discipline pursuant to
25 Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety
26 Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in
27 paragraphs 28-57, Respondent Franco committed acts involving dishonesty, fraud or deceit
28 whereby another was injured by issuing electronic certificates of compliance for those vehicles

1 without performing bona fide inspections of the emission control devices and systems on the
2 vehicles., thereby depriving the People of the State of California of the protection afforded by the
3 Motor Vehicle Inspection Program.

4 **OTHER MATTERS**

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

10 67. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station
11 License Number TC 286422 issued to Respondent Z Smog is revoked or suspended following a
12 hearing under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the
13 name of said licensee may be likewise revoked or suspended by the Director.

14 68. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
15 Number EO 638808, issued to Respondent Franco, is revoked or suspended following a hearing
16 under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name
17 of said licensee may be likewise revoked or suspended by the Director.

18 **PRAYER**

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

22 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
23 286422, issued to Gabriel Franco; dba Z Smog;

24 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to
25 Respondent Gabriel Franco;

26 3. Revoking or suspending Smog Check, Test-Only License Number TC 286422, issued
27 to Gabriel Franco; dba Z Smog;

1 4. Revoking or suspending Smog Check Inspector License Number EO 638808, issued
2 to Gabriel Franco;

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

5 6. Ordering Gabriel Franco to pay the Bureau of Automotive Repair the reasonable costs
6 of the investigation and enforcement of this case, pursuant to Business and Professions Code
7 section 125.3 and if placed on probation, the costs of probation monitoring; and,

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

9
10
11 DATED: As of Digital Signature Date

Dorais,
Patrick@DCA

Digitally signed by
Dorais, Patrick@DCA
Date: 2025.08.28
13:48:43 -07'00'

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

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