ROB BONTA
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General
MARISSA N. HAMILTON
Deputy Attorney General
State Bar No. 322489
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6701
Facsimile: (916) 731-2126
E-mail: Marissa.Hamilton@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against**:** **ALDER SMOG & TIRES, LLC, ARMANDO NEFTALI ABARCA, LUIS ARMANDO RODRIGUEZ** **17682 San Bernardino Ave.** **Fontana, CA 92335** **Automotive Repair Dealer Registration No. ARD 296598** **Smog Check Station License No. RC 296598,** **LUIS RODRIGUEZ** **1157 N. Acacia Ave.** **Rialto, CA 92376** **Smog Check Inspector License No. EO 641766,** **ARMANDO NEFTALI ABARCA** **17682 San Bernardino Ave.** **Fontana, CA 92335** **Mailing:** **5356 Bell Ave.** **Jurupa Valley, CA 92509** **Smog Check Inspector License No. EO 641773**	Case No. 79/22-16490 **ACCUSATION**

Smog Check Repair Technician License No. EI 641773,

Respondents.

PARTIES

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

Automotive Repair Dealer Registration – Respondent Alder Smog & Tires

2. On or about February 7, 2020, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 296598 to Alder Smog & Tires, LLC, Armando Neftali Abarca, Luis Armando Rodriguez (Respondent Alder Smog & Tires). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2024, unless renewed.

Smog Check Station License – Respondent Alder Smog & Tires

3. On or about March 9, 2020, the Bureau of Automotive Repair issued Smog Check Station License Number RC 296598 to Respondent Alder Smog & Tires. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2024, unless renewed.

STAR Station Certification – Respondent Alder Smog & Tires

4. On or about May 26, 2020, the Bureau issued STAR Station Certification to Respondent Alder Smog & Tires. The STAR Station Certification will remain active unless Respondent Alder Smog & Tires' Automotive Repair Dealer Registration and/or Smog Check Station License is revoked, cancelled, or these license(s) becomes delinquent or if the certification is invalidated.

Smog Check Inspector License – Respondent Luis Rodriguez

5. On or about March 11, 2019, the Bureau of Automotive Repair issued Smog Check Inspector License Number EO 641766 to Luis Rodriguez (Respondent Rodriguez). The Smog

Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2024, unless renewed.

Smog Check Inspector and Repair Technician Licenses – Respondent Armando Neftali Abarca

6. On or about March 13, 2019, the Bureau of Automotive Repair issued Smog Check Inspector License Number EO 641773 to Armando Neftali Abarca (Respondent Abarca). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2025, unless renewed.

7. On or about July 29, 2019, the Bureau of Automotive Repair issued Smog Check Repair Technician License Number EI 641773 to Respondent Abarca. The Smog Check Repair Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2025, unless renewed.

JURISDICTION

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

9. Section 9884.7 of the Code provides that the Director may revoke an automotive repair dealer registration.

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

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

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

STATUTORY PROVISIONS

13. Section 9884.7 of the Code provides, in pertinent part:

(a) The director, if the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer:

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

. . .

(4) Any other conduct that constitutes fraud.

. . .

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

. . .

14. Section 9889.22 of the Code provides:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

15. Health and Safety Code section 44012 provides:

The test at the smog check stations shall be performed in accordance with procedures 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 system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard 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. 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 vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

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

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, a visual inspection is made of emission control devices and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the department, that may include, but are not limited to, onboard diagnostic testing. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(g) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or would have passed a tailpipe test.

(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

16. Health and Safety Code section 44015, subdivision (b), provides:

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

17. Health and Safety Code section 44032 provides:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

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18. Health and Safety Code section 44059 provides:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

19. 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:

. . .

(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.

. . .

20. Health and Safety Code section 44072.10, subdivision (c), provides:

(c) The department shall revoke the license of any smog check technician or station licensee 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:

(1) Clean piping, as defined by the department.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

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

REGULATORY PROVISIONS

21. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:

(c) The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

22. California Code of Regulations, title 16, section 3340.30 provides, in pertinent 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.

