1	Kamala D. Harris	
2	Attorney General of California LINDA K. SCHNEIDER	
3	Supervising Deputy Attorney General LAURO A. PAREDES	
4	Deputy Attorney General State Bar No. 254663	
5	110 West "A" Street, Suite 1100	
	San Diego, CA 92101 P.O. Box 85266	
6	San Diego, CA 92186-5266 Telephone: (619) 645-2091	
7	Facsimile: (619) 645-2061 Attorneys for Complainant	
8		RE THE
9		CONSUMER AFFAIRS 'AUTOMOTIVE REPAIR
10	STATE OF	CALIFORNIA
11		1
12	In the Matter of the Accusation Against:	Case No. 79/13-53
13	NESTOR ALONSO RODRIGUEZ, DBA ROMAN SMOG TEST ONLY;	FIRST AMENDED ACCUSATION
14	6645 Mission Blvd., Suite C Riverside, CA 92509	
15		
16	Automotive Repair Dealer Registration No. ARD 267565	
17	Smog Check-Test Only Station License No. TC 267565	
18	ALFREDO IVAN ROMAN; 24117 Kernwood Drive	
19	Moreno Valley, CA 92557	
20	Advanced Emissions Specialist Technician License No. EA 631208 (to be redesignated	
21	upon renewal as EO 631208 and/or EI631208),	
22	CHARLES GUZMAN ROMAN	
23	3725 Arora Street Riverside, CA 92509	
24	Advanced Emissions Specialist Technician License No. EA 634710 (to be redesignated	
25	upon renewal as EO 634710 and/or EI 634710)	
26		
27		
28	Respondents.	
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		First Amended Accus

