

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

In the Matter of the Accusation Against:

EARTH STATION, MIKE PAUL ROMANI, OWNER

7601 Greenback Lane

Citrus Heights, CA 95610

Automotive Repair Dealer Registration No. ARD 264421

Smog Check Station License No. RC 264421

MIKE PAUL ROMANI

7601 Greenback Lane

Citrus Heights, CA 95610

Smog Check Inspector License No. EO 142238

Smog Check Repair Technician License No. EI 142238,

BRIAN D. DUPRAS

4800 Minnesota Ave.

Fair Oaks, CA 95628

Smog Check Inspector License No. EO 309111

Smog Check Repair Technician License No. EI 309111,

TONIA RENELL ROA

4520 Hackberry Lane

Carmichael, CA 95608

Smog Check Inspector License No. EO 639903

Smog Check Repair Technician License No. EI 639903,

Respondents.

Case No. 79/18-4143

OAH No. 2019090660

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on July 14, 2020.

IT IS SO ORDERED this 3 day of June, 2020.



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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In the Matter of the Accusation Against:

**EARTH STATION, MIKE PAUL ROMANI, OWNER; MIKE PAUL
ROMANI; TONIA RENELL ROA AND BRIAN DUPRAS,**

Respondents

Case No. 79/18-4143

OAH No. 2019090669

PROPOSED DECISION

Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 16, 2020, in Sacramento, California.

Daniel McGee, Deputy Attorney General, represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Respondents Brian Dupras and Tonia Renell Roa appeared at the hearing and represented themselves.

There was no appearance by or on behalf of respondents Earth Station or Mike Paul Romani, Owner, who was duly served with a Notice of Hearing. The matter

proceeded as a default against Earth Station and Mr. Romani pursuant to California Government Code section 11520, subdivision (a).

Evidence was received, the record was closed, and the matter was submitted for decision on March 16, 2020.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. Mr. Romani owns Earth Station located in Citrus Heights, California. On or about March 22, 2011, the Bureau issued Mr. Romani, as owner of Earth Station, Automotive Repair Dealer Registration No. ARD 264421 (ARD). The ARD was in full force and effect at all times relevant to the proceedings. The ARD will expire on March 31, 2020, unless renewed or revoked.

2. On or about March 29, 2011, the Bureau issued Smog Check Station License No. RC 264421 (Station license) to Mr. Romani. The Station license was in full force and effect at all times relevant to the proceedings and will expire on March 31, 2020, unless renewed or revoked.

3. In 2002, the Bureau issued Mr. Romani Advanced Emission Specialist Technician (EA) License No. EA 142238. Effective August 2, 2012, Mr. Romani's EA license was renewed by the Bureau as Smog Check Inspector (EO) License No. EO 142238 and Smog Check Repair Technician (EI) License No. EI 142238. Mr. Romani's EO and EI licenses were in full force and effect at all times relevant to the proceedings and will expire on July 31, 2020, unless renewed or revoked.

4. In 1996, the Bureau issued Mr. Dupras License No. EA 309111. Effective August 2, 2012, Mr. Dupras's EA license was renewed by the Bureau as License No. EO 309111 and License No. EI 309111. Mr. Dupras's EO and EI licenses were in full force and effect at all times relevant to the proceedings and will expire on August 31, 2020, unless renewed or revoked.

5. On or about January 11, 2017, the Bureau issued License No. EO 639903 to Ms. Roa. The EO license was in full force and effect at all times relevant to the proceedings and will expire on September 30, 2020, unless renewed or revoked.

6. On August 30, 2018, complainant signed and thereafter filed an Accusation against respondents. Complainant alleged that Mr. Romani's ARD and respondents' licenses and are subject to discipline for violating the Bureau's laws and regulations related to respondents "clean plugging" five vehicles at Earth Station. Clean plugging is a process in which a fraudulent smog Certificate of Compliance is generated by the smog facility.

7. Respondents timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Clean Plugging Investigation

8. California's Smog Check Program requires motor vehicle owners to have their vehicles pass a smog inspection and obtain a Certificate of Compliance every two years to renew their vehicle registration and when a vehicle's title is transferred. The purpose of the Smog Check Program is to reduce air pollution by identifying and

requiring the repair of polluting motor vehicles. Smog Check inspectors at Smog Check stations perform the smog inspections. The Bureau licenses inspectors and stations.

9. Ian Evans, Program Representative II for the Bureau, prepared a report and testified at hearing concerning the Smog Check Program and the Bureau's role in ensuring the laws and regulations governing the Smog Check Program are correctly implemented by licensees. When performing a smog inspection, the smog inspector performs visual, functional, and diagnostic tests of the vehicle to ensure the emission control components are present and properly functioning.

10. Mr. Evans explained in his report that on March 9, 2015, the Smog Check Program was updated to require the "use of an On-Board Diagnostic Inspection System (BAR-OIS)," which is smog check equipment required when inspecting "most model-year 2000 and newer gasoline and hybrid vehicles and 1998 and newer diesel vehicles." The BAR-OIS "consists of a certified Data Acquisition Device (DAD), computer, bar code scanner, and printer." The "DAD is an On-Board Diagnostic (OBD) scan tool, that when required by the California BAR-OIS software, retrieves OBD data from the vehicle." The BAR-OIS is used to input technician information, the physical Vehicle Identification Number (VIN), and the Department of Motor Vehicles (DMV) renewal information. The "BAR-OIS software requires a continuous Internet connection when performing a Smog Check inspection."

11. Mr. Evans also explained that the "[d]ata retrieved, captured, and recorded" to the Bureau's Vehicle Information Database (VID) during a BAR-OIS Smog Check inspection includes the electronic VIN (eVIN), which is the "digitally stored VIN programmed into the vehicle's Powertrain Control Module (PCM)." The eVIN should match the VIN located on the vehicle and is unique to each vehicle. Data retrieved also

includes the "communication protocol, which is the specific 'language' the PCM uses to rely or communicate information to scan tools and other computers or devices such as the BAR-OIS; and the number of Parameter Identifications (PIDs), which is the number of specific data values each PCM reports related to emission controls."

The "PIDs are data points reported by the vehicle's on-board computer to a scan tool or BAR-OIS." Mr. Evans explained, "[t]he PID count is the number of data points reported by the vehicle's on-board computer and is programmed during manufacture." Examples of PIDs are engine speed, vehicle speed, engine temperature, and other input and output values utilized by the vehicle's on-board computer. The "communication protocol is programmed into the vehicle's on-board computer during the manufacturing process and does not change."

12. The BAR-OIS software determines whether the vehicle passes the smog inspection, which is based on the visual, functional, and OBD tests. Once the smog inspection is complete, the BAR-OIS prints a Vehicle Inspection Report (VIR), "which is a physical record of the test results and shows the Certificate of Compliance number that was issued if the vehicle passed the Smog Check inspection." "Licensed Smog Check Inspectors are the only persons authorized by the [Bureau] to perform official" smog check inspections. The Bureau issues smog check inspectors a "license and a personal access code which are used to gain access to the [Emissions Inspection System] EIS and used to set up a username and password within the BAR-OIS to perform smog check inspections."

13. The Bureau's VID for a vehicle "contains registration data from DMV plus emission standards, vehicle Smog Check inspections, smog check stations and inspectors, and Certificates of Compliance." The Bureau can retrieve the VID information to review smog check results for a vehicle. Mr. Evans explained the Bureau

can "access the VID to view test data on Smog Check inspections performed at any Smog Check Station, or search for, retrieve, and print a test record for a particular vehicle which has been tested."

VID information can be reviewed to investigate methods smog check stations and inspectors use to fraudulently issue smog certificates using "clean plugging," which refers to a "method by which another vehicle's properly functioning OBD II system, or another source, is used to generate passing data readings or diagnostic information for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance or not present for testing."