. . .

23. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides, in pertinent part:

(c) 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 . . .

24. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides:

(c) No person shall enter any vehicle identification information or emission control system identification data for any vehicle other than the one being tested into the EIS or OIS. Nor shall any person enter into the EIS or OIS any false information about the vehicle being tested.

25. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions test methods and procedures which apply to all vehicles inspected in the State of California.

26. California Code of Regulations, title 16, section 3373, provides:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(e) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

COST RECOVERY

27. Section 125.3 of the Code provides, in pertinent part, that the Board may request the 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, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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FACTUAL ALLEGATIONS

28. On March 9, 2015, the Bureau implemented a policy change requiring the use of an On-Board Diagnostic Inspection System (OIS) in testing of 2000 model year and newer gas powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer diesel powered vehicles 14,000 GVW and under. The OIS Bureau Test Data lists differences in electronic Vehicle Identification Numbers (eVIN) for vehicles that have received smog inspections, in addition to communication protocol (the language used to communicate) and Parameter ID (PID) differences with vehicles that have been certified correctly that are the same make and model vehicles.

29. A Bureau representative initiated an investigation in which he reviewed OIS test data for Alder Smog & Tires. The Bureau representative's investigation revealed that data related to certain vehicles certified by Respondents contained a pattern of unmistakable discrepancies between the information transmitted during the inspections and known similar data for the vehicles being tested. The review showed seven (7) vehicles where the OIS test data did not match known similar data for the vehicles being tested, including vehicles being certified with a different eVIN, communication protocols, and/or PID amounts. These unmistakable documented discrepancies confirm that those seven (7) vehicles receiving smog certificates from Alder Smog & Tires were fraudulently tested during the smog inspection using the clean plugging method.[1]

30. The following tables illustrate the above-described documented clean plugging activities of Respondents on or about June 21, 2022 through October 11, 2022:

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[1] Clean plugging refers to the use of another vehicle's properly functioning On Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance to vehicles that are not in smog compliance or were not present for testing.

31. **Vehicle No. 1 – 2006 Chevrolet Silverado C3500**

Test Date	Vehicle Certified & Plate No.	Certificate No.	Technician	OIS Test Data Details
6/21/2022	2006 Chevrolet Silverado C3500 90144K2	SS561261C	EO641766 (Respondent Rodriguez)	eVIN: 1GBJC34D36E239231 Expected: 1GBJC34D36E239231 Protocol: JVPW Expected: ICAN11bt5 PID Count: 12/2 Expected: 26/9/3 or 28/9 or 28/9/3

The discrepancies in the OIS test data prove the OIS Data Acquisition Device (DAD) was not connected to the 2006 Chevrolet Silverado C3500 being certified, causing the issuance of a fraudulent smog certificate of compliance.

32. **Vehicle No. 2 – 2005 Ford Explorer XLS**

Test Date	Vehicle Certified & Plate No.	Certificate No.	Technician	OIS Test Data Details
6/24/2022	2005 Ford Explorer XLS 7AYY193	IR049771C	EO641773 (Respondent Abarca)	eVIN: JHMCM56166C004607 Expected: 1FMZU62E05ZA42321 Protocol: I914 Expected: ICAN11bt5 PID Count: 21 Expected: 47

In addition to the information set forth in the table above, the Bureau's analysis of data related to Vehicle No. 2 included the following facts further tending to support the conclusion that Respondents engaged in clean plugging. The vehicle used to fraudulently pass the smog check inspection on the 2005 Ford Explorer XLS was identified through the eVIN, communication protocol, and PID as a 2006 Honda Accord. The discrepancies in the OIS test data prove the OIS Data Acquisition Device (DAD) was not connected to the 2005 Ford Explorer XLS being certified, causing the issuance of a fraudulent smog certificate of compliance.