1	Complainant alleges:
2	PARTIES
3	1. Patrick Dorais (Complainant) brings this First Amended Accusation solely in his
4	official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer
5	Affairs.
6	Automotive Repair Dealer Registration
7	2. On December 28, 2011, the Bureau issued Automotive Repair Dealer Registration
8	Number ARD 267565 ("registration") to Nestor Alonso Rodriguez ("Respondent Rodriguez"),
9	doing business as Roman Smog Test Only. The registration was in full force and effect at all
10	times relevant to the charges brought herein and expired on December 31, 2013.
11	Smog Check Test Only Station License
12	3. On January 12, 2012, the Bureau issued Smog Check Test Only Station License
13	Number TC 267565 ("station license") to Respondent Rodriguez. The station license was in full
14	force and effect at all times relevant to the charges brought herein and expired December 31,
15	2013.
16	Advanced Emission Specialist Technician License
17	4. On or about July 27, 2009, the Bureau issued Advanced Emission Specialist
18	Technician License Number EA 631208 ("technician license") to Alfredo Ivan Roman
19	("Respondent Alfredo"). The technician license was in full force and effect at all times relevant
20	to the charges brought herein and will expired on December 31, 2013. Upon renewal Respondent
21	Alfredo Ivan Roman's license will be redesignated as EO 631208 and/or EI 631208. <sup>1</sup>
22	Advanced Emission Specialist Technician License
23	5. On or about August 30, 2012, the Bureau issued Advanced Emission Specialist
24	Technician License Number EA 634710 ("technician license") to Charles Guzman Roman
25	("Respondent Charles"). The technician license was in full force and effect at all times relevant
26	<sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,
27	3340.29 and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license to Smog Check Inspector (EO) license and/or Smog
28	Check Repair Technician (EI) license.
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1	to the charges brought herein and will expire on November 30, 2014, unless renewed. Upon
2	renewal Respondent Charles Guzman Roman's license will be redesignated as EO 634710and/or
3	EI 634710.
4	JURISDICTION
5	6. This First Amended Accusation is brought before the Director of Consumer Affairs
6	(Director) for the Bureau of Automotive Repair, under the authority of the following laws.
7	7. Business and Professions Code ("Code") section 477 provides, in pertinent part, that
8	"Board" includes "bureau," "commission," "committee," "department," "division," "examining
9	committee," "program," and "agency." "License" includes certificate, registration or other means
10	to engage in a business or profession regulated by the Code.
11	8. Section 9884.7 of the Code states, in pertinent part:
12	(a) The director, where the automotive repair dealer cannot show there
13	was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the
14	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
15	automotive repair dealer.
16 17	(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.
18	unitité of misiouding.
19	(A) A man of the second and and it is a second it is a formal
20	(4) Any other conduct which constitutes fraud.
21	(b) Except as provided for in subdivision (c), if an automotive repair
22	dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently
23	the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate
24	his or her other places of business.
25	(c) Notwithstanding subdivision (b), the director may invalidate temporarily or permanently, the registration for all places of business
26	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
27	willful violations of this chapter, or regulations adopted pursuant to it.
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1	9. Code section 9884.13 provides, in pertinent part: that the expiration of a valid
2	registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
3	against an automotive repair dealer or to render a decision temporarily or permanently
4	invalidating (suspending or revoking) a registration.
5	10. Health and Safety Code section 44002 provides, in pertinent part, that the Director
6	has all the powers and authority granted under the Automotive Repair Act for enforcing the
7	Motor Vehicle Inspection Program.
8	STATUTORY PROVISIONS
9	11. Section 44072.2 of the Health and Safety Code states, in pertinent part:
10	The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner,
11	officer, or director thereof, does any of the following:
12	(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations
13	adopted pursuant to it, which related to the licensed activities.
14	(c) Violates any of the regulations adopted by the director pursuant to
15	this chapter.
16	(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.
17	12. Health & Saf. Code section 44072.4 states, in pertinent part:
18	The director may take disciplinary action against any licensee after a
19	hearing as provided in this article by any of the following:
20	(a) Imposing probation upon terms and conditions to be set forth by the director.
21	(b) Suspending the license.
22	(c) Revoking the license.
23	13. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
24	
25	suspension of a license by operation of law, or by order or decision of the Director of Consumer
26	Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
27	of jurisdiction to proceed with disciplinary action.
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1	14. Health & Saf. Code section 44072.8 states that when a license has been revoked or
2	suspended following a hearing under this article, any additional license issued under this chapter
3	in the name of the licensee may be likewise revoked or suspended by the director.
4	REGULATORY PROVISIONS
5	15. California Code of Regulations, title 16, section 3340.28, states:
6	
7 8	(e) Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.
9	
10	COST RECOVERY
11	16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
12	administrative law judge to direct a licentiate found to have committed a violation or violations of
13	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14	enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
15	renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
.16	included in a stipulated settlement.
17	BACKGROUND
18	17. On July 31, 2012 and September 6, 2012, the Bureau of Automotive Repair (BAR)
19	investigated Roman Smog Test Only station and found multiple instances of fraud. During the
20	two days of surveillance all three Respondent's were video recorded falsifying smog test results
21	using the clean piping method and issuing fraudulent electronic certificates of compliance.
22	<b>SURVEILLANCE OPERATION – JULY 31, 2012</b>
23	18. On or about July 31, 2012, the Bureau performed a surveillance operation at
24	Respondent, Roman Smog Test Only. The surveillance operation and information obtained from
25	the Bureau's Vehicle Information Database ("VID") revealed that between 1725 hours and 1746
26	hours, Respondent Alfredo performed a smog inspection that resulted in the issuance of electronic
27	certificate of compliance for a 1993 Honda Accord set forth as vehicle number 1 in Table 1,
28	below, certifying that he had tested and inspected that vehicle and that the vehicle was in
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compliance with applicable laws and regulations. In fact, Respondent Alfredo performed the 1 smog inspection using the clean piping method.<sup>2</sup> Alfredo used the tail pipe emissions of a Nissan 2 pickup in order to issue the electronic certificate of compliance. Further, Respondent Charles 3 assisted in the performance of the smog inspection and certification of the 1993 Honda Accord 4 listed as vehicle number 1 in Table 1 below. 5

