

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

In the Matter of the Accusation Against:

**ALCHI INC., DBA PATRIOT AUTO
CARE AND BRAKES, WATHIQ N.F.
ALCHI, PRESIDENT**

910 Highland Avenue, Ste. A
National City, CA 91950

Automotive Repair Dealer Registration No.

ARD 253302

Smog Check Station License No.

RC 253302

Lamp Station License No. LS 253302,

Class A

Brake Station License No. BS 253302,

Class C

and

J. ALBERTO GURROLA

526 E. Avenue

National City, CA 91950

Advanced Emission Specialist Technician

License No. EA 108157 (redesignated
upon renewal as EO 108157 and EI
108157)

Respondents.

Case No. 79/13-76

OAH No. 2013060970

DECISION

The attached Stipulated Settlement and Disciplinary Order as to J. Alberto Gurrola, Only 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 J. Alberto Gurrola, Advanced Emission Specialist Technician License No. EA 108157 (redesignated upon renewal as EO 108157 and EI 108157).

This Decision shall become effective September 11, 2014.

DATED: August 18, 2014


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

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14 **ALCHI, PRESIDENT**
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15 **National City, CA 91950**

16 **Automotive Repair Dealer Registration No.**
ARD 253302
17 **Smog Check Station License No. RC 253302**
Lamp Station License No. LS 253302, Class
18 **A**
19 **Brake Station License No. BS 253302, Class**
C

20 **And**

21 **J. ALBERTO GURROLA**
526 E. Avenue
22 **National City, CA 91950**

23 **Advanced Emission Specialist Technician**
24 **License No. EA 108157 (redesignated upon**
renewal as EO 108157 and EI 108157)

25 Respondents.

Case No. 79/13-76

OAH No. 2013060970

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO J.
ALBERTO GURROLA, ONLY

26
27 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
28 entitled proceedings that the following matters are true:

1 PARTIES

2 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
3 brought this action solely in his official capacity and is represented in this matter by Kamala D.
4 Harris, Attorney General of the State of California, by Rita M. Lane, Deputy Attorney General.

5 2. Respondent J. Alberto Gurrola is representing himself in this proceeding and has
6 chosen not to exercise his right to be represented by counsel.

7 3. On a date uncertain in 2002, the Bureau issued Advanced Emission Specialist
8 Technician License Number EA 108157 ("technician license") to J. Alberto Gurrola
9 ("Respondent"). Respondent's technician license expired on December 31, 2013. Respondent's
10 technician license was timely renewed and was redesignated as Smog Check Inspector License
11 Number EO 108157 and Smog Check Repair Technician Number EI 108157.¹

12 JURISDICTION

13 4. Accusation No. 79/13-76 was filed before the Director of Consumer Affairs
14 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
15 Respondent. The Accusation and all other statutorily required documents were properly served
16 on Respondent on May 6, 2013. Respondent timely filed his Notice of Defense contesting the
17 Accusation.

18 5. A copy of Accusation No. 79/13-76 is attached as Exhibit A and incorporated herein
19 by reference.

20 ADVISEMENT AND WAIVERS

21 6. Respondent has carefully read, and understands the charges and allegations in
22 Accusation No. 79/13-76. Respondent has also carefully read, and understands the effects of this
23 Stipulated Settlement and Disciplinary Order.

24 7. Respondent is fully aware of his legal rights in this matter, including the right to a
25 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 his own expense; the right to confront and cross-examine the witnesses against him; the right to
2 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
3 the attendance of witnesses and the production of documents; the right to reconsideration and
4 court review of an adverse decision; and all other rights accorded by the California
5 Administrative Procedure Act and other applicable laws.

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

8 CULPABILITY

9 9. Respondent admits the truth of each and every charge and allegation in Accusation
10 No. 79/13-76.

11 10. Respondent agrees that his Advanced Emission Specialist Technician License, now
12 designated as Smog Check Inspector License Number EO 108157 and Smog Check Repair
13 Technician Number EI 108157, are subject to discipline and he agrees to be bound by the
14 Director's probationary terms as set forth in the Disciplinary Order below.

15 CONTINGENCY

16 11. This stipulation shall be subject to approval by the Director of Consumer Affairs or
17 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
18 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
19 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
20 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
21 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
22 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision
23 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except
24 for this paragraph, it shall be inadmissible in any legal action between the parties, and the
25 Director shall not be disqualified from further action by having considered this matter.

