

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**NESTOR ALONSO RODRIGUEZ, DBA
ROMAN SMOG TEST ONLY;**
6645 Mission Blvd., Suite C
Riverside, CA 92509

Automotive Repair Dealer Registration No.
ARD 267565
Smog Check-Test Only Station License No.
TC 267565

ALFREDO IVAN ROMAN;
24117 Kernwood Drive
Moreno Valley, CA 92557

Advanced Emissions Specialist Technician
License No. EA 631208 (to be
redesignated upon renewal as EO 631208
and/or EI 631208)

CHARLES GUZMAN ROMAN
3725 Arora Street
Riverside, CA 92509

Advanced Emissions Specialist Technician
License No. EA 634710 (to be redesignated
upon renewal as EO 634710 and/or EI
634710)

Respondents.

Case No. 79/13-53

OAH No. 2013060972

DECISION

The attached Stipulated Revocation of License and Order as to Only Respondent Nestor Alonso Rodriguez is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Nestor Alonso Rodriguez dba Roman Smog Test Only, Automotive Repair Dealer Registration No. ARD 267565 and Smog Check-Test Only Station License No. TC 267565.

This Decision shall become effective May 28, 2014.

DATED: MAY 02 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 LAURO A. PAREDES
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Attorneys for Complainant

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10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
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Case No. 79/13-53

13 **NESTOR ALONSO RODRIGUEZ, DBA**
ROMAN SMOG TEST ONLY;
14 **6645 Mission Blvd., Suite C**
Riverside, CA 92509

OAH No. 2013060972

15 **Automotive Repair Dealer Registration No.**
16 **ARD 267565**
17 **Smog Check-Test Only Station License No.**
TC 267565

STIPULATED REVOCATION OF
LICENSE AND ORDER AS TO ONLY
RESPONDENT NESTOR ALONSO
RODRIGUEZ

18 **ALFREDO IVAN ROMAN;**
19 **24117 Kernwood Drive**
Moreno Valley, CA 92557

20 **Advanced Emissions Specialist Technician**
21 **License No. EA 631208 (to be redesignated**
22 **upon renewal as EO 631208 and/or**
EI631208),

23 **CHARLES GUZMAN ROMAN**
24 **3725 Arora Street**
Riverside, CA 92509

25 **Advanced Emissions Specialist Technician**
26 **License No. EA 634710 (to be redesignated**
upon renewal as EO 634710 and/or EI
634710)

27 Respondents.
28

1 In the interest of a prompt and speedy settlement of this matter, consistent with the public
2 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of
3 Automotive Repair the parties hereby agree to the following Stipulated Revocation of License
4 and Disciplinary Order which will be submitted to the Director for the Director's approval and
5 adoption as the final disposition of the First Amended Accusation solely with respect to
6 Respondent Nestor Alanso Rodriguez.

7 **PARTIES**

8 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair. He
9 brought this action solely in his official capacity and is represented in this matter by Kamala D.
10 Harris, Attorney General of the State of California, by Lauro A. Paredes, Deputy Attorney
11 General.

12 2. Nestor Alonso Rodriguez, doing business as Roman Smog Test Only (Respondent) is
13 representing himself in this proceeding and has chosen not to exercise his right to be represented
14 by counsel.

15 3. On or about December 28, 2011, the Bureau of Automotive Repair issued
16 Automotive Repair Dealer Registration No. ARD 267565 to Nestor Alonso Rodriguez, dba
17 Roman Smog Test Only. The Automotive Repair Dealer Registration was in full force and effect
18 at all times relevant to the charges brought in First Amended Accusation No. 79/13-53 and
19 expired on December 31, 2013.

20 4. On or about January 12, 2012, the Bureau of Automotive Repair issued Smog Check-
21 Test Only Station License No. TC 267565 to Nestor Alonso Rodriguez, dba Roman Smog Test
22 Only. The Smog Check-Test Only Station License was in full force and effect at all times
23 relevant to the charges brought in First Amended Accusation No. 79/13-53 and expired on
24 December 31, 2013.

