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

In the Matter of the Accusation Against: **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** **CHARLES GUZMAN ROMAN** **3725 Arora Street** **Riverside, CA 92509** **Advanced Emissions Specialist Technician License No. EA 634710** Respondents.	Case No. 79/13-53 **ACCUSATION** (Smog Check)

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. On December 28, 2011, the Bureau issued Automotive Repair Dealer Registration Number ARD 267565 ("registration") to Nestor Alonso Rodriguez ("Respondent Rodriguez"), doing business as Roman Smog Test Only. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2013 unless renewed.

Smog Check Test Only Station License

3. On January 12, 2012, the Bureau issued Smog Check Test Only Station License Number TC 267565 ("station license") to Respondent Rodriguez. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2013, unless renewed.

Advanced Emission Specialist Technician License

4. On or about July 27, 2009, the Bureau issued Advanced Emission Specialist Technician License Number EA 631208 ("technician license") to Alfredo Ivan Roman ("Respondent Alfredo"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2013, unless renewed.

Advanced Emission Specialist Technician License

5. On or about August 30, 2012, the Bureau issued Advanced Emission Specialist Technician License Number EA 634710 ("technician license") to Charles Guzman Roman ("Respondent Charles"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2014, unless renewed.

JURISDICTION

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

7. Business and Professions Code ("Code") section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

8. Section 9884.7 of the Code states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there 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 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.
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> ...
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> (4) Any other conduct which constitutes fraud.
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> ...
>
> (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director 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.

9. Code section 9884.13 provides, in pertinent part: that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

10. Health and Safety Code section 44002 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.

STATUTORY PROVISIONS

11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

> 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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> ...
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

12. Health & Saf. Code section 44072.4 states, in pertinent part:

> The director may take disciplinary action against any licensee after a hearing as provided in this article by any of the following:
>
> (a) Imposing probation upon terms and conditions to be set forth by the director.
>
> (b) Suspending the license.
>
> (c) Revoking the license.

13. Health & Saf. Code section 44072.6 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.

14. Health & Saf. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

COST RECOVERY

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

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

BACKGROUND

16. On July 31, 2012 and September 6, 2012, the Bureau of Automotive Repair (BAR) investigated Roman Smog Test Only station and found multiple instances of fraud. During the two days of surveillance all three Respondent's were video recorded falsifying smog test results using the clean piping method and issuing fraudulent electronic certificates of compliance.

SURVEILLANCE OPERATION – JULY 31, 2012

17. On or about July 31, 2012, the Bureau performed a surveillance operation at Respondent, Roman Smog Test Only. The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 1725 hours and 1746 hours, Respondent Alfredo performed a smog inspection that resulted in the issuance of electronic certificate of compliance for a 1993 Honda Accord set forth as vehicle number 1 in Table 1, below, certifying that he had tested and inspected that vehicle and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent Alfredo performed the smog inspection using the clean piping method.[1] Alfredo used the tail pipe emissions of a Nissan pickup in order to issue the electronic certificate of compliance. Further, Respondent Charles assisted in the performance of the smog inspection and certification of the 1993 Honda Accord listed as vehicle number 1 in Table 1 below.

SURVEILLANCE OPERATION – SEPTEMBER 6, 2012

18. On or about September 6, 2012, the Bureau performed a second surveillance operation at Respondent, Roman Smog Test Only. The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 1707 hours and 1740 hours, Respondent Alfredo performed two (2) smog inspections that resulted in

[1] "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.

the issuance of electronic certificates of compliance for vehicles number 2 and 3 set forth in Table 1 below, certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent Alfredo performed the smog inspections on vehicles number 2 and 3 set forth in Table 1 below using the clean piping method. Alfredo used the tail pipe emissions of a 2000 Ford Expedition in order to issue the electronic certificates of compliance. The Chevrolet Silverado and Mercury Villager certified were not in the test bay at the time of the smog inspections. Further, Respondent Charles assisted in the performance of the smog inspections and certifications on the 2006 Chevrolet Silverado and 2000 Mercury Villager on vehicles number 2 and 3 set forth in Table 1 below.

Table 1

Test Dates/ Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
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
2. 9/6/2012 1707 hours to 1717 hours	2006 Chevrolet Silverado (8T72626)	2000 Ford Expedition	XL208744C	Ford 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)

19. 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.

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SECOND CAUSE FOR DISCIPLINE

(Fraud)

20. 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)

21. 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:

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

b. **Section 44015, subdivision (b)**: Respondent issued electronic certificates of compliance without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

FOURTH CAUSE FOR DISCIPLINE

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

22. Respondent Rodriguez has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), 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 the California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c)**: Respondent issued electronic certificates of compliance even though the vehicles had not been inspected in accordance with section 3340.42 of that Code.