26 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
27 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
28 signatures thereto, shall have the same force and effect as the originals.

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

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Smog Check Inspector License Number EO 108157 and Smog Check Repair Technician Number EI 108157 issued to J. Alberto Gurrola are revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Actual Suspension.** Smog Check Inspector License Number EO 108157 and Smog Check Repair Technician Number EI 108157 issued to Respondent Gurrola are suspended for 7 consecutive days, to begin on the effective date of the decision.

2. **Obey All Laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

3. **Reporting.** Respondent must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

4. **Jurisdiction.** If an accusation is filed against Respondent during the term of probation, the Director shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

5. **Violation of Probation.** Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may,

after giving notice and opportunity to be heard suspend or revoke his Smog Check Inspector License Number EO 108157 and Smog Check Repair Technician Number EI 108157.


6. **Continuing Education Courses.** During the period of probation, Respondent shall attend and successfully complete a Bureau Certified Licensed Inspector Training Course (Type 2) in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the Respondent. Said course shall be completed and proof of completion submitted to the Bureau within 180 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 180-day period, Respondents' license shall be immediately suspended until such proof is received.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Smog Check Inspector License Number EO 108157 and my Smog Check Repair Technician Number EI 108157. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED:

7/29/2014


J. ALBERTO GURROLA
Respondent

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ENDORSEMENT

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

DATED: 8-1-14

Respectfully submitted,

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


RITA M. LANE
Deputy Attorney General
Attorneys for Complainant

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EXHIBIT A

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
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15 Automotive Repair Dealer Registration No.
16 **ARD 253302**
Smog Check Station License No. RC 253302
17 Lamp Station License No. LS 253302, Class
18 **A**
Brake Station License No. BS 253302, Class
19 **C**

20 **And**

21 **J. ALBERTO GURROLA**
526 E. Avenue
National City, CA 91950

22
23 **Advanced Emission Specialist Technician**
License No. EA 108157 (to be redesignated
24 upon renewal as EO 108157 and/or EI
108157)

25 Respondents.

Case No. 79/13-76

ACCUSATION

(SMOG CHECK)

27 ///

28 ///

1 Complainant alleges:

2 **PARTIES**

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

5 **LICENSE INFORMATION**

6 **Automotive Repair Dealer Registration No. ARD253302**

7 2. On or about January 18, 2008, the Bureau issued Automotive Repair Dealer
8 Registration Number ARD 253302 ("registration") to Alchi Inc., doing business as Patriot Auto
9 Care and Brakes, Wathiq N.F. Alchi, President ("Respondent"). The registration will expire on
10 December 31, 2013, unless renewed.

11 **Smog Check Station License No. RC 253302**

12 3. On or about February 26, 2010, the Bureau issued Smog Check Station License
13 Number RC 253302 ("station license") to Respondent. The station license was in full force and
14 effect at all times relevant to the charges brought herein and will expire on December 31, 2013,
15 unless renewed.

16 **Lamp Station License No. LS 253302**

17 4. On or about June 28, 2012, the Bureau of Automotive Repair issued Lamp Station
18 License Number LS 253302, Class A, to Respondent. The Lamp Station License was in full force
19 and effect at all times relevant to the charges brought herein and will expire on December 31,
20 2013, unless renewed.

21 **Brake Station License No. BS 253302**

22 5. On or about June 28, 2012, the Bureau of Automotive Repair issued Brake Station
23 License Number BS 253302, Class C to Respondent. The Brake Station License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on December 31,
25 2013, unless renewed.

26 **Advanced Emission Specialist Technician License EA 108157**

27 6. On a date uncertain in 2002, the Bureau issued Advanced Emission Specialist
28 Technician License Number EA 108157 ("technician license") to J. Alberto Gurrola

1 ("Respondent Gurrola"). Respondent Gurrola's technician license is due to expire on December
2 31, 2013. Upon timely renewal of the license, the license will be redesignated as EO 108157
3 and/or to EI 108157.¹

4 JURISDICTION

5 7. This Accusation is brought before the Director of Consumer Affairs ("Director") for
6 the Bureau of Automotive Repair, under the authority of the following laws. All section
7 references are to the Business and Professions Code unless otherwise indicated.

8 8. Business and Professions Code ("Code") section 9884.7 provides that the Director
9 may revoke an automotive repair dealer registration.