14. Mr. Evans conducted a "detailed review of the VID data for Smog Check inspections performed at Earth Station." His "review showed a pattern of vehicles being certified with a different and/or unexpected eVin" and the "data for the vehicles certified also contains different communication protocols, and different PID amounts." Mr. Evans identified five vehicles inspected at Earth Station, which included one inspection performed by Mr. Romani, one performed by Mr. Dupras, and three performed by Ms. Roa, that were clean plugged between April 2017 and January 2018. In addition to his report, Mr. Evans prepared a table of information he reviewed for each vehicle that was clean plugged and provided the supporting documents for the table.

VEHICLE NO. 1

15. Vehicle No. 1 is a 2006 Dodge Durango Limited (2006 Dodge), VIN No. 1D8HB58206F129699. Mr. Romani tested the 2006 Dodge at Earth Station on April 11, 2017, at 12:19 p.m., and issued smog certificate ZT361315C under his EO license. The OIS test data for the 2006 Dodge shows that the eVIN transmitted was

4T1BK46KX7U542286, the communication protocol was ICAN11BT5 and the PID count was 46/17. The eVIN transmitted during the test was for a 2007 Toyota Camry New Generation LE (2007 Toyota), tested by Mr. Romani on the same day, at 12:59 p.m.

16. The 2006 Dodge was previously tested on January 20, 2017. The OIS test data transmitted shows the eVIN was 1D8HB58206F129699, the communication protocol was ICAN11BT5 and the PID count was 43/8, which was consistent with similar vehicle OIS test data.

17. The OIS test data transmitted for the 2006 Dodge matched the test data for the smog inspection respondent conducted on the 2007 Toyota. Mr. Evans determined that respondent used the 2007 Toyota to vehicle to generate a fraudulent Certificate of Compliance for the 2006 Dodge.

VEHICLE No. 2

18. Vehicle No. 2 is a 2000 Toyota Tacoma Xtra Cab (2000 Tacoma), VIN No. 4TAWN72N9YZ642099. Ms. Roa tested the 2000 Tacoma at Earth Station on May 30, 2017, and issued smog certificate ZV900007C, under her EO license. The OIS test data for the 2000 Tacoma shows that there was no eVIN transmitted, the communication protocol transmitted was ICAN29bt2, and the PID count was 15. Similar vehicle OIS test data for the 2000 Tacoma provides that no eVIN is expected, the expected protocol is I914, and the PID is 17.

19. The 2000 Tacoma had previously been tested by Mr. Dupras at Earth Station on May 18, 2015. The OIS test data shows that no eVIN was transmitted the communication protocol was I914, and the PID count was 17.

20. Mr. Evans opined that the "discrepancies in the OIS Test Data prove that the OIS [DAD] was not connected" to the 2000 Tacoma being certified, "causing issuance of a fraudulent Certificate of Compliance."

VEHICLE NO. 3

21. Vehicle No. 3 is a 2004 Honda Civic DX VP (2004 Honda), VIN No. 2HGES16354H606842. Ms. Roa tested the 2004 Honda at Earth Station on June 23, 2017, and issued smog certificate ZX676728C, under her EO license. The OIS test data for the 2004 Honda shows that the eVIN transmitted was 3N1CE2CP6FL3774968, the communication protocol transmitted was ICAN11bt5 and the PID count was 39/16. The eVIN transmitted during the test was for a 2015 Nissan Versa (2015 Nissan).

22. The 2004 Honda was previously tested and certified by Mr. Dupras at Earth Station on June 5, 2015. The OIS test data shows that the eVIN transmitted was 2HGES16354H606842, the communication protocol was I914, and the PID count was 17, which is consistent with the expected OIS data of similar vehicles.

23. The OIS test data transmitted for the 2004 Honda matched the eVIN for the 2015 Nissan. Mr. Evans determined that Ms. Roa used the 2015 Nissan to generate a fraudulent Certificate of Compliance for the 2004 Honda.

VEHICLE NO. 4

24. Vehicle No. 4 is a 2002 Toyota Tacoma Xtracab Prerunner (2002 Tacoma), VIN No. 5TESN92N22Z118027. Ms. Roa tested the 2002 Tacoma at Earth Station on August 4, 2017, at 11:51 a.m., and issued smog certificate HD168438C under her EO license. The OIS test data for the 2002 Tacoma shows that the eVIN transmitted was 1N6BD06T37C427581, the communication protocol transmitted was I914, and the PID

count was 18. The eVIN transmitted during the test was for a 2007 Nissan Frontier King Cab XE (2007 Nissan), tested by Ms. Roa on the same day, at 11:56 a.m.

25. On August 10, 2015, a previous test was performed on the 2002 Tacoma. The OIS test data shows that an eVIN was not transmitted, the communication protocol was I914, and the PID count was 17, which is consistent with the expected OIS data of similar vehicles.

26. The OIS test data transmitted for the 2002 Tacoma matched the test data for the smog inspection conducted on the 2007 Nissan. Mr. Evans determined that Ms. Roa used the 2007 Nissan to generate a fraudulent Smog Check Certificate of Compliance for the 2002 Tacoma.

VEHICLE No. 5

27. Vehicle No. 5 is a 2007 Toyota Corolla CE (2007 Corolla), VIN No.1NXBR32E47Z772542. Mr. Dupras tested the 2007 Corolla at Earth Station on January 2, 2018, and issued smog certificate HL483933C, under his EO license. The OIS test data for the 2007 Corolla shows that no eVIN was transmitted, the communication protocol transmitted was ICAN29bt2, and the PID count was 15.

28. On December 8, 2017, the 2007 Corolla was previously tested by Mr. Dupras at Earth Station. The OIS test data for that inspection showed that the eVIN transmitted was 1NXBR32E47Z772542, the communication protocol was I914, and the PID was 18, which is consistent with the expected OIS data of similar vehicles.

29. Mr. Evans opined that the "discrepancies in the OIS Test Data prove that the OIS [DAD] was not connected" to the 2007 Corolla being certified, "causing issuance of a fraudulent Certificate of Compliance."

Prior Citation Issued to Earth Station and Mike Romani

30. Earth Station and Mr. Romani have received three previous citations:
 - a. On January 23, 2014, the Bureau issued Citation No. C2014-0483 to Earth Station for issuing a Certificate of Compliance to a Bureau undercover vehicle with a defective, disconnected and modified Evaporative Emissions system. (Health & Saf. Code § 44012 subd. (f).) The total civil penalty for that citation was \$1,000. The decision became effective on March 27, 2014. Payment was received the same day.
 - b. On January 12, 2016, the Bureau issued Citation No. C2016-107 to Earth Station for issuing a Certificate of Compliance to a vehicle using a BAR97 when an OBD OIS was required. A Citation Service conference was held and the Citation was modified and reissued as an Order of Abatement.
 - c. Mr. Romani was also issued a Citation No. M2016-108 for the same incident related to Citation No. C2016-107. The Citation issued to Mr. Romani was modified and reissued as an Order of Abatement.

Mr. Dupras's Testimony

31. Mr. Dupras has been licensed by the Bureau since 1986. He has never been cited for clean plugging and he denied ever engaged in clean plugging. Mr.

Dupras described himself as a "legitimate" smog technician. He has performed thousands of smog inspections. Mr. Dupras was not aware of any clean plugging occurring at Earth Station. He explained that he cannot imagine any smog technician engaging in clean plugging because "every tech knows" that they would be caught.