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

23. Respondent Rodriguez has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about July 31, 2012 and September 6, 2012, regarding the vehicles set forth in Table 1 above, Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing an electronic certificates of compliance for the vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

24. Respondent Alfredo Roman has subjected his technician 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, he violated sections of that Code, as follows:

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

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

SEVENTH CAUSE FOR DISCIPLINE

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

25. Respondent Alfredo has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), 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 the California Code of Regulations, title 16, as follows:

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

b. **Section 3340.41, subdivision (c)**: Respondent entered false information into the Emission Inspection System for the electronic certificates of compliance by entering vehicle emission control information for vehicles other than the vehicles being certified.

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

26. Respondent Alfredo has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about July 31, 2012 and 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 vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

NINTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

27. Respondent Charles Roman has subjected his technician 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, he violated sections of that Code, as follows:

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

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

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TENTH CAUSE FOR DISCIPLINE

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

28. Respondent Charles has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), 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 the California Code of Regulations, title 16, as follows:

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

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

ELEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

29. Respondent Charles has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about July 31, 2012, and September 6, 2012, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing an 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 vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

VID DATA REVIEW

30. A Bureau representative conducted a detailed review of VID data for all smog inspections performed at Respondent Rodriguez' automotive repair dealership for the period of May 23, through June 9, 2012. The review of the OBD II functional tests[2] showed a pattern of the

[2] The On Board Diagnostic, generation II ("OBD II"), functional test is an automated 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 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 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 indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD (continued...)

same OBD II diagnostic trouble code, (P1298), stored in the memory of the power train control module (PCM) on fourteen different vehicles that received smog certificates during that timeframe. The BAR specifically examined the VID data, in detail, for five of the vehicles that were certified from May 23, 2012, to June 6, 2012, and it was determined that none of them support the P1298 OBD II code. Table 2 below documents all five vehicles that were certified with pending OBD II codes stored in the PCM memory that, according to the original equipment manufacturer (OEM) service information, are not supported. The five vehicles identified in Table 2 below were issued electronic certificates of compliance using clean plugging[3] methods.

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

II functional test, it will fail the overall inspection.

[3] 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 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.

TWELFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

31. 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.

THIRTEENTH CAUSE FOR DISCIPLINE

(Fraud)

32. Respondent Rodriguez' registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud 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.

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

33. Respondent Rodriguez' smog check station 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: 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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b. Section 44012, subdivision (f): Respondent failed to ensure that the emission control tests were performed on vehicles 1 through 5, identified in Table 2 above, in accordance with procedures prescribed by the department.

c. Section 44015, subdivision (b): Respondent issued electronic smog certificates of compliance for vehicles 1 through 5, identified in Table 2 above, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health & Safety Code section 44012.

FIFTEENTH CAUSE FOR DISCIPLINE

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

34. Respondent Rodriguez' smog check station license is subject to disciplinary action pursuant to Health & Safety Code section 44072.2, subdivision (c), in that Respondent failed to 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.

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

35. 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,

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thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

36. 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.

b. Section 44012, subdivision (f): Respondent failed to perform the emission control tests on vehicles 1 through 5, identified in Table 2 above, in accordance with procedures prescribed by the department.

c. Section 44059: Respondent willfully made false entries for electronic certificates of compliance for vehicles 1 through 5, identified in Table 2 above, by certifying that the vehicles had been inspected as required when, in fact, they had not.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to 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 (c), in that Respondent failed to 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 3340.30, subdivision (a): Respondent failed to inspect and test vehicles 1 through 5, identified in Table 2 above, in accordance with Health & Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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c. Section 3340.41, subdivision (c): Respondent entered into the emissions inspection system vehicle identification information or emission control system identification data for a vehicle other than the one being tested for vehicles 1 through 5, identified in Table 2 above.

d. Section 3340.42: Respondent failed to conduct the required smog tests on vehicles 1 through 5, identified in Table 2 above, in accordance with the Bureau's specifications.

NINETEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

38. Respondent Alfredo's technician 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.

OTHER MATTERS

39. 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.

40. 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.

41. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 631208, issued to Alfredo Ivan Roman, 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 634710, issued to Charles Guzman Roman, 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.

PRAYER

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

1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration Number ARD 267565, issued to Nestor Alonso Rodriguez doing business as Roman Smog Test Only,

2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued in the name Nestor Alonso Rodriguez;

3. Revoking or suspending Smog Check Test Only Station License Number TC 267565, issued to Nestor Alonso Rodriguez, doing business as Roman Smog Test Only

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Nestor Alonso Rodriguez;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 631208, issued to Alfredo Ivan Roman;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Alfredo Ivan Roman;

7. Revoking or suspending Advanced Emission Specialist Technician License Number EA 634710, issued to Charles Guzman Roman;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Charles Guzman Roman;

9. Ordering Nestor Alonso Rodriguez, Alfredo Ivan Roman and Charles Guzman Roman to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 2/20/13

John WALLAUCH by Doug Balch
DOUG BALCH

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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