10 9. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
11 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
12 proceeding against an automotive repair dealer or to render a decision invalidating a registration
13 temporarily or permanently.

14 10. Health and Safety Code section 44002 provides, in pertinent part, that the Director
15 has all the powers and authority granted under the Automotive Repair Act for enforcing the
16 Motor Vehicle Inspection Program.

17 11. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration
18 or suspension of a license by operation of law, or by order or decision of the Director of
19 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the
20 Director of jurisdiction to proceed with disciplinary action.

21 12. Health and Safety Code section 44072.8 states that when a license has been revoked
22 or suspended following a hearing under this article, any additional license issued under this
23 chapter in the name of the licensee may be likewise revoked or suspended by the director.

24 13. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
25 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
2 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

3 **STATUTORY PROVISIONS**

4 14. Code section 9884.7 states, in pertinent part:

5 (a) The director, where the automotive repair dealer cannot show there was
6 a bona fide error, may refuse to validate, or may invalidate temporarily or
7 permanently, the registration of an automotive repair dealer for any of the
8 following acts or omissions related to the conduct of the business of the
9 automotive repair dealer, which are done by the automotive repair dealer or any
10 automotive technician, employee, partner, officer, or member of the automotive
11 repair dealer.

12 (1) Making or authorizing in any manner or by any means whatever any
13 statement written or oral which is untrue or misleading, and which is known, or
14 which by the exercise of reasonable care should be known, to be untrue or
15 misleading.

16

17 (3) Failing or refusing to give to a customer a copy of any document
18 requiring his or her signature, as soon as the customer signs the document.

19 (4) Any other conduct which constitutes fraud.

20

21 (6) Failure in any material respect to comply with the provisions of this
22 chapter [the Automotive Repair Act (Code, § 9880, et seq.)] or regulations adopted
23 pursuant to it.

24 15. Code section 9884.8 states, in pertinent part:

25 All work done by an automotive repair dealer, including all warranty work,
26 shall be recorded on an invoice and shall describe all service work done and parts
27 supplied. . . . One copy of the invoice shall be given to the customer and one
28 copy shall be retained by the automotive repair dealer.

16. Code section 9884.9 states, in pertinent part:

23 (a) The automotive repair dealer shall give to the customer a written
24 estimated price for labor and parts necessary for a specific job. No work shall be
25 done and no charges shall accrue before authorization to proceed is obtained from
26 the customer. No charge shall be made for work done or parts supplied in excess
27 of the estimated price without the oral or written consent of the customer that shall
28 be obtained at some time after it is determined that the estimated price is
insufficient and before the work not estimated is done or the parts not estimated
are supplied. Written consent or authorization for an increase in the original
estimated price may be provided by electronic mail or facsimile transmission from
the customer. The bureau may specify in regulation the procedures to be followed
by an automotive repair dealer when an authorization or consent for an increase in

1 the original estimated price is provided by electronic mail or facsimile
2 transmission. If that consent is oral, the dealer shall make a notation on the work
3 order of the date, time, name of person authorizing the additional repairs and
4 telephone number called, if any, together with a specification of the additional
5 parts and labor and the total additional cost.

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9
10 17. Health and Safety Code section 44072.2 provides, in pertinent part:

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

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

17

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

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

22 18. Health and Safety Code section 44072.8 states:

23 When a license has been revoked or suspended following a hearing under this
24 article, any additional license issued under this chapter in the name of the licensee
25 may be likewise revoked or suspended by the director.

26 COST RECOVERY

27 19. Code section 125.3 provides, in pertinent part, that a Board may request the
28 administrative law judge to direct a licensee found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

29 UNDERCOVER OPERATION – March 8, 2012

30 20. Prior to the undercover run at the Respondent's facility, Bureau personnel had
31 inspected and documented a 1990 Toyota (Toyota). The only emission repair necessary for the
32 Toyota to pass a properly performed Smog Check Inspection was the replacement of a defective
33 vacuum hose connected to the Manifold Absolute Pressure (MAP) Sensor.