25 **JURISDICTION**

26 5. First Amended Accusation No. 79/13-53 was filed before the Director of Consumer
27 Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending
28 against Respondent. The First Amended Accusation and all other statutorily required documents

1 were properly served on Respondent on February 20, 2014. Respondent timely filed his Notice of
2 Defense contesting the Accusation. A copy of First Amended Accusation No. 79/13-53 is
3 attached as Exhibit A and incorporated by reference.

4 **ADVISEMENT AND WAIVERS**

5 6. Respondent has carefully read, and understands the charges and allegations in First
6 Amended Accusation No. 79/13-53. Respondent also has carefully read, and understands the
7 effects of this Stipulated Revocation of License and Order.

8 7. Respondent is fully aware of his legal rights in this matter, including the right to a
9 hearing on the charges and allegations in the First Amended Accusation; the right to be
10 represented by counsel, at his own expense; the right to confront and cross-examine the witnesses
11 against him; the right to present evidence and to testify on his own behalf; the right to the
12 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
13 the right to reconsideration and court review of an adverse decision; and all other rights accorded
14 by the California Administrative Procedure Act and other applicable laws.

15 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
16 every right set forth above.

17 **CULPABILITY**

18 9. Respondent admits the truth of each and every charge and allegation in First
19 Amended Accusation No. 79/13-53, agrees that cause exists for discipline and revocation of his
20 Automotive Repair Dealer Registration No. ARD 267565 and Smog Check-Test Only Station
21 License No. TC 267565.

22 10. Respondent understands that by signing this stipulation he enables the Director to
23 issue an order accepting the revocation of his Automotive Repair Dealer Registration and Smog
24 Check-Test Only Station Licenses without further process.

25 **RESERVATION**

26 11. The admissions made by Respondent herein are only for the purposes of this
27 proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of
28

1 Automotive Repair or other professional licensing agency is involved, and shall not be admissible
2 in any other criminal or civil proceeding.

3 **CONTINGENCY**

4 12. This stipulation shall be subject to approval by the Director or the Director's designee.
5 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of
6 Automotive Repair may communicate directly with the Director and staff regarding this
7 stipulation and revocation, without notice to or participation by Respondent. By signing the
8 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
9 to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director
10 fails to adopt this stipulation as the Decision and Order, the Stipulated Revocation and
11 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible
12 in any legal action between the parties, and the Director shall not be disqualified from further
13 action by having considered this matter.

14 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
15 copies of this Stipulated Revocation of License and Order, including and facsimile signatures
16 thereto, shall have the same force and effect as the originals.

17 14. This Stipulated Revocation of License and Order is intended by the parties to be an
18 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
19 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
20 negotiations, and commitments (written or oral). This Stipulated Revocation of License and
21 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
22 writing executed by an authorized representative of each of the parties.

23 15. In consideration of the foregoing admissions and stipulations, the parties agree that
24 the Director may, without further notice or formal proceeding, issue and enter the following

25 Order:

26 ///

27 ///

28 ///

ORDER

1
2 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 267565
3 and Smog Check-Test Only Station License No. TC 267565 issued to Respondent Nestor Alonso
4 Rodriguez, dba Roman Smog Test Only is revoked.

5 1. The revocation of Respondent's Automotive Repair Dealer Registration and Smog
6 Check-Test Only Station License shall constitute the imposition of discipline against Respondent.
7 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
8 license history with the Bureau of Automotive Repair.

9 2. Respondent shall lose all rights and privileges as an Auto Repair Dealer and Smog
10 Station Test Only in California as of the effective date of the Director's Decision and Order.

11 3. Respondent shall cause to be delivered to the Bureau his pocket licenses and, if one
12 was issued, his wall certificates on or before the effective date of the Decision and Order.

13 4. If Respondent ever files an application for licensure or a petition for reinstatement in
14 the State of California, the Bureau shall treat it as a petition for reinstatement. Respondent must
15 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
16 effect at the time the petition is filed, and all of the charges and allegations contained in First
17 Amended Accusation No. 79/13-53 shall be deemed to be true, correct and admitted by
18 Respondent when the Director determines whether to grant or deny the petition.

19 5. Respondent shall be jointly and severally responsible for costs of investigation and
20 prosecution incurred by the Bureau with co-Respondents Alfredo Ivan Roman and Charles
21 Guzman Roman, and shall pay the Bureau its costs in the amount of \$10,691.00 prior to issuance
22 of a new or reinstated license.