32. Mr. Dupras worked at Earth Station for approximately 11 months. He explained that Earth Station was a "drive up" smog station, which he opined was a "bad idea." Vehicles moved through a line as the smog inspections were completed. He described the operation as "chaotic." He left Earth Station in July 2018, because of the chaotic nature of the operation.

33. Mr. Dupras has not performed any smog inspections for a year. He works for Los Rios Community Colleges as an equipment mechanic. Mr. Dupras explained that although he no longer needs his licenses to perform his job, he would like to keep the licenses and remained certified for his "own personal enjoyment."

Ms. Roa's Evidence

34. Ms. Roa also denied intentionally engaging in clean plugging. Ms. Roa explained that she was never asked to engage in clean plugging and she never observed clean plugging occurring at Earth Station. Ms. Roa was licensed for three months when she began working at Earth Station in March 2017.

35. Ms. Roa is aware that she made at least one mistake that involved issuing an inaccurate Certificate of Compliance. Ms. Roa explained that Vehicle 4, the 2002 Tacoma had lined up at the drive-through inspection area at Earth Station. The vehicle began to overheat, so she had to abort the test. Ms. Roa asked the driver of the 2002 Tacoma to move the vehicle. The driver of the 2007 Nissan moved up in line. The paperwork for the 2002 Tacoma was not moved. She scanned the paperwork for the

2002 Tacoma, but completed the smog inspection of the 2007 Nissan. However, before the driver of the 2007 Nissan left, Ms. Roa realized her mistake. She re-inspected the 2007 Nissan with the correct paperwork.

Ms. Roa immediately informed Mr. Romani of her mistake. He became upset with her and explained the seriousness of the mistake. Ms. Roa explained that she did not understand the ramifications of her mistake, but based on Mr. Romani's reaction, she decided to document the incident on the smog inspection paperwork for the vehicles, which she submitted at hearing. Ms. Roa did not inform the Bureau of the incident.

36. Ms. Roa lost her job at Earth Station in August 2017, after the incident with the 2002 Tacoma. Ms. Roa explained that Mr. Romani was no longer comfortable with her performing inspections and he did not want the mistake to happen again. Ms. Roa explained that she understands that she did not follow proper protocol, which resulted in a serious mistake. Ms. Roa was new to the smog industry. Since leaving Earth Station she has "refined" her inspections so that she does not make the same mistakes. She explained that she now scans the vehicle first, then the paperwork and then checks the last eight numbers of the VIN to make sure the paperwork matches the vehicle.

37. For the last two years, Ms. Roa has worked full-time at Smog King in Roseville and El Dorado Hills. She would like to continue working as a smog technician.

Analysis

38. The evidence established that respondents violated the rules and regulations pertaining to the Automotive Repair Act and Motor Vehicle Inspection Program by issuing Certificates of Compliance for five vehicles using a clean plugging

method. Mr. Romani, owner of Earth Station did not appear at the hearing. However, the testimony of Mr. Dupras describing the chaotic nature of the drive-up smog inspection operation run by Mr. Romani was compelling. The evidence strongly suggests that operations at Earth Station fostered an environment in which smog technicians made mistakes that resulted in fraudulent Certificates of Compliance being issued. Mr. Romani has an obligation as the owner of Earth Station and as a technician to ensure smog inspections are performed accurately.

39. The evidence did not demonstrate that Mr. Dupras or Ms. Roa intentionally engaged in clean plugging. Mr. Dupras has been licensed by the Bureau for over 30 years. He has no history of citations related to clean-plugging. While the evidence established that there were discrepancies in the OIS Test Data that prove the OIS DAD was not connected to Vehicle 5, which caused issuance of a fraudulent Certificate of Compliance to the 2007 Corolla being certified. Mr. Dupras's testimony was persuasive that this was a result of a mistake rather than an intentional act.

40. Likewise, Ms. Roa persuasively testified that she made mistakes early in her career as a smog technician. She had only been licensed three months when she began working at Earth Station. Ms. Roa produced evidence regarding the mistake she discovered concerning Vehicle No. 4. It is plausible that the other two vehicles in which Ms. Roa conducted smog inspections that resulted in the issuance of fraudulent Certificates of Compliance, were also a result of mistakes.

41. The Bureau's Disciplinary Guidelines provide for a maximum discipline of revocation for the causes for discipline charged against respondents. When all the evidence is considered, revocation of Earth Station's ARD and Station License, and Mr. Romani's Smog Check Inspector License and Smog Check Repair Technician License is necessary to protect the public health, safety, and welfare. Mr. Romani repeatedly

failed to ensure that the proper procedures were followed at Earth Station. No evidence was presented to suggest that any changes have been made at Earth Station to ensure that future mistakes will not occur. Mr. Romani also has a history of previous citations. Therefore, revocation is the only appropriate way to remedy the risk to the public.

42. However, a period of probation for Mr. Dupras and Ms. Roa is appropriate to ensure the public is protected. Ms. Roa should also complete additional training to ensure she has corrected her practices.

Cost of Investigation

43. Complainant requested that, pursuant to Business and Professions Code section 125.3, respondents be ordered to reimburse the Bureau for the reasonable costs of investigation and enforcement of this matter in the total amount of \$7,802.38. In support of this total amount, complainant submitted a Certification of Prosecution Costs and Declaration of Daniel McGee, Deputy Attorney General, which stated that the Bureau has been billed \$7,005 for the time the Attorney General's Office worked on this matter. Attached to the certification of costs prepared by Mr. McGee is a computer printout that described the tasks performed, the amount of time billed, and the billing rate by each professional, which appropriately established the requested enforcement costs. Also included are declarations signed by Mr. Evans and Mark Casillas, Program Representative III, with an attached list of hours, work performed, and costs of totaling \$797.38.

44. As set forth in Legal Conclusion 27, the scope of the investigation was appropriate in light of the alleged misconduct and the cost of enforcement and

investigation are reasonable. Respondents shall be ordered to pay a proportional share the costs.

LEGAL CONCLUSIONS

Applicable Law

1. The Automotive Repair Act, set forth in Business and Professions Code section 9880, et seq., governs the registration, licensing and discipline of Automotive Repair Dealers. The Legislature has expressly declared that protecting the public "shall be the highest priority" of the Bureau exercising these functions and that, "whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 9880.3.)

2. Pursuant to Health and Safety Code section 44002, the Director has all of the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

3. Under the Motor Vehicle Inspection Program, set forth in Health and Safety Code section 44000, et seq., the Legislature has declared that California's Motor Vehicle Inspection Program requires an "enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven." (Health & Saf. Code, § 44001, subd. (b)(5)(E).) The program provides for privately operated Smog Check Stations that are authorized "pursuant to Section 44015 to issue certificates of compliance or noncompliance to vehicles meeting the requirements of this chapter." (Health & Saf. Code, § 44010.)

4. In revocation proceedings, the Bureau must prove that charges in the Accusation are true, and it must do so using the preponderance of the evidence standard. (*Imports Performance et al. v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.) Respondent has the burden of establishing any affirmative defenses.

5. A licensed smog check station shall not issue a certificate of compliance to any vehicle except as authorized by the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44015.) Tests at smog check stations "shall be performed in accordance with procedures prescribed by the department" (Health & Saf. Code, § 44012.) A visual or functional check must be made of the emission control devices specified by the department, and the visual or functional check "shall be performed in accordance with procedures prescribed by the department." (Health & Saf. Code, § 44012, subd. (f).)

6. Health and Safety Code section 44032 provides, in relevant part, that "[q]ualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012."

7. Health and Safety Code section 44072.2, provides 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 Safety Code section 44000,

et seq.)) and the regulations adopted pursuant to it, which related to the licensed activities.

[¶] . . . [¶]

(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.