34 21. On or about March 8, 2012, a Bureau undercover operator ("operator") drove the
35 Bureau documented Toyota to the Respondent's facility and requested a Smog Check Inspection.
36 The operator signed an estimate but was not provided with a copy. Smog test results obtained

1 from the Bureau's Vehicle Information Database shows that Respondent Gurrola performed a
2 Smog Check Inspection on the Toyota and the operator was then informed that the vehicle had
3 failed. The operator authorized the Respondent to diagnose the cause of the Smog Check
4 Inspection failure. The Respondent printed a revised estimate totaling \$109.95 and the operator
5 signed it but was not provided with a copy. Following the diagnosis Respondent's employee told
6 the operator the Toyota had a bad Oxygen Sensor and four (4) bad vacuum lines (hoses). The
7 operator authorized the repairs and Respondent's employee printed another revised estimate
8 totaling \$331.28. The operator signed the revised estimate but was not provided with a copy. On
9 or about March 9, 2012, the operator returned to the subject facility to retrieve the Toyota. The
10 operator paid \$331.28, received Invoice No. [REDACTED] and a Vehicle Inspection Report (VIR) that
11 shows the undercover vehicle passed the smog inspection and Certificate of Compliance number
12 [REDACTED] was issued. The undercover operator was not given a copy of the VIR for the failed
13 smog test conducted on March 8, 2012.

14 22. On or about March 14, 2012, Bureau personnel re-inspected the Toyota and found the
15 following: the Oxygen Sensor, two (2) vacuum lines to the vacuum modulator, and the defective
16 hose to the MAP Sensor had been replaced. The only repair necessary for the Toyota to pass a
17 properly performed Smog Check Inspection was the replacement of the defective vacuum hose to
18 the MAP Sensor. The replacement of the Oxygen Sensor and the two (2) vacuum lines to the
19 vacuum modulator were unnecessary.

20 23. The smog test repair information obtained from the VID and the VIR generated by
21 Respondent Gurrola, shows repairs were performed to the Toyota's Vacuum Routing (EGR),
22 Initial Timing (Secondary), and Oxygen Sensor (Inputs). The Toyota's Exhaust Gas Recirculation
23 (EGR) System, Initial Timing, and Oxygen Sensor were documented and found to be in good
24 condition and not in need of repair or replacement.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Untrue or Misleading Statements)**

27 24. Respondent's registration is subject to discipline pursuant to Code section
28 9884.7(a)(1), in that Respondent made statements which he knew or which by exercise of

1 reasonable care should have known to be untrue or misleading when, on or about March 8, 2012,
2 the Respondent told the undercover operator that the Oxygen Sensor and four (4) vacuum lines on
3 the Bureau's 1990 Toyota needed replacement, when in fact, only one (1) vacuum line was
4 defective. The Oxygen Sensor and the two (2) vacuum lines to the vacuum modulator were in
5 good condition and did not need replacement.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 25. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
9 subdivision(a)(4), in that on or about March 9, 2012, the Respondent committed acts constituting
10 fraud by accepting payment for replacement of the Oxygen Sensor and vacuum modulator lines
11 when the only repair needed was the replacement of the defective vacuum hose to the MAP
12 Sensor. The replacement of the Oxygen Sensor and vacuum modulator lines was unnecessary.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Code)**

15 26. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
16 subdivision (a)(6), in that Respondent failed to comply with the following sections of that code:

17 a. **Section 9884.8:** On or about March 9, 2012, Respondent failed to provide the
18 Bureau operator with an invoice describing all service work performed and parts supplied.

19 b. **Section 9884.9, subdivision (a):** On or about March 8, 2012, Respondent failed to
20 provide the Bureau operator with a written estimated price for parts and labor for a specific job.

21 c. **Section 9884.9, subdivision (a)(1):** On or about March 8, 2012, Respondent failed
22 to note additional authorization for repairs on Invoice No. [REDACTED]

23 **FOURTH CAUSE FOR DISCIPLINE**

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

25 27. Respondent's Smog Check Station license is subject to discipline pursuant to Health
26 and Safety Code section 44072.2, subdivision (c), in that on or about March 8, 2012, Respondent
27 violated California Code of Regulations, title 16, section 3340.41, subdivision (a) in that on or

28 ///

1 about March 9, 2012, Respondent failed to provide the Bureau operator with a copy of the VIR
2 for the failed smog test conducted on March 8, 2012.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 28. Respondent's Smog Check Station license is subject to discipline pursuant to Health
6 and Safety Code section 44072.2, subdivision (d), in that on or about March 8, 2012, Respondent
7 committed acts involving dishonesty, fraud or deceit whereby another was injured by representing
8 to the undercover operator that that the undercover vehicle needed the Oxygen Sensor and four
9 (4) vacuum lines replaced, when in fact, only one (1) vacuum line was defective.