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## **SURVEILLANCE OPERATION – SEPTEMBER 6, 2012**

19. On or about September 6, 2012, the Bureau performed a second surveillance 7 operation at Respondent, Roman Smog Test Only. The surveillance operation and information 8 obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 1707 9 hours and 1740 hours, Respondent Alfredo performed two (2) smog inspections that resulted in 10 the issuance of electronic certificates of compliance for vehicles number 2 and 3 set forth in Table 11 1 below, certifying that he had tested and inspected those vehicles and that the vehicles were in 12 compliance with applicable laws and regulations. In fact, Respondent Alfredo performed the 13 smog inspections on vehicles number 2 and 3 set forth in Table 1 below using the clean piping 14 method. Alfredo used the tail pipe emissions of a 2000 Ford Expedition in order to issue the 15 electronic certificates of compliance. The Chevrolet Silverado and Mercury Villager certified 16 were not in the test bay at the time of the smog inspections. Further, Respondent Charles assisted 17 in the performance of the smog inspections and certifications on the 2006 Chevrolet Silverado 18 and 2000 Mercury Villager on vehicles number 2 and 3 set forth in Table 1 below. 19

20

21	Test Dates/ Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
22	1.				
23	7/31/2012 1725 hours to 1746 hours	1993 Honda Accord (3ENZ279)	Nissan Pickup	XJ623789C	1993 Honda Accord never seen. Nissan pickup used for test
24 25	<b>2.</b> 9/6/2012	2006 Chevrolet	2000 Ford	XL208744C	Ford Expedition
25					

Table 1

26

 $^{2}$  "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in compliance or are not present in the smog check area during the time of the certification.