8. Business and Professions Code section 9884.7, subdivision (a) provides in pertinent part:

The director, where the automotive repair dealer cannot show there was a bona fide error, 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 reasonable exercise of reasonable care should be known, to be untrue or misleading.

[¶] . . . [¶]

(4) Any other conduct which constitutes fraud.

[¶] . . . [¶]

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

9. Health and Safety Code section 44072.10 states, in pertinent part:

[¶] . . . [¶]

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

[¶] . . . [¶]

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

10. California Code of Regulations, title 16, section 3340.30, provides in relevant part:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

11. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides in relevant part that "[a] licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly."

12. California Code of Regulations, title 16, section 3340.42, sets forth the smog check test methods required to be performed on all vehicles subject to smog check inspections. This includes conducting OBD tests on vehicle models 2000 and newer, and diesel-powered vehicles 1998 model-year and newer, and visual inspection of emission control components.

Cause for Discipline

RESPONDENT ROMANI'S AUTOMOTIVE REPAIR DEALER REGISTRATION

13. Cause exists to discipline Mr. Romani's ARD, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1). As set forth in Factual Findings 8 through 29, and 38, complainant established by a preponderance of that evidence that

Mr. Romani, owner of Earth Station, made or authorized statements which he knew, or in the exercise of reasonable care should have known, to be untrue or misleading. Mr. Romani certified that Vehicles 1 through 5 passed inspection and were in compliance with applicable laws and regulations. However, Mr. Romani conducted, or caused to be conducted, the inspections on the vehicles using the clean plugging method, in that he, or his employees, substituted or used a different vehicle during the inspections to issue smog Certificates of Compliance for the vehicles and did not test or inspect the vehicles as required by Health and Safety Code section 44012.

14. Cause exists to discipline Mr. Romani's ARD pursuant to Business and Professions Code section 9884.7, subdivision (a)(4). As set forth in Factual Findings 8 through 29, and 38, complainant established by a preponderance of the evidence that Mr. Romani engaged in fraudulent conduct by issuing electronic smog Certificates of Compliance for Vehicles 1 through 5, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the people of California the protections afforded by the Motor Vehicle Inspection Program.

RESPONDENT ROMANI'S SMOG CHECK STATION LICENSE

15. Cause exists to discipline Mr. Romani's Station license, pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Mr. Romani failed to comply with Health and Safety Code sections 44012, subdivision (a), and 44015. As set forth in Factual Findings 8 through 29, and 38, complainant established by a preponderance of that evidence that Mr. Romani failed to ensure that the emissions control tests were performed on Vehicles 1 through 5, and issued electronic Certificates of Compliance for Vehicles 1 through 5, without ensuring that the vehicles were properly tested and inspected.

16. Cause exists to discipline Mr. Romani's Station license, pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Mr. Romani violated California Code of Regulations, title 16, sections 3340.35, subdivision (c), and 3340.42. As set forth in Factual Findings 8 through 29, and 38, complainant established by a preponderance of the evidence that Mr. Romani issued electronic Certificates of Compliance for Vehicles 1 through 5 even though the vehicles had not been inspected in accordance with section 3340.42 and failed to ensure that the required tests were conducted on Vehicles 1 through 5.

17. Cause exists to discipline Mr. Romani's Station license, pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Mr. Romani committed dishonest, fraudulent, or deceitful acts whereby another was injured. As set forth in Factual Findings 8 through 29, and 38, complainant established by a preponderance of the evidence that Mr. Romani issued electronic Certificates of Compliance for Vehicles 1 through 5 without ensuring bona fide inspections were performed on the emissions systems, thereby depriving the People of the State of California of the protections afforded by the Motor Vehicle Inspection Program.

RESPONDENT ROMANI'S SMOG CHECK INSPECTOR AND SMOG CHECK REPAIR TECHNICIAN LICENSES

18. Cause exists to discipline Mr. Romani's EO and EI licenses, pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Mr. Romani violated Health and Safety Code section 44012. As set forth in Factual Findings 15 through 17, complainant established by a preponderance of the evidence that Mr. Romani failed to perform the emission control tests on Vehicle 1 in accordance with procedures prescribed by the Bureau.

19. Cause exists to discipline Mr. Romani's EO and EI licenses pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Mr. Romani failed to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a), and 3340.42. As set forth in Factual Findings 15 through 17, complainant established by a preponderance of the evidence that Mr. Romani failed to inspect and test Vehicle 1 in accordance with Health and Safety Code sections 44012 and 44035 and failed to conduct the required smog tests on the vehicle in accordance with Bureau specifications.

20. Cause exists to discipline Mr. Romani's EO and EI licenses, pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Mr. Romani committed dishonest, fraudulent, or deceitful acts whereby another was injured. As set forth in Factual Findings 15 through 17, complainant established by a preponderance of the evidence that Mr. Romani issued an electronic Certificate of Compliance for Vehicle 1 without ensuring a bona fide inspection was performed on the emissions system, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

RESPONDENT ROA'S SMOG CHECK INSPECTOR LICENSE

21. Cause exists to discipline Ms. Roa's EO license, pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Ms. Roa violated Health and Safety Code section 44012. As set forth in Factual Findings 18 through 26, complainant established by a preponderance of the evidence that Ms. Roa failed to perform the emission control tests on Vehicles 2 through 4 in accordance with procedures prescribed by the Bureau.

22. Cause exists to discipline Ms. Roa's EO license pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Ms. Roa failed to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a), and 3340.42. As set forth in Factual Findings 18 through 26, complainant established by a preponderance of the evidence that Ms. Roa failed to inspect and test Vehicles 2 through 4 in accordance with Health and Safety Code sections 44012 and 44035 and failed to conduct the required smog tests on the vehicles in accordance with Bureau specifications.

23. Cause exists to discipline Ms. Roa's EO license, pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Ms. Roa committed dishonest, fraudulent, or deceitful acts whereby another was injured. As set forth in Factual Findings 18 through 26, complainant established by a preponderance of the evidence that Ms. Roa issued electronic Certificates of Compliance for Vehicles 2 through 4 without ensuring bona fide inspections were performed on the emissions systems, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

**RESPONDENT DUPRAS'S SMOG CHECK INSPECTOR AND SMOG CHECK REPAIR
TECHNICIAN LICENSES**

24. Cause exists to discipline Mr. Dupras's EO and EI licenses, pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Mr. Dupras violated Health and Safety Code section 44012. As set forth in Factual Findings 27 through 29, complainant established by a preponderance of the evidence that Mr. Dupras failed to perform the emission control tests on Vehicle 5 in accordance with procedures prescribed by the Bureau.

25. Cause exists to discipline Mr. Dupras's EO and EI licenses pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Mr. Dupras failed to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a), and 3340.42. As set forth in Factual Findings 27 through 29, complainant established by a preponderance of the evidence that Mr. Dupras failed to inspect and test Vehicle 5 in accordance with Health and Safety Code sections 44012 and 44035 and failed to conduct the required smog tests on the vehicle in accordance with Bureau specifications.

26. Cause exists to discipline Mr. Dupras's EO and EI licenses, pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Mr. Dupras committed dishonest, fraudulent, or deceitful acts whereby another was injured. As set forth in Factual Findings 27 through 29, complainant established by a preponderance of the evidence that Mr. Dupras issued an electronic Certificate of Compliance for Vehicle 5 without ensuring a bona fide inspection was performed on the emissions system, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Costs of Investigation

27. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of

his/her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

Respondents were not successful in getting any charges dismissed. Mr. Romani did not appear at hearing and as a result did not raise a colorable challenge to discipline. In contrast, Ms. Roa and Mr. Dupras both provided evidence of mitigation and rehabilitation, which support probation rather than revocation of their licenses. Complainant seeks a total of \$7,802.38 in costs. When all the *Zuckerman* factors are considered, the cost amount is reasonable. Mr. Romani, owner of Earth Station shall pay the \$7,002.38 of the costs. Ms. Roa was responsible for three of the five vehicles. She shall pay \$500. Mr. Dupras was responsible for one of the vehicles. He shall pay \$300.