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25 ///

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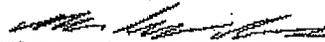
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ACCEPTANCE

I have carefully read the Stipulated Revocation of License and Order. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration and Smog Check-Test Only Station License. I enter into this Stipulated Revocation of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 3-7-14

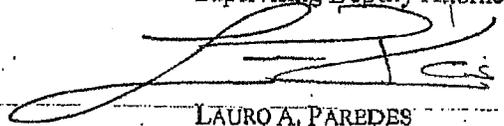

NESTOR ALONSO RODRIGUEZ, DBA ROMAN
SMOG TEST ONLY
Respondent

ENDORSEMENT

The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated:

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California.
LINDA K. SCHNEIDER
Supervising Deputy Attorney General



LAURO A. PAREDES
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 79/13-53

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 LAURO A. PAREDES
Deputy Attorney General
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14 **6645 Mission Blvd., Suite C**
Riverside, CA 92509

FIRST AMENDED ACCUSATION

15 **Automotive Repair Dealer Registration No.**
16 **ARD 267565**
17 **Smog Check-Test Only Station License No.**
TC 267565

18 **ALFREDO IVAN ROMAN;**
24117 Kernwood Drive
19 **Moreno Valley, CA 92557**
Advanced Emissions Specialist Technician
20 **License No. EA 631208 (to be redesignated**
upon renewal as EO 631208 and/or
21 **EI631208),**

22 **CHARLES GUZMAN ROMAN**
3725 Arora Street
23 **Riverside, CA 92509**
Advanced Emissions Specialist Technician
24 **License No. EA 634710 (to be redesignated**
upon renewal as EO 634710 and/or EI
25 **634710)**

26
27 Respondents.
28

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 631208.¹

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 ¹ 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
28 Emission Specialist Technician (EA) license to Smog Check Inspector (EO) license and/or Smog
Check Repair Technician (EI) license.

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
14 or permanently, the registration of an automotive repair dealer for any of the
15 following acts or omissions related to the conduct of the business of the
16 automotive repair dealer, which are done by the automotive repair dealer or
17 any automotive technician, employee, partner, officer, or member of the
18 automotive repair dealer.

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

23 ...

24 (4) Any other conduct which constitutes fraud.

25 ...

26 (b) Except as provided for in subdivision (c), if an automotive repair
27 dealer operates more than one place of business in this state, the director
28 pursuant to subdivision (a) shall only invalidate temporarily or permanently
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
his or her other places of business.

(c) Notwithstanding subdivision (b), the director may invalidate
temporarily or permanently, the registration for all places of business
operated in this state by an automotive repair dealer upon a finding that the
automotive repair dealer has, or is, engaged in a course of repeated and
willful violations of this chapter, or regulations adopted pursuant to it.

///

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 (e) Upon renewal of an unexpired Basic Area Technician license or an
8 Advanced Emission Specialist Technician license issued prior to the
9 effective date of this regulation, the licensee may apply to renew as a Smog
10 Check Inspector, Smog Check Repair Technician, or both.

...

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 **SURVEILLANCE OPERATION – JULY 31, 2012**

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

1 compliance with applicable laws and regulations. In fact, Respondent Alfredo performed the
 2 smog inspection using the clean piping method.² Alfredo used the tail pipe emissions of a Nissan
 3 pickup in order to issue the electronic certificate of compliance. Further, Respondent Charles
 4 assisted in the performance of the smog inspection and certification of the 1993 Honda Accord
 5 listed as vehicle number 1 in Table 1 below.

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

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

20 **Table 1**

21 Test Dates/ Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
22 1. 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 2. 9/6/2012	2006 Chevrolet	2000 Ford	XL208744C	Ford Expedition

26 ² “Clean piping” is sampling the (clean) tailpipe emissions and/or the RPM readings of
 27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
 28 compliance or are not present in the smog check area during the time of the certification.