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1	Test Dates/ Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details	
2	1707 hours to 1717 hours	Silverado (8T72626)	Expedition		used to certify the 2006 Chevrolet	
3 4 5	<b>3.</b> 9/6/2012 1721 hours to 1740 hours	2000 Mercury Villager (6PFT338)	2000 Ford Expedition	XL208745C	Ford Expedition used to certify the 2000 Mercury	
6		FIRST CAUSE FOR DISCIPLINE				
7	(Misleading Statements)					
8	20. Resp	ondent Rodriguez	has subjected its regist	ration to discipli	ne under Code section	
9	9884.7, subdivisi	on (a)(1), in that	on or about July 31, 201	2 and Septembe	r 6, 2012, Respondent	
10	made statements	which he knew, o	or which by exercise of	reasonable care s	should have known,	
11	were untrue or m	isleading when R	espondent Rodriguez is	sued electronic o	certificates of	
12	compliance for th	ne vehicles set for	th in Table 1 above, cer	tifying that the v	vehicles were in	
13	compliance with	applicable laws a	nd regulations when, in	fact, the vehicle	s had been clean piped.	
14		<u>SECC</u>	OND CAUSE FOR DI	<b>SCIPLINE</b>		
15			(Fraud)			
16		•	, o		ine under Code section	
17			on or about July 31, 20	-		
18			aud by issuing electron		-	
19			, without performing bo	-		
20		·		•	of the State of California	
21	of the protection	•	fotor Vehicle Inspection	U		
22			RD CAUSE FOR DIS			
23	22. Resp	•	the Motor Vehicle Ins		<b>m)</b> Sipline under Health and	
24		Ū.	U			
25 26			ivision (a), in that on o	-		
20 27	Code, as follows:			espondent viola	icu sections of that	
27	///	•				
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1	a. Section 44012: Respondent failed to ensure that the emission control tests
2	were performed on the vehicles in accordance with procedures prescribed by the department.
3	b. Section 44015, subdivision (b): Respondent issued electronic certificates of
4	compliance without properly testing and inspecting the vehicles to determine if they were in
5	compliance with section 44012 of that Code.
6	FOURTH CAUSE FOR DISCIPLINE
7	(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)
8	23. Respondent Rodriguez has subjected its station license to discipline under Health and
9	Safety Code section 44072.2, subdivision (c), in that on or about July 31, 2012 and September 6,
10	2012, regarding the vehicles set forth in Table 1 above, Respondent violated sections of the
11	California Code of Regulations, title 16, as follows:
12	a. Section 3340.35, subdivision (c): Respondent issued electronic certificates of
13	compliance even though the vehicles had not been inspected in accordance with section 3340.42
14	of that Code.
15	b. Section 3340.42: Respondent failed to conduct the required smog tests and
16	inspections on the vehicles in accordance with the Bureau's specifications.
17	FIFTH CAUSE FOR DISCIPLINE
18	(Dishonesty, Fraud or Deceit)
19	24. Respondent Rodriguez has subjected his station license to discipline under Health
20	and Safety Code section 44072.2, subdivision (d), in that on or about July 31, 2012 and
21	September 6, 2012, regarding the vehicles set forth in Table 1 above, Respondent committed acts
22	involving dishonesty, fraud or deceit whereby another was injured by issuing an electronic
23	certificates of compliance for the vehicles without performing bona fide inspections of the
24	emission control devices and systems on the vehicles, thereby depriving the People of the State of
25	California of the protection afforded by the Motor Vehicle Inspection Program.
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1	SIXTH CAUSE FOR DISCIPLINE
2	(Violations of the Motor Vehicle Inspection Program)
3	25. Respondent Alfredo Roman has subjected his technician license to discipline under
4	Health and Safety Code section 44072.2, subdivision (a), in that on or about July 31, 2012 and
5	September 6, 2012, regarding the vehicles set forth in Table 1 above, he violated sections of that
6	Code, as follows:
7	a. Section 44012: Respondent failed to ensure that the emission control tests
8	were performed on the vehicles in accordance with procedures prescribed by the department.
9	b. Section 44032: Respondent failed to perform tests of the emission control
10	devices and systems on the vehicles in accordance with section 44012 of that Code, in that the
11	vehicles had been clean piped.
12	SEVENTH CAUSE FOR DISCIPLINE
13	(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)
14	26. Respondent Alfredo has subjected his technician license to discipline under Health
15	and Safety Code section 44072.2, subdivision (c), in that on or about July 31, 2012 and
16	September 6, 2012, regarding the vehicles set forth in Table 1 above, he violated sections of the
17	California Code of Regulations, title 16, as follows:
18	a. Section 3340.30, subdivision (a): Respondent failed to inspect and test the
19	vehicles in accordance with Health and Safety Code section 44012.
20	b. Section 3340.41, subdivision (c): Respondent entered false information into
21	the Emission Inspection System for the electronic certificates of compliance by entering vehicle
22	emission control information for vehicles other than the vehicles being certified.
23	c. Section 3340.42: Respondent failed to conduct the required smog tests and
24	inspections on the vehicles in accordance with the Bureau's specifications.
25	EIGHTH CAUSE FOR DISCIPLINE
26	(Dishonesty, Fraud or Deceit)
27	27. Respondent Alfredo has subjected his technician license to discipline under Health
28	and Safety Code section 44072.2, subdivision (d), in that on or about July 31, 2012 and
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September 6, 2012, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 1 above, without performing bona fide inspections of the emission control devices and systems on the 3 vehicles, thereby depriving the People of the State of California of the protection afforded by the 4 Motor Vehicle Inspection Program. 5

#### NINTH CAUSE FOR DISCIPLINE

#### (Violations of the Motor Vehicle Inspection Program)

28. Respondent Charles Roman has subjected his technician license to discipline under 8 9 Health and Safety Code section 44072.2, subdivision (a), in that on or about July 31, 2012 and September 6, 2012, regarding the vehicles set forth in Table 1 above, he violated sections of that 10 Code, as follows: 11

Section 44012: Respondent failed to ensure that the emission control tests 12 a. were performed on the vehicles in accordance with procedures prescribed by the department. 13

b. Section 44032: Respondent failed to perform tests of the emission control 14 devices and systems on the vehicles in accordance with section 44012 of that Code, in that the 15 vehicles had been clean piped. 16