Conclusion

28. When all of the evidence is considered, to protect the public health, safety, and welfare, Mr. Romani's Automotive Repair Dealer Registration, Station License, Smog Check Inspector and Smog Check Repair Technician licenses must be revoked. Ms. Roa and Mr. Dupras's licenses are placed on probation for three years under terms and conditions set forth below.

ORDER

Respondent Mike Paul Romani and Earth Station

1. Automotive Repair Dealer Registration No. ARD 264421 issued to Mike Paul Romani, as owner of Earth Station, is REVOKED.

2. Smog Check Station License No. RC 264421 issued to Mike Paul Romani, as owner of Earth Station, is REVOKED.

3. Smog Check Inspector License No. EO 142238 and Smog Check Repair Technician License No. EI 142238 issued to Mike Paul Romani, are REVOKED.

4. Mike Paul Romani shall pay the Bureau \$7,002.38 for the reasonable costs of the investigation and enforcement of Bureau Case No. 79/18-4143. Mr. Romani shall pay the costs within 90 days of the effective date of the Decision.

Respondent Tonia Renell Roa

It is hereby ordered that Smog Check Inspector License No. EO 639903 issued to Tonia Renell Roa is REVOKED. However, the revocation is stayed and Ms. Roa is placed on probation for three (3) years on the following terms and conditions:

1. Obey All Laws: During the period of probation, Ms. Roa shall comply with all federal and state statutes, regulations, and rules governing all Bureau registrations and licenses held by Ms. Roa.

2. Quarterly Reporting: During the period of probation, Ms. Roa shall report either by personal appearance or in writing as determined by the Bureau on a schedule set by the Bureau, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. Report Financial Interests: Ms. Roa shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the Bureau during the period of probation, report any financial interest which Ms. Roa or any partners, officers, or owners of any of her facilities may have in any other business

required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

4. Access to Examine Vehicles and Records: Ms. Roa shall provide Bureau representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Ms. Roa shall also provide Bureau representatives unrestricted access to all records pursuant to Bureau laws and regulations.

5. Tolling of Probation: If, during probation, Ms. Roa leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, Ms. Roa shall notify the Bureau in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California. All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that Ms. Roa obey all laws, shall be held in abeyance during any period of time of 30 days or more in which Ms. Roa is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which Ms. Roa is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

6. Violation of Probation: If Ms. Roa violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary

order provided in the decision. Once Ms. Roa is served notice of the Bureau's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

7. Maintain Valid License: Ms. Roa shall, at all times while on probation, maintain a current and active license with the Bureau, including any period during which suspension or probation is tolled. If Ms. Roa's license is expired at the time the decision becomes effective, the license must be renewed by Ms. Roa within 30 days of that date. If Ms. Roa's license expires during a term of probation, by operation of law or otherwise, then upon renewal Ms. Roa's license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active license during the period of probation shall also constitute a violation of probation.

8. Cost Recovery: Ms. Roa shall pay the Bureau \$500 for the reasonable costs of the investigation and enforcement of Case No. 79/18-4143. Ms. Roa shall make such payment as follows: payment in full within one year of the start of probation, or upon any terms agreed upon by the Bureau. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Ms. Roa shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for Case No. 79/18-4143. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. The Bureau reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. Training Course: During the period of probation, Ms. Roa shall attend and successfully complete a Bureau-specified and-approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by Ms. Roa. Ms. Roa shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. Failure to provide proof of enrollment and/or successful course completion to the Bureau within the timeframes specified shall constitute a violation of probation, and Respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

10. Notification to Employer: When performing services that fall within the scope of her license, Ms. Roa shall provide each of her current or future employers a copy of the decision and the underlying Accusation before commencing employment. Notification to Ms. Roa's current employer shall occur no later than the effective date of the decision. Ms. Roa shall submit to the Bureau, upon request, satisfactory evidence of compliance with this term of probation

11. Completion of Probation: Upon successful completion of probation, Ms. Roa's affected license will be fully restored or issued without restriction, if Ms. Roa meets all current requirements for licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

Respondent Brian Dupras

It is hereby ordered that Smog Check Inspector License No. EO 309111 and Smog Check Repair Technician License No. EI 309111 issued to Brian Dupras are

REVOKED. However, the revocation is stayed and Mr. Dupras is placed on probation for three (3) years on the following terms and conditions:

1. Obey All Laws: During the period of probation, Mr. Dupras shall comply with all federal and state statutes, regulations and rules governing all Bureau registrations and licenses held by Mr. Dupras.

2. Quarterly Reporting: During the period of probation, Mr. Dupras shall report either by personal appearance or in writing as determined by the Bureau on a schedule set by the Bureau, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. Report Financial Interests: Mr. Dupras shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the Bureau during the period of probation, report any financial interest which Mr. Dupras or any partners, officers, or owners of any of his facilities may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

4. Access to Examine Vehicles and Records: Mr. Dupras shall provide Bureau representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Mr. Dupras shall also provide Bureau representatives unrestricted access to all records pursuant to Bureau laws and regulations.

5. Tolling of Probation: If, during probation, Mr. Dupras leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, Mr. Dupras shall notify the Bureau in writing

within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California. All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that Mr. Dupras obey all laws, shall be held in abeyance during any period of time of 30 days or more in which Mr. Dupras is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which Mr. Dupras is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

6. Violation of Probation: If Mr. Dupras violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once Mr. Dupras is served notice of the Bureau's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

7. Maintain Valid License: Mr. Dupras shall, at all times while on probation, maintain a current and active licenses with the Bureau, including any period during which suspension or probation is tolled. If Mr. Dupras's licenses are expired at the time the decision becomes effective, the licenses must be renewed by Mr. Dupras within 30 days of that date. If Mr. Dupras's licenses expires during a term of probation, by operation of law or otherwise, then upon renewal Mr. Dupras's license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to

maintain a current and active licenses during the period of probation shall also constitute a violation of probation.

8. Cost Recovery: Mr. Dupras shall pay the Bureau \$300 for the reasonable costs of the investigation and enforcement of Case No. 79/18-4143. Mr. Dupras shall make such payment as follows: payment in full within one year of the start of probation, or upon any terms agreed upon by the Bureau. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Mr. Dupras shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for Case No. 79/18-4143. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. The Bureau reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. Completion of Probation: Upon successful completion of probation, Mr. Dupras's affected licenses will be fully restored or issued without restriction, if Mr. Dupras meets all current requirements for licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

DATE: April 9, 2020

DocuSigned by:
Marcie Larson
F72F4885838541C...
MARCIE LARSON

Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 79/18-4143

12 **EARTH STATION**
13 **MIKE PAUL ROMANI, OWNER**
7601 Greenback Lane
14 Citrus Heights, CA 95610
Automotive Repair Dealer Registration
15 **No. ARD 264421**
Smog Check Station License No. RC264421

ACCUSATION

16 **MIKE PAUL ROMANI**
17 7601 Greenback Lane
Citrus Heights, CA 95610
18 **Smog Check Inspector License No. EO 142238**
Smog Check Repair Technician License
19 **No. EI 142238**

20 **BRIAN D. DUPRAS**
4800 Minnesota Ave.
21 Fair Oaks, CA 95628
Smog Check Inspector License No. EO 309111
22 **Smog Check Repair Technician License**
No. EI 309111,

23 **TONIA RENELL ROA**
24 4520 Hackberry Lane
Carmichael, CA 95608
25 **Smog Check Inspector License No. EO 639903**

26 Respondents.

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1 Patrick Dorais ("Complainant") alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration**

6 2. On or about March 22, 2011, the Bureau issued Automotive Repair Dealer
7 Registration Number ARD 264421 to Mike Paul Romani ("Respondent Romani") as owner of
8 Earth Station. The Automotive Repair Dealer Registration was in full force and effect at all times
9 relevant to the charges brought herein and will expire on March 31, 2019, unless renewed.