Test Dates/ Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
1707 hours to 1717 hours	Silverado (8T72626)	Expedition		used to certify the 2006 Chevrolet
3. 9/6/2012 1721 hours to 1740 hours	2000 Mercury Villager (6PFT338)	2000 Ford Expedition	XL208745C	Ford Expedition used to certify the 2000 Mercury

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

20. Respondent Rodriguez has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about July 31, 2012 and September 6, 2012, Respondent made statements which he knew, or which by exercise of reasonable care should have known, were untrue or misleading when Respondent Rodriguez issued electronic certificates of compliance for the vehicles set forth in Table 1 above, certifying that the vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

21. Respondent Rodriguez has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about July 31, 2012 and September 6, 2012, Respondent committed acts which constitute fraud 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 vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

22. Respondent Rodriguez has subjected his station license to discipline under 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, Respondent violated sections of that Code, as follows:

///

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 I 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 I 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 September 6, 2012, he committed acts involving dishonesty, fraud or deceit whereby another was
2 injured by issuing electronic certificates of compliance for the vehicles set forth in Table 1 above,
3 without performing bona fide inspections of the emission control devices and systems on the
4 vehicles, thereby depriving the People of the State of California of the protection afforded by the
5 Motor Vehicle Inspection Program.

6 **NINTH CAUSE FOR DISCIPLINE**

7 **(Violations of the Motor Vehicle Inspection Program)**

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

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

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

17 **TENTH CAUSE FOR DISCIPLINE**

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

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

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

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

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28 ///

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 tests³ 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 plugging⁴ methods.

22 ³ 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
24 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
25 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional
26 test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link
27 Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically
28 retrieves information from the vehicle's on-board computer about the status of the readiness
indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
II functional test, it will fail the overall inspection.

⁴ Clean-plugging is the use of the OBD 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...)

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
2. May 24, 2012 0838 hours to 0902 hours	2006 Nissan Titan (61548B1)	P1298	XH414293C	EA631208 Alfredo Roman
3. 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

TWELFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

32. Respondent Rodriguez' registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that he made or authorized statements which he knew, or in the exercise of reasonable care should have known to be untrue or misleading as follows: Respondent certified that vehicles 1 through 5, identified in Table 2 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging methods in that, a different vehicle(s) was substituted during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and the vehicles were not tested or inspected, as required by Health and Safety Code section 44012.

of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure. Clean plugging occurs during the inspection of a vehicle that has an OBD II system. To clean plug a vehicle, the smog technician enters information into the EIS for the vehicle the technician wishes to certify and then plugs the OBD II system connector from the EIS into another vehicle that has a properly functioning OBD II system for the purpose of obtaining a "Passing" OBD II functional test result.

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.

17 ///

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

1 comply with provisions of California Code of Regulations, title 16, as follows:

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

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

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

10 **SIXTEENTH CAUSE FOR DISCIPLINE**

11 **(Dishonesty, Fraud, or Deceit)**

12 36. Respondent Rodriguez' smog check station license is subject to disciplinary action
13 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that Respondent
14 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic
15 smog certificates of compliance for the vehicles 1 through 5, identified in Table 2 above, without
16 performing bona fide inspections of the emission control devices and systems on the vehicles,
17 thereby depriving the People of the State of California of the protection afforded by the Motor
18 Vehicle Inspection Program.

19 **SEVENTEENTH CAUSE FOR DISCIPLINE**

20 **(Violations of the Motor Vehicle Inspection Program)**

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

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

27 ///

28 ///

1 compliance for the vehicles 1 through 5, identified in Table 2 above, without performing bona
2 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
3 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
4 Program.

5 **OTHER MATTERS**

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

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

15 42. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
16 Technician License Number EA 631208, and/or redesignated license(s) EO 631208 and/or EI
17 631208, issued to Alfredo Ivan Roman, are revoked or suspended, any additional license issued
18 under this chapter in the name of said licensee may be likewise revoked or suspended by the
19 director.

20 43. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
21 Technician License Number EA 634710, and/or redesignated license(s) EO 634710 and/or EI
22 634710, issued to Alfredo Ivan Roman, are revoked or suspended, any additional license issued
23 under this chapter in the name of said licensee may be likewise revoked or suspended by the
24 director.

25 **PRAYER**

26 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Director of Consumer Affairs issue a decision:
28

- 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 possess;
- 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 possess;
- 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.

24
25 DATED: February 20, 2014 Patrick Dorais

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