#### **TENTH CAUSE FOR DISCIPLINE**

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

29. Respondent Charles has subjected his technician license to discipline under Health 19 and Safety Code section 44072.2, subdivision (c), in that on or about July 31, 2012 and 20 September 6, 2012, regarding the vehicles set forth in Table 1 above, he violated sections of the 21 California Code of Regulations, title 16, as follows: 22

23 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test the vehicles in accordance with Health and Safety Code section 44012. 24

c. Section 3340.42: Respondent failed to conduct the required smog tests and 25 inspections on the vehicles in accordance with the Bureau's specifications. 26

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1	ELEVENTH CAUSE FOR DISCIPLINE
2	(Dishonesty, Fraud or Deceit)
3	30. Respondent Charles has subjected his technician license to discipline under Health
4	and Safety Code section 44072.2, subdivision (d), in that on or about July 31, 2012, and
5	September 6, 2012, he committed acts involving dishonesty, fraud or deceit whereby another was
6	injured by issuing an electronic certificates of compliance for the vehicles set forth in Table 1
7	above, without performing bona fide inspections of the emission control devices and systems on
8	the vehicles, thereby depriving the People of the State of California of the protection afforded by
9	the Motor Vehicle Inspection Program.
10	VID DATA REVIEW
11	31. A Bureau representative conducted a detailed review of VID data for all smog
12	inspections performed at Respondent Rodriguez' automotive repair dealership for the period of
13	May 23, through June 9, 2012. The review of the OBD II functional tests <sup>3</sup> showed a pattern of the
14	same OBD II diagnostic trouble code, (P1298), stored in the memory of the power train control
15	module (PCM) on fourteen different vehicles that received smog certificates during that
16	timeframe. The BAR specifically examined the VID data, in detail, for five of the vehicles that
17	were certified from May 23, 2012, to June 6, 2012, and it was determined that none of them
18	support the P1298 OBD II code. Table 2 below documents all five vehicles that were certified
19	with pending OBD II codes stored in the PCM memory that, according to the original equipment
20	manufacturer (OEM) service information, are not supported. The five vehicles identified in Table
21	2 below were issued electronic certificates of compliance using clean plugging <sup>4</sup> methods.
22	<sup>3</sup> The On Board Diagnostic, generation II ("OBD II"), functional test is an automated
23	function of the BAR-97 Emissions Inspection System analyzer ("EIS"). The EIS includes a computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
24	oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link
25	Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically retrieves information from the vehicle's on-board computer about the status of the readiness
26	indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.
27 28	<sup>4</sup> Clean-plugging is the use of the ÔBD II readiness monitor status and stored code status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to the noncompliant vehicle's failure to complete the minimum number (continued)
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		Table 2		
Test Times	Vehicle Certified	Unsupported OBD II Code	Certificate Issued	Technician License No.
1. May 23, 2012 1705 hours to 1718 hours	2002 Chevrolet Camaro (5VPA248)	P1298	XH414290C	EA631208 Alfredo Roman
<b>2.</b> May 24, 2012 0838 hours to 0902 hours	2006 Nissan Titan (61548B1)	P1298	XH414293C	EA631208 Alfredo Roman
<b>3.</b> May 28, 2012 1102 hours to 1118 hours	2005 Dodge Neon (5KKD073)	P1298	XH538814C	EA631208 Alfredo Roman
4. June 5, 2012 1134 hours to 1150 hours	2001 Chrysler Town & Country (6EUK639)	P1298	XH538836C	EA631208 Alfredo Roman
5. June 6, 2012 1220 hours to 1232 hours	1999 Chevrolet Malibu (5SZF036)	P1298	XH538848	EA631208 Alfredo Roman
L	TWELFT	H CAUSE FOR	DISCIPLINE	
(Untrue or Misleading Statements)				
	Untrue	or Misleading S	statements)	
32. Respond	lent Rodriguez' regi	-	,	ction pursuant to E
*	lent Rodriguez' regi	stration is subject	to disciplinary a	-
rof. Code section 98	lent Rodriguez' regi 384.7, subdivision (a	stration is subject	to disciplinary ada or authorized	statements which