10 **Smog Check Station License**

11 3. On or about March 29, 2011, the Bureau issued Smog Check Station License
12 Number RC 264421 to Respondent Romani. The Smog Check Station License was in full force
13 and effect at all times relevant to the charges brought herein and will expire on March 31, 2019,
14 unless renewed.

15 **Smog Check Inspector/Smog Check Repair Technician Licenses**

16 4. On a date unknown in 2002, Advanced Emission Specialist Technician License
17 Number EA 142238 was issued to Respondent Romani. Respondent Romani's Advanced
18 Emission Specialist Technician License expired on July 31, 2012, and was cancelled on August 2,
19 2012. Effective August 2, 2012, the license was renewed as Smog Check Inspector License
20 Number EO 142238 and Smog Check Repair Technician License No. EI 142238. The Smog
21 Check Inspector and Smog Check Repair Technician licenses were in full force and effect at all
22 times relevant to the charges brought herein and will expire on July 31, 2020, unless renewed.

23 5. On a date unknown in 1996, Advanced Emission Specialist Technician License
24 Number EA 309111 was issued to Brian D. Dupras ("Respondent Dupras"). Respondent
25 Dupras's Advanced Emission Specialist Technician License was due to expire on August 31,
26 2012, and was cancelled on August 23, 2012. Effective August 23, 2012, the license was
27 renewed as Smog Check Inspector License Number EO 309111 and Smog Check Repair
28 Technician License No. EI 309111. The Smog Check Inspector and Smog Check Repair

1 Technician licenses were in full force and effect at all times relevant to the charges brought herein
2 and will expire on August 31, 2020, unless renewed.

3 6. On or about January 11, 2017, the Bureau issued Smog Check Inspector License
4 Number EO 639903 to Tonia Renell Roa ("Respondent Roa"). The Smog Check Inspector
5 License was in full force and effect at all times relevant to the charges brought herein and will
6 expire on September 30, 2020, unless renewed.

7 **JURISDICTION**

8 7. This Accusation is brought before the Bureau under the authority of the following
9 laws.

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

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

16 10. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
17 "commission," "committee," "department," "division," "examining committee," "program," and
18 "agency." "License" includes certificate, registration or other means to engage in a business or
19 profession regulated by the Code.

20 11. Health & Safety Code section 44002 provides, in pertinent part, that the Director has
21 all the powers and authority granted under the Automotive Repair Act for enforcing the Motor
22 Vehicle Inspection Program.

23 12. Health & Safety Code section 44072.6 provides, in pertinent part, that the expiration
24 or suspension of a license by operation of law, or by order or decision of the Director of
25 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the
26 Director of jurisdiction to proceed with disciplinary action.

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1 13. Health & Safety 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 **STATUTORY AND REGULATORY PROVISIONS**

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

6 (a) The director, where the automotive repair dealer cannot show there was a
7 bona fide error, may deny, suspend, revoke, or place on probation the registration of
8 an automotive repair dealer for any of the following acts or omissions related to the
9 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.

10 (1) Making or authorizing in any manner or by any means whatever any
11 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.

12 (4) Any other conduct that constitutes fraud.

13 (6) Failure in any material respect to comply with the provisions of this chapter
or regulations adopted pursuant to it.

14 15. Health & Safety Code section 44072.2 states, in pertinent part:

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

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

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

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

22 16. Health & Safety Code section 44012 states, in pertinent part:

23 The test at the smog check stations shall be performed in accordance with procedures
24 prescribed by the department and may require loaded mode dynamometer testing in
enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic
25 system, or other appropriate test procedures as determined by the department in
consultation with the state board. The department shall implement testing using onboard
26 diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on
model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013.
27 However, the department, in consultation with the state board, may prescribe alternative
test procedures that include loaded mode dynamometer or two-speed idle testing for
28 vehicles with onboard diagnostic systems that the department and the state board determine

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1 exhibit operational problems. The department shall ensure, as appropriate to the test
2 method, the following:

3 Emission control systems required by state and federal law are reducing excess
4 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of
5 Section 44013.

6 17. Health & Safety Code section 44015(b) states, "If a vehicle meets the requirements of
7 Section 44012, a smog check station licensed to issue certificates shall issue a certificate of
8 compliance or a certificate of noncompliance."

9 18. Health & Safety Code section 44072.10(c) states, in pertinent part:

10 The department shall revoke the license of any smog check technician or
11 station licensee who fraudulently certifies vehicles or participates in the fraudulent
12 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
13 the following:

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

16 19. Health & Safety Code section 44024.5(a), states:

17 The department shall compile and maintain statistical and emissions profiles
18 and data from motor vehicles that are subject to the motor vehicle inspection
19 program. The department may use data from any source, including remote sensing
20 data, in use data, and other motor vehicle inspection program data, to develop and
21 confirm the validity of the profiles, to evaluate the program, and to assess the
22 performance of smog check stations. The department shall undertake these
23 requirements directly or seek a qualified vendor for these services.

24 20. Health & Safety Code section 44037 states, in pertinent part:

25 (a) The department shall compile and maintain records, using the sampling
26 methodology necessary to ensure their scientific validity and reliability, of tests and
27 repairs performed by qualified smog check technicians at licensed smog check
28 stations pursuant to this chapter on all of the following information:

(1) The motor vehicle identification information and the test data collected at
the station.

(5) Data received and compiled through the use of the centralized computer
database and computer network to be established pursuant to Section 44037.1, and
any other information determined to be essential by the department for program
enhancement to achieve greater efficiency, consumer protection, cost-effectiveness,
convenience, or emission reductions . . .

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1 COST RECOVERY

2 24. Code section 125.3 provides, in pertinent part, that a Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 UPDATED SMOG CHECK PROGRAM - ON BOARD DIAGNOSTIC SYSTEM

7 25. On March 9, 2015, California's Smog Check Program was updated to keep pace with
8 ever-advancing technology. The program update requires the use of an On-Board Diagnostic
9 Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of
10 the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and
11 most 1998 and newer diesel vehicles instead of the BAR-97 emission inspection system (EIS)
12 used for most model year 1999 and older gasoline and hybrid vehicles and 1997 and older diesel
13 vehicles. The BAR-OIS system consists of a certified Data Acquisition Device (DAD),
14 computer, bar code scanner, and printer.

15 26. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the
16 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between
17 the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used
18 to input technician information, the vehicle identification number, and DMV renewal
19 information. The vehicle identification number (VIN) that is physically present on all vehicles is
20 required to be programmed into the vehicle's On-Board Diagnostics – Generation II (OBD II) on
21 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in
22 earlier model-years. The electronically programmed VIN, referred to as the "eVIN", is captured
23 by the Bureau during a smog check inspection and should match the physical VIN on the vehicle.
24 The printer is used to provide a Vehicle Inspection Report (VIR), which shows the inspection
25 results and the Smog Check Certificate of Compliance Number for passing vehicles. Data

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1 retrieved and recorded during an OIS smog check includes the eVIN, the communication
2 protocol,¹ and the number of Parameter Identifications (PID's)².