10 **UNDERCOVER OPERATION – APRIL 5, 2012**

11 29. Prior to the undercover run at the subject facility, Bureau personnel had inspected and
12 documented a 1992 Toyota (Toyota). Bureau personnel installed a defective vacuum hose
13 connected to the Vacuum Sensor for the fuel injection system. This condition caused the Toyota
14 to fail a Smog Check Inspection due to elevated tailpipe emissions. The only emission repair
15 necessary for the Toyota to pass a properly performed Smog Check Inspection was the
16 replacement of the defective vacuum hose to the Vacuum Sensor.

17 30. On or about April 5, 2012, a Bureau undercover operator drove the Bureau
18 documented Toyota to the Respondent's facility and requested a Smog Check Inspection. The
19 operator signed an estimate and was provided with a copy. Smog test results obtained from the
20 Bureau's Vehicle Information Database shows that Respondent Gurrola performed a Smog Check
21 Inspection on the Toyota and Smog Certificate of Compliance No. [REDACTED] was issued. The
22 operator paid \$58.00, received a copy of Invoice No. [REDACTED] and a VIR.

23 31. On April 9, 2012, Bureau personnel re-inspected the Toyota and found the following:
24 The defective vacuum hose to the Vacuum Sensor was still installed on the Toyota. Bureau
25 personnel performed two (2) Smog Check Inspections on the Toyota and the vehicle failed both
26 Smog Check Inspections due to elevated tailpipe emissions. The Bureau documented Toyota
27 could not have passed a properly performed Smog Check Inspection.

28 ///

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent's station license is subject to discipline pursuant to Health and Safety
4 Code section 44072.2, subdivision (a), in that on or about April 5, 2012, regarding the 1992
5 Toyota, Respondent failed to comply with Health and Safety Code section 44012 in that
6 Respondent failed to perform emission control inspections on the Toyota in accordance with
7 procedures prescribed by the department.

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with Regulations)**

10 33. Respondent's station license is subject to discipline pursuant to Health and Safety
11 Code section 44072.2, subdivision (c), in that on or about April 5, 2012, regarding the 1992
12 Toyota, Respondent failed to comply with the provisions of California Code of Regulations, title
13 16, section 3340.35, subdivision (c) in that Respondent issued electronic Certificate of
14 Compliance No. [REDACTED] for the Toyota even though the vehicle had not been inspected in
15 accordance with section 3340.42.

16 **EIGHTH CAUSE FOR DISCIPLINE**

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

18 34. Respondent Gurrola's technician license(s) is subject to discipline pursuant to Health
19 & Safety Code section 44072.2, subdivision (a), in that on or about April 5, 2012, regarding the
20 1992 Toyota, Respondent Gurrola failed to comply with the following sections of that Code:

21 a. **Section 44012:** Respondent Gurrola failed to perform emission control inspections
22 on the vehicle in accordance with procedures prescribed by the department.

23 b. **Section 44032:** Respondent Gurrola failed to perform tests of emission control
24 devices and systems in accordance with Section 44012.

25 **NINTH CAUSE FOR DISCIPLINE**

26 **(Failure to Comply with Regulations)**

27 35. Respondent Gurrola's technician license(s) is subject to discipline pursuant to Health
28 & Safety Code section 44072.2, subdivision (c), in that on or about April 5, 2012, regarding the

1 1992 Toyota, Respondent Gurrola failed to comply with provisions of California Code of
2 Regulations, title 16, section 3340.30, subdivision (a) in that Respondent Gurrola failed to
3 inspect, test and repair the Toyota in accordance with Health and Safety Code sections 44012 and
4 44035, and California Code of Regulations, title 16, section 3340.42.

5 **UNDERCOVER OPERATION – MAY 8, 2012**

6 36. Prior to the undercover run at the subject facility, Bureau personnel had inspected and
7 documented a 1992 Chevrolet (Chevrolet). Bureau personnel caused a malfunction to the AIR
8 system (AIR control wire grounded). This condition causes the vehicle to fail a Smog Check
9 Inspection test due to excessive Oxides of Nitrogen (NOX) emission levels. The only emission
10 repair necessary for the Chevrolet to pass a properly performed Smog Check Inspection was to
11 repair the malfunction to the AIR system.