rof. Code section 98 new, or in the exerc	lent Rodriguez' regi 384.7, subdivision (a ise of reasonable ca	stration is subject a)(1), in that he ma re should have know	to disciplinary ad ade or authorized own to be untrue	statements which or misleading as f
rof. Code section 98 new, or in the exerc espondent certified	lent Rodriguez' regi 384.7, subdivision (a ise of reasonable ca that vehicles 1 throu	stration is subject a)(1), in that he ma re should have know ugh 5, identified in	to disciplinary ad ade or authorized own to be untrue n Table 2 above,	statements which or misleading as f had passed inspec
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rof. Code section 98 new, or in the exerc espondent certified rere in compliance v spections on the ve	lent Rodriguez' regi 384.7, subdivision (a ise of reasonable ca that vehicles 1 throuvith applicable laws hicles using clean-p	astration is subject a)(1), in that he ma re should have know ugh 5, identified in and regulations. lugging methods i	to disciplinary ad ade or authorized own to be untrue n Table 2 above, In fact, Responde in that, a differen	statements which or misleading as f had passed inspec ent conducted the t vehicle(s) was
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rof. Code section 98 new, or in the exerce espondent certified vere in compliance v aspections on the ve abstituted during the ehicles, and the veh	lent Rodriguez' regi 384.7, subdivision (a ise of reasonable ca that vehicles 1 throuvith applicable laws hicles using clean-p e OBD II functional	astration is subject a)(1), in that he matrix re should have known ugh 5, identified in and regulations. lugging methods in tests in order to is	to disciplinary ad ade or authorized own to be untrue n Table 2 above, In fact, Responde in that, a differen ssue smog certifie	statements which or misleading as f had passed inspec ent conducted the t vehicle(s) was cates of complianc
rof. Code section 98 new, or in the exerce espondent certified vere in compliance v aspections on the ve abstituted during the ehicles, and the veh	lent Rodriguez' regi 384.7, subdivision (a ise of reasonable ca that vehicles 1 throuvith applicable laws hicles using clean-p e OBD II functional	astration is subject a)(1), in that he matrix re should have known ugh 5, identified in and regulations. lugging methods in tests in order to is	to disciplinary ad ade or authorized own to be untrue n Table 2 above, In fact, Responde in that, a differen ssue smog certifie	statements which or misleading as f had passed inspec ent conducted the t vehicle(s) was cates of complianc
rof. Code section 98 new, or in the exerce espondent certified vere in compliance v uspections on the ve ubstituted during the ehicles, and the veh 4012.	lent Rodriguez' regi 384.7, subdivision (a ise of reasonable ca that vehicles 1 throuvith applicable laws hicles using clean-p e OBD II functional icles were not tested as monitors, or due	astration is subject a)(1), in that he matrix re should have known ugh 5, identified in and regulations. lugging methods in tests in order to is d or inspected, as n to the presence of failure. Clean pl	to disciplinary ad ade or authorized own to be untrue n Table 2 above, In fact, Responde in that, a differen ssue smog certifie required by Healt	statements which or misleading as f had passed inspec- ent conducted the t vehicle(s) was cates of complianc h and Safety Code
32. Respondent certified were in compliance were in compliance were ubstituted during the rehicles, and the veh 4012.	lent Rodriguez' regi 384.7, subdivision (a ise of reasonable ca that vehicles 1 throu with applicable laws hicles using clean-p e OBD II functional icles were not tested as monitors, or due tem or component DBD II system. To EIS for the vehicle om the EIS into and	stration is subject a)(1), in that he may re should have known ugh 5, identified in and regulations. lugging methods in tests in order to is l or inspected, as n to the presence of failure. Clean plus the technician wo other vehicle that	to disciplinary ad ade or authorized own to be untrue n Table 2 above, In fact, Responde in that, a differen ssue smog certific required by Healt of a stored fault of ugging occurs du icle, the smog te vishes to certify a has a properly fi	statements which or misleading as f had passed inspect ent conducted the t vehicle(s) was cates of complianc h and Safety Code code that indicates uring the inspection chnician enters and then plugs the unctioning OBD I