3 27. As with the BAR-97 EIS, the technician also performs a visual and functional test on
4 the vehicle. The visual inspection of the emission control components verifies the required
5 emission control devices are present and properly connected and a functional test is performed of
6 the malfunction indicator light. The OIS software makes the determination whether or not the
7 vehicle passes the inspection based on the results of the OBD, visual, and functional tests.

8 REVIEW OF OIS TEST DATA

9 28. Bureau Representative I.E. reviewed BAR-OIS test data pertaining to smog check
10 inspections conducted at Respondent's facility. I.E. found that Respondent performed smog
11 check inspections on five vehicles identified below using a method known as "clean plugging",³
12 resulting in the issuance of fraudulent certificates of compliance for the vehicles.

13 Vehicle #1

14 29. BAR-OIS test data showed that on April 11, 2017, Respondent Romani performed a
15 smog check inspection on a 2006 Dodge Durango Limited (Vehicle 1), resulting in the issuance
16 of Certificate of Compliance No. ZT361315C. The BAR-OIS test details for Vehicle 1 showed
17 that the eVIN recorded during the inspection did not match the physical VIN for Vehicle 1.

18 30. The Bureau's VID data also showed that on April 11, 2017, a smog inspection was
19 performed by Respondent Romani on a 2007 Toyota Camry New Generation LE. The eVIN
20 transmitted to the VID was the same eVIN that was recorded during the April 11, 2017, smog
21 inspection on Vehicle 1. Further, the communication protocol and PID count reported for the

22 ¹ The OBD II communication protocol describes the specific manufacturer/vehicle
23 communication "language" used by the OBD II computer to communicate to scan tools and other
24 devices such as the BAR-OIS. The communication protocol is programmed into the OBD II
25 computer during manufacture and does not change.

26 ² PID's are data points reported by the OBD II computer to the scan tool or BAR-OIS (for
27 example, engine speed [rpm], vehicle speed, engine temperature, etc.) The PID count is the
28 number of data points reported by the OBD II computer and is programmed during manufacture.
Each make and model vehicle reports a specific number of PID counts.

³ Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another
source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog
certificate of compliance to another vehicle that is not in compliance with the Smog Check
Program and/or is not present for testing.

1 April 11, 2017, smog inspection on the 2007 Toyota Camry New Generation LE were the same as
2 the communication protocol and PID count for the April 11, 2017, smog inspection on Vehicle 1.

3 31. BAR-OIS test data also showed that on January 20, 2017, a smog inspection was
4 performed on Vehicle 1 by another licensed smog check facility and that the eVIN transmitted
5 matched the physical VIN of Vehicle 1 and that the communication protocol and PID count were
6 consistent with expected similar vehicle OIS Test Data for that make and model.

7 32. I.E. concluded that the DAD was not connected to Vehicle 1 during the April 11,
8 2017, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance
9 for that vehicle.

10 **Vehicle #2**

11 33. BAR-OIS test data showed that on May 30, 2017, Respondent Roa performed a smog
12 check inspection on a 2000 Toyota Tacoma Xtra Cab (Vehicle 2), resulting in the issuance of
13 Certificate of Compliance No. ZV900007C. The BAR-OIS test details for Vehicle 2 showed that
14 the eVIN was not recorded. I.E. reviewed the Comparative OIS Test Data for 2000 Toyota
15 Tacoma Xtra Cab vehicles and found that the communication protocol and PID count recorded
16 during the smog check inspection on Vehicle 2 were not consistent with the communication
17 protocol and PID count for that make and model.

18 34. BAR-OIS test data also showed that on May 18, 2015, a smog inspection was
19 performed on Vehicle 2 by Respondent Dupras, and that the eVIN was not transmitted, and the
20 communication protocol and PID count were consistent with expected similar vehicle OIS Test
21 Data for that make and model.

22 35. I.E. concluded that the DAD was not connected to Vehicle 2 during the May 30,
23 2017, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance
24 for that vehicle.

25 **Vehicle #3**

26 36. BAR-OIS test data showed that on June 23, 2017, Respondent Roa performed a smog
27 check inspection on a 2004 Honda Civic DX VP (Vehicle 3), resulting in the issuance of
28 Certificate of Compliance No. ZX676728C. The BAR-OIS test details for Vehicle 3 showed that

1 the eVIN recorded during the inspection did not match the physical VIN for Vehicle 3. I.E.
2 reviewed the Comparative OIS Test Data for 2004 Honda Civic DX VP vehicles and found that
3 the communication protocol and PID count recorded during the smog check inspection on
4 Vehicle 3 were not consistent with the communication protocol and PID count for that make and
5 model.

6 37. BAR-OIS test data also showed that on June 9, 2015, a smog inspection was
7 performed on Vehicle 3 by Respondent Dupras and that the eVIN transmitted matched the
8 physical VIN of Vehicle 3, and that the communication protocol and PID count were consistent
9 with expected similar vehicle OIS Test Data for that make and model.

10 38. I.E. concluded that the DAD was not connected to Vehicle 3 during the June 23,
11 2017, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance
12 for that vehicle.

13 Vehicle #4

14 39. BAR-OIS test data showed that on August 4, 2017, Respondent Roa performed a
15 smog check inspection on a 2002 Toyota Tacoma Xtracab Prerunner (Vehicle 4), resulting in the
16 issuance of Certificate of Compliance No. HD168438C. The BAR-OIS test details for Vehicle 4
17 showed that an incorrect eVIN was recorded. I.E. reviewed the Comparative OIS Test Data for
18 2002 Toyota Tacoma Xtracab Prerunner vehicles and found that the PID count recorded during
19 the smog check inspection on Vehicle 4 was not consistent with the PID count for that make and
20 model.

21 40. The Bureau's VID data also showed that on August 4, 2017, a smog inspection was
22 performed by Respondent Roa on a 2007 Nissan Frontier King Cab XE. The eVIN transmitted to
23 the VID was the same eVIN that was recorded during the August 4, 2017, smog inspection on
24 Vehicle 4. Further, the communication protocol and PID count as transmitted to the VID were
25 the same communication protocol and PID count that were transmitted in connection with the
26 smog inspection of Vehicle 4. While the communication protocol and PID count as transmitted
27 were consistent with those expected for a 2007 Nissan Frontier King Cab XE, they were not
28 consistent with the communication protocol and PID count as would be expected for the make

1 and model of Vehicle 4.

2 41. BAR-OIS test data also showed that on August 10, 2015, a smog inspection was
3 performed on Vehicle 4 by another facility and that the eVIN was not transmitted and that the
4 communication protocol and PID count were consistent with expected similar vehicle OIS Test
5 Data for that make and model.

6 42. I.E. concluded that the DAD was not connected to Vehicle 4 during the August 4,
7 2017, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance
8 for that vehicle.

9 **Vehicle #5**

10 43. BAR-OIS test data showed that on January 2, 2018, Respondent Dupras performed a
11 smog check inspection on a 2007 Toyota Corolla CE (Vehicle 5), resulting in the issuance of
12 Certificate of Compliance No. HL483933C. The BAR-OIS test details for Vehicle 5 showed that
13 the eVIN was not recorded during the inspection. I.E. reviewed the Comparative OIS Test Data
14 for 2007 Toyota Corolla CE vehicles and found that they transmit the correct eVIN, and that the
15 PID count and communication protocol recorded during the smog check inspection on Vehicle 5
16 were not consistent with the PID count and communication protocol for that make and model.

17 44. BAR-OIS test data also showed that on December 8, 2017, a smog inspection was
18 performed on Vehicle 5 by Respondent Dupras and that the eVIN was transmitted and the
19 communication protocol and PID count recorded during the inspection was consistent with the
20 communication protocol and PID count for that make and model.