12 37. On or about May 8, 2012, a Bureau undercover operator drove the Bureau
13 documented Chevrolet to the Respondent's facility and requested a Smog Check Inspection. The
14 operator signed an estimate and was provided with a copy. Respondent Gurrola performed a
15 Smog Check Inspection on the Chevrolet and Respondent told the operator that the vehicle had
16 failed. The operator authorized the subject facility to diagnose the cause of the Smog Check
17 Inspection failure and was provided a written estimate of \$90.00 for the diagnosis.

18 38. On or about May 9, 2012, the operator phoned the Respondent to inquire about the
19 progress of the diagnosis. She was told the EGR (Exhaust Gas Recirculation) passages were
20 restricted with carbon and needed to be cleaned out. The operator was given a verbal estimate of
21 \$90.00 and she then authorized the repair.

22 39. On or about May 9, 2012, the operator returned to the subject facility to retrieve the
23 Chevrolet. The Respondent told the operator additional problems had been found with the
24 Chevrolet in that two wires had been taped together and they were grounded causing the air pump
25 to run all the time. The operator paid \$238.00, received Invoice number 29886 and two (2) VIRs.
26 One VIR, dated May 8, 2012, shows the Chevrolet failed the failed the Smog Check Inspection
27 and the second VIR, Dated May 9, 2012, shows the Chevrolet passed the Smog Check Inspection.

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40. On May 10, 2012, Bureau personnel re-inspected the Chevrolet and found the following: The malfunction to the AIR system had been repaired as invoiced. This was the only repair necessary for the Chevrolet to pass a properly performed Smog Check Inspection. The EGR passage cleaning that was authorized and invoiced was unnecessary. The EGR system was documented and found to be functioning properly and not in need of service or repair. Both VIRs show an entry of "N/A" (not applicable) for "Thermostatic Air Cleaner", when in fact, the Chevrolet is equipped with a Thermostatic Air Cleaner.

TENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

41. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(1), in that Respondent made statements which he knew or which by exercise of reasonable care should have known to be untrue or misleading when, in regard to the Bureau's 1992 Chevrolet, Respondent told the operator the EGR passages were restricted and needed to be cleaned, when in fact the EGR system was in good condition, functioning properly, and not in need of repair or service.

ELEVENTH CAUSE FOR DISCIPLINE

(Fraud)

42. Respondent's registration is subject to discipline pursuant to Code section 9884.7, subdivision(a)(4), in that Respondent committed acts constituting fraud by accepting payment for repairs to the EGR passages of the Bureau's 1992 Chevrolet. The only needed repair of the Chevrolet was to repair the malfunction to AIR system.

TWELFTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

43. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about May 9, 2012, pursuant to California Code of Regulations, title 16, section 3373, Respondent created an untrue or misleading record by stating on the Invoice No. [REDACTED] for the Bureau's 1992 Chevrolet, that the EGR passages were restricted, when in fact the EGR system was documented and found to be in good condition and not in need of repair.

1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

3 44. Respondent's station license is subject to discipline pursuant to Health and Safety
4 Code section 44072.2, subdivision (a), in that on or about May 8, 2012, in regard to the 1992
5 Chevrolet, Respondent failed to comply with Code section 44012 in that Respondent failed to
6 perform the emission control inspection on the undercover vehicle in accordance with procedures
7 prescribed by the department in that Respondent entered N/A (Not Applicable) into the EIS for
8 the visual inspection results for the Thermostatic Air Cleaner (TAC), when in fact, a TAC is
9 required and was present and connected on the 1992 Chevrolet.

10 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

12 45. Respondent's station license is subject to discipline pursuant to Health and Safety
13 Code section 44072.2, subdivision (d), in that on or about March 8, 2012, Respondent committed
14 acts involving dishonesty, fraud or deceit whereby another was injured by telling the undercover
15 operator that EGR passages of the 1992 Chevrolet were restricted and needed to be cleaned, and
16 accepting payment for this repair, when in fact the EGR system was in good condition,
17 functioning properly, and not in need of repair or service.