[	
1	THIRTEENTH CAUSE FOR DISCIPLINE
2	(Fraud)
3	33. Respondent Rodriguez' registration is subject to disciplinary action pursuant to Bus.
4	& Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute
5	fraud by issuing electronic smog certificates of compliance for the vehicles 1 through 5, identified
6	in Table 2 above, without performing bona fide inspections of the emission control devices and
7	systems on the vehicles, thereby depriving the People of the State of California of the protection
8	afforded by the Motor Vehicle Inspection Program.
9	FOURTEENTH CAUSE FOR DISCIPLINE
10	(Violations of the Motor Vehicle Inspection Program)
11	34. Respondent Rodriguez' smog check station license is subject to disciplinary action
12	pursuant to Health & Safety Code section 44072.2, subdivision (a), in that Respondent failed to
13	comply with the following sections of that Code:
14	a. Section 44012: Respondent failed to ensure that all emission control devices and
15	systems required by law for vehicles 1 through 5, identified in Table 2 above, were installed and
16	functioning correctly in accordance with test procedures.
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18	b. Section 44012, subdivision (f): Respondent failed to ensure that the emission control
19	tests were performed on vehicles 1 through 5, identified in Table 2 above, in accordance with
20	procedures prescribed by the department.
21	c. Section 44015, subdivision (b): Respondent issued electronic smog certificates of
22	compliance for vehicles 1 through 5, identified in Table 2 above, without ensuring that the
23	vehicles were properly tested and inspected to determine if they were in compliance with Health
24	& Safety Code section 44012.
25	FIFTEENTH CAUSE FOR DISCIPLINE
26	(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)
27	35. Respondent Rodriguez' smog check station license is subject to disciplinary action
28	pursuant to Health & Safety Code section 44072.2, subdivision (c), in that Respondent failed to
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comply with provisions of California Code of Regulations, title 16, as follows:

a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 5, identified in Table 2 above.

b. Section 3340.35, subdivision (c): Respondent issued electronic smog certificates of
compliance for vehicles 1 through 5, identified in Table 2 above, even though the vehicles had
not been inspected in accordance with section 3340.42.

c. Section 3340.42: Respondent failed to ensure that the required smog tests were conducted on vehicles 1 through 5, identified in Table 2 above, in accordance with the BAR's specifications.

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# SIXTEENTH CAUSE FOR DISCIPLINE

## (Dishonesty, Fraud, or Deceit)

36. Respondent Rodriguez' smog check station license is subject to disciplinary action
pursuant to Health & Safety Code section 44072.2, subdivision (d), in that Respondent
committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic
smog certificates of compliance for the vehicles 1 through 5, identified in Table 2 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.

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## SEVENTEENTH CAUSE FOR DISCIPLINE

## (Violations of the Motor Vehicle Inspection Program)

37. Respondent Alfredo's technician license is subject to disciplinary action pursuant to
Health & Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply with
the following sections of that Code:

a. Section 44012, subdivision (a): Respondent failed to ensure that all emission control
devices and systems required by law for vehicles 1 through 5, identified in Table 2 above, were
installed and functioning correctly in accordance with test procedures.