21 45. I.E. concluded that the DAD was not connected to Vehicle 5 during the January 2,
22 2018, smog check inspection, resulting in the issuance of a fraudulent certificate of compliance
23 for that vehicle.

24 **FIRST CAUSE FOR DISCIPLINE**

25 (Untrue or Misleading Statements)

26 46. Respondent Romani's registration is subject to discipline pursuant to Code
27 section 9884.7(a)(1), in that Respondent Romani made or authorized statements which
28 Respondent Romani knew or in the exercise of reasonable care should have known to be untrue

1 or misleading. Specifically, Respondent Romani certified that Vehicles 1 through 5, identified in
2 paragraphs 29 through 45 above, passed inspection and were in compliance with applicable laws
3 and regulations. In fact, Respondent Romani conducted, or caused to be conducted, smog check
4 inspections on the vehicles using clean-plugging methods, in that Respondent substituted
5 different vehicles during the inspections in order to issue smog certificates of compliance for the
6 vehicles, and did not test or inspect the vehicles as required by Health & Safety Code section
7 44012.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Fraud)

10 47. Respondent Romani's registration is subject to discipline pursuant to Code
11 section 9884.7(a)(4), in that Respondent Romani committed acts that constitute fraud by issuing
12 electronic smog certificates of compliance for Vehicles 1 through 5, identified in paragraphs 29
13 through 45 above, without ensuring that bona fide inspections were performed of the emission
14 control devices and systems on the vehicles, thereby depriving the People of the State of
15 California of the protection afforded by the Motor Vehicle Inspection Program.

16 **THIRD CAUSE FOR DISCIPLINE**

17 (Violations of Motor Vehicle Inspection Program)

18 48. Respondent Romani's smog check station license is subject to discipline pursuant to
19 Health & Safety Code section 44072.2(a), in that regarding Vehicles 1 through 5, identified in
20 paragraphs 29 through 45 above, Respondent Romani failed to comply with that Code, as
21 follows:

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

24 b. **Section 44015**: Respondent Romani issued electronic smog certificates of
25 compliance for the vehicles without ensuring that the vehicles were properly tested and inspected
26 to determine if they were in compliance with Health & Safety Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Failure to Comply with Regulations)

3 49. Respondent Romani's smog check station license is subject to discipline pursuant to
4 Health & Safety Code section 44072.2(c), in that Respondent Romani failed to comply with
5 Regulations, as follows:

6 a. **Section 3340.35(c)**: Respondent Romani issued electronic smog certificates of
7 compliance for Vehicles 1 through 5, identified in paragraphs 29 through 45 above, even though
8 the vehicles had not been inspected in accordance with CCR section 3340.42.

9 b. **Section 3340.42**: Respondent Romani failed to ensure that the required smog tests
10 were conducted on Vehicles 1 through 5, identified in paragraphs 29 through 45 above, in
11 accordance with the Bureau's specifications.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 (Dishonesty, Fraud or Deceit)

14 50. Respondent Romani's smog check station license is subject to discipline pursuant to
15 Health & Safety Code section 44072.2(d), in that Respondent Romani committed dishonest,
16 fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates
17 of compliance for Vehicles 1 through 5, identified in paragraphs 29 through 45 above, without
18 ensuring that a bona fide inspection was performed of the emission control devices and systems
19 on the vehicles, thereby depriving the people of the State of California of the protection afforded
20 by the Motor Vehicle Inspection Program.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 (Violations of Motor Vehicle Inspection Program)

23 51. Respondent Romani's inspector and smog check repair technician licenses are subject
24 to discipline pursuant to Health & Safety Code section 44072.2(a), in that Respondent Romani
25 violated section 44012 of that Code. Specifically, Respondent Romani failed to perform the
26 emission control tests on Vehicle 1, identified in paragraphs 29 through 32 above, in accordance
27 with procedures prescribed by the department.

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1 SEVENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Regulations)

3 52. Respondent Romani's inspector and smog check repair technician licenses are subject
4 to discipline pursuant to Health & Safety Code section 44072.2(c), in that regarding Vehicle 1,
5 identified in paragraphs 29 through 32 above, he failed to comply with provisions of Regulations,
6 as follows:

7 a. Section 3340.30(a): Respondent Romani failed to inspect and test Vehicle 1 in
8 accordance with Health & Safety Code sections 44012 and 44035, and CCR section 3340.42.

9 b. Section 3340.42: Respondent Romani failed to conduct the required smog tests on
10 Vehicle 1 in accordance with the Bureau's specifications.

11 EIGHTH CAUSE FOR DISCIPLINE

12 (Dishonesty, Fraud, or Deceit)

13 53. Respondent Romani's smog check inspector and smog check repair technician
14 licenses are subject to discipline pursuant to Health & Safety Code section 44072.2(d), in that he
15 committed dishonest, fraudulent, or deceitful acts whereby another was injured by using false
16 information for electronic smog certificates of compliance issued for Vehicle 1, identified in
17 paragraphs 29 through 32 above, thereby failing to performing bona fide inspections of the
18 emission control devices and systems on the vehicles and depriving the people of the State of
19 California of the protection afforded by the Motor Vehicle Inspection Program.

20 NINTH CAUSE FOR DISCIPLINE

21 (Violations of Motor Vehicle Inspection Program)

22 54. Respondent Roa's smog check inspector license is subject to discipline pursuant to
23 Health & Safety Code section 44072.2(a), in that Respondent Roa violated section 44012 of that
24 Code. Specifically, Respondent Roa failed to perform the emission control tests on Vehicles 2
25 through 4, identified in paragraphs 33 through 42 above, in accord with procedures prescribed by
26 the department.

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1 TENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Regulations)

3 55. Respondent Roa's smog check inspector license is subject to discipline pursuant to
4 Health & Safety Code section 44072.2(c), in that regarding Vehicles 2 through 4, identified in
5 paragraphs 33 through 42 above, Respondent Roa failed to comply with provisions of
6 Regulations, as follows:

7 a. Section 3340.30(a): Respondent Roa failed to inspect and test Vehicles 2 through 4
8 in accordance with Health & Safety Code sections 44012 and 44035, and CCR section 3340.42.

9 b. Section 3340.42: Respondent Roa failed to conduct the required smog tests on
10 Vehicles 2 through 4 in accordance with the Bureau's specifications.

11 ELEVENTH CAUSE FOR DISCIPLINE

12 (Dishonesty, Fraud, or Deceit)

13 56. Respondent Roa's smog check inspector license is subject to discipline pursuant to
14 Health & Safety Code section 44072.2(d), in that she committed dishonest, fraudulent, or
15 deceitful acts whereby another was injured by using false information for electronic smog
16 certificates of compliance issued for Vehicles 2 through 4, identified in paragraphs 33 through 42
17 above, thereby failing to performing bona fide inspections of the emission control devices and
18 systems on the vehicles and depriving the people of the State of California of the protection
19 afforded by the Motor Vehicle Inspection Program.

20 TWELFTH CAUSE FOR DISCIPLINE

21 (Violations of Motor Vehicle Inspection Program)

22 57. Respondent Dupras's smog check inspector and smog check repair technician
23 licenses are subject to discipline pursuant to Health & Safety Code section 44072.2(a), in that
24 Respondent Dupras violated section 44012 of that Code. Specifically, Respondent Dupras failed
25 to perform the emission control tests on Vehicle 5, identified in paragraph 43 through 45 above,
26 in accordance with procedures prescribed by the department.

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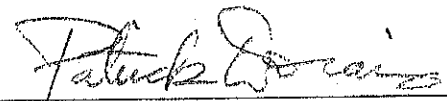
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9. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Safety Code in the name of Tonia Renell Roa;

10. Ordering Respondents, and each of them, 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,

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

DATED: August 30, 2018 

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

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