18 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

20 46. Respondent Gurrola's technician license(s) is subject to discipline pursuant to Health
21 and Safety Code section 44072.2, subdivision (a), in that on or about May 8, 2012, regarding the
22 1992 Chevrolet, Respondent Gurrola failed to comply with Code sections 44012 in that
23 Respondent Gurrola failed to perform emission control inspections on 1992 Chevrolet in
24 accordance with procedures prescribed by the department in that Respondent Gurrola entered
25 N/A (Not Applicable) into the EIS for the visual inspection results for the Thermostatic Air
26 Cleaner (TAC), when in fact, a TAC is required and was present and connected on the undercover
27 vehicle.

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1 **SIXTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 47. Respondent Gurrola's technician license(s) is subject to discipline pursuant to Health
4 and Safety Code section 44072.2, subdivision (c), in that on or about May 8, 2012, regarding the
5 1992 Chevrolet, Respondent Gurrola failed to comply with provisions of California Code of
6 Regulations, title 16, section 3340.30, subdivision (a) in that Respondent Gurrola failed to
7 inspect, test and repair the 1992 Chevrolet in accordance with Health and Safety Code sections
8 44012 and 44035, and California Code of Regulations, title 16, section 3340.42 as set forth in
9 paragraph 45 above.

10 **OTHER MATTERS**

11 48. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
12 or may invalidate temporarily or permanently, the registrations for all places of business operated
13 in this state by Alchi Inc., including, but not limited to Patriot Auto Care and Brakes, Automotive
14 Repair Dealer Registration No. ARD 253302, upon a finding that it has, or is, engaged in a course
15 of repeated and willful violations of the laws and regulations pertaining to an automotive repair
16 dealer.

17 49. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
18 License No. RC 253302, issued to Alchi Inc., Wathiq N. F. Alchi, President, doing business as
19 Patriot Auto Care and Brakes, is revoked or suspended; any additional license issued under this
20 chapter in the name of said licensee may be likewise revoked or suspended by the director.

21 50. Pursuant to Health & Safety Code section 44072.8, if Lamp Station License No. LS
22 253302, class A, issued to Alchi Inc., Wathiq N. F. Alchi, President, doing business as Patriot
23 Auto Care and Brakes, is revoked or suspended; any additional license issued under this chapter
24 in the name of said licensee may be likewise revoked or suspended by the director.

25 51. Pursuant to Health & Safety Code section 44072.8, if Brake Station License No. BS
26 253302, class C, issued to Alchi Inc., Wathiq N. F. Alchi, President, doing business as Patriot
27 Auto Care and Brakes, is revoked or suspended; any additional license issued under this chapter
28 in the name of said licensee may be likewise revoked or suspended by the director.

52. Pursuant to Health & Safety Code section 44072.8, if Respondent Gurrola's technician license(s), currently designated as EA 108157 and as redesignated upon timely renewal as EO 108157 and/or EI 108157, is/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.

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 No. ARD 253302, issued to Alchi Inc., doing business as Patriot Auto Care and Brakes, Wathiq N. F. Alchi, President;

2. Revoking, suspending or placing on probation any other Automotive Repair Dealer Registration issued in the name Alchi Inc., Patriot Auto Care and Brakes, and/or Wathiq N. F. Alchi;

3. Revoking or suspending Smog Check Station License No. RC 253302, issued to Alchi Inc., doing business as Patriot Auto Care and Brakes, Wathiq N. F. Alchi, President;

4. Revoking or suspending Lamp Station License No. LS 253302, class A, issued to Alchi Inc., doing business as Patriot Auto Care and Brakes, Wathiq N. F. Alchi, President;

5. Revoking or suspending Brake Station License No. BS 253302, class C, issued to Alchi Inc., doing business as Patriot Auto Care and Brakes, Wathiq N. F. Alchi, President;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Alchi Inc., Patriot Auto Care and Brakes, and/or Wathiq N. F. Alchi;

7. Revoking or suspending J. Alberto Gurrola's Smog Technician license(s), currently designated as EA 108157 and as redesignated upon his timely renewal as EO 108157 and/or EI 108157;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of J. Alberto Gurrola;

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1 9. Ordering Alchi Inc., doing business as Patriot Auto Care and Brakes, Wathiq N. F.
2 Alchi, President, and J. Alberto Gurrola, to pay the Bureau of Automotive Repair the reasonable
3 costs of the investigation and enforcement of this case, pursuant to Business and Professions
4 Code section 125.3; and,

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

6
7 DATED: _____

5/3/13

John Wallauch
JOHN WALLAUCH

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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