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1	b. Section 44012, subdivision (f): Respondent failed to perform the emission control
2	tests on vehicles 1 through 5, identified in Table 2 above, in accordance with procedures
3	prescribed by the department.
4	c. Section 44059: Respondent willfully made false entries for electronic certificates of
5	compliance for vehicles 1 through 5, identified in Table 2 above, by certifying that the vehicles
6	had been inspected as required when, in fact, they had not.
7	EIGHTEENTH CAUSE FOR DISCIPLINE
8	(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)
9	38. Respondent Alfredo's technician license is subject to disciplinary action pursuant to
10	Health & Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply with
11	provisions of California Code of Regulations, title 16, as follows:
12	a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued electronic
13	smog certificates of compliance for vehicles 1 through 5, identified in Table 2 above.
14	<b>b.</b> Section 3340.30, subdivision (a): Respondent failed to inspect and test vehicles 1
15	through 5, identified in Table 2 above, in accordance with Health & Safety Code sections 44012
16	and 44035, and California Code of Regulations, title 16, section 3340.42.
17	c. Section 3340.41, subdivision (c): Respondent entered into the emissions inspection
18	system vehicle identification information or emission control system identification data for a
19	vehicle other than the one being tested for vehicles 1 through 5, identified in Table 2 above.
20	d. Section 3340.42: Respondent failed to conduct the required smog tests on vehicles 1
21	through 5, identified in Table 2 above, in accordance with the Bureau's specifications.
22	NINETEENTH CAUSE FOR DISCIPLINE
23	(Dishonesty, Fraud, or Deceit)
24	39. Respondent Alfredo's technician license is subject to disciplinary action pursuant to
25	Health & Safety Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
26	fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
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compliance for the vehicles 1 through 5, identified in Table 2 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.

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#### **OTHER MATTERS**

40. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
or may invalidate temporarily or permanently, the registrations for all places of business operated
in this state by Nestor Alonso Rodriguez upon a finding that he has, or is, engaged in a course of
repeated and willful violations of the laws and regulations pertaining to an automotive repair
dealer.

41. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
License Number TC 267565, issued to Nestor Alonso Rodriguez doing business as Roman Smog
Test Only, is revoked or suspended, any additional license issued under this chapter in the name
of said licensee may be likewise revoked or suspended by the director.

42. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
Technician License Number EA 631208, and/or redesignated license(s) EO 631208 and/or EI
631208, issued to Alfredo Ivan Roman, are revoked or suspended, any additional license issued
under this chapter in the name of said licensee may be likewise revoked or suspended by the
director.

43. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
Technician License Number EA 634710, and/or redesignated license(s) EO 634710 and/or EI
634710, issued to Alfredo Ivan Roman, are revoked or suspended, any additional license issued
under this chapter in the name of said licensee may be likewise revoked or suspended by the
director.

## <u>PRAYER</u>

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	1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
2	Number ARD 267565, issued to Nestor Alonso Rodriguez doing business as Roman Smog Test
3	Only,
4	2. Revoking, suspending or placing on probation any other automotive repair dealer
5	registration issued in the name Nestor Alonso Rodriguez;
6	3. Revoking or suspending Smog Check Test Only Station License Number TC 267565,
7	issued to Nestor Alonso Rodriguez, doing business as Roman Smog Test Only
8	4. Revoking or suspending any additional license issued under Chapter 5 of the Health
9	and Safety Code in the name of Nestor Alonso Rodriguez;
10	5. Revoking or suspending Advanced Emission Specialist Technician License Number
11	EA 631208, issued to Alfredo Ivan Roman or if redesignated as EO 631208 and/or EI 631208,
12	revoking or suspending such emissions license as he does posses;
13	6. Revoking or suspending any additional license issued under Chapter 5 of the Health
14	and Safety Code in the name of Alfredo Ivan Roman;
15	7. Revoking or suspending Advanced Emission Specialist Technician License Number
16	EA 634710, issued to Charles Guzman Roman; or if redesignated as EO 634710 and/or EI
17	634710, revoking or suspending such emissions license as he does posses;
18	8. Revoking or suspending any additional license issued under Chapter 5 of the Health
19	and Safety Code in the name of Charles Guzman Roman;
20	9. Ordering Nestor Alonso Rodriguez, Alfredo Ivan Roman and Charles Guzman
21	Roman to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
22	enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
23	10. Taking such other and further action as deemed necessary and proper.
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25	DATED: Ebruary 20, 2014 Fatuch Drais
26	PATRICK DORAIS Chief
27	Bureau of Automotive Repair Department of Consumer Affairs
28	State of California Complainant
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	First Amended Accusation