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33. **Vehicle No. 3 – 2010 Mitsubishi Lancer DE**

Test Date	Vehicle Certified & Plate No.	Certificate No.	Technician	OIS Test Data Details
7/16/2022	2010 Mitsubishi Lancer DE 8PAP835	SU132554C	EO641766 (Respondent Rodriquez)	eVIN: WMWMR33579TU96634 Expected: JA32U1FU4AU026980 Protocol: ICAN11bt5 Expected: ICAN11bt5 PID Count: 36/11 Expected: 38 or 38/14 or 40 or 40/14

In addition to the information set forth in the table above, the Bureau's analysis of data related to Vehicle No. 3 included the following facts further tending to support the conclusion that Respondents engaged in clean plugging. The vehicle used to fraudulently pass the smog check inspection on the 2010 Mitsubishi Lancer DE was identified through the eVIN, communication protocol, and PID as a 2009 Mini Cooper. On the same day, on or about July 16, 2022, this 2009 Mini Cooper was also tested and certified under technician license EO641766 (Respondent Rodriquez) at Alder Smog & Tires. The discrepancies in the OIS test data prove the OIS Data Acquisition Device (DAD) was not connected to the 2010 Mitsubishi Lancer DE being certified, causing the issuance of a fraudulent smog certificate of compliance.

34. **Vehicle No. 4 – 2004 Nissan Titan XE**

Test Date	Vehicle Certified & Plate No.	Certificate No.	Technician	OIS Test Data Details
8/24/2022	2004 Nissan Titan XE 8M76936	SW164830C	EO641766 (Respondent Rodriquez)	eVIN: 1C6RR6FT2ES278497 Expected: Not Expected Protocol: ICAN11bt5 Expected: I914 PID Count: 43 Expected: 22

In addition to the information set forth in the table above, the Bureau's analysis of data related to Vehicle No. 4 included the following facts further tending to support the conclusion that Respondents engaged in clean plugging. The vehicle used to fraudulently pass the smog

check inspection on the 2004 Nissan Titan XE was identified through the eVIN, communication protocol, and PID as a 2014 Ram 1500 ST. On the same day, on or about August 24, 2022, this 2014 Ram 1500 ST was also tested and certified under technician license EO641766 (Respondent Rodriquez) at Alder Smog & Tires. The discrepancies in the OIS test data prove the OIS Data Acquisition Device (DAD) was not connected to the 2004 Nissan Titan XE being certified, causing the issuance of a fraudulent smog certificate of compliance.

35. **Vehicle No. 5 – 2000 Honda Civic LX**

Test Date	Vehicle Certified & Plate No.	Certificate No.	Technician	OIS Test Data Details
8/26/2022	2000 Honda Civic LX 8ZVK856	SW262887C	EO641766 (Respondent Rodriquez)	eVIN: 5N1AR1NN9CC624592 Expected: Not Expected Protocol: ICAN11bt5 Expected: I914 PID Count: 43 Expected: 16

In addition to the information set forth in the table above, the Bureau's analysis of data related to Vehicle No. 5 included the following facts further tending to support the conclusion that Respondents engaged in clean plugging. The vehicle used to fraudulently pass the smog check inspection on the 2000 Honda Civic LX was identified through the eVIN, communication protocol, and PID as a 2012 Nissan Pathfinder. On the same day, on or about August 26, 2022, this 2012 Nissan Pathfinder was also tested and certified under technician license EO641766 (Respondent Rodriquez) at Alder Smog & Tires. The discrepancies in the OIS test data prove the OIS Data Acquisition Device (DAD) was not connected to the 2000 Honda Civic LX being certified, causing the issuance of a fraudulent smog certificate of compliance.

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36. **Vehicle No. 6 – 2006 Chevrolet Silverado K2500 Heavy Duty**

Test Date	Vehicle Certified & Plate No.	Certificate No.	Technician	OIS Test Data Details
10/5/2022	2006 Chevrolet Silverado K2500 Heavy Duty	SY330993C	EO641766 (Respondent Rodriquez)	eVIN: 1GCHK23D56F172389 Expected: 1GCHK23D56F172389 Protocol: JVPW Expected: ICAN11bt5 PID Count: 12/2 Expected: 26/9/3 or 28/9 or 28/9/3

The discrepancies in the OIS test data prove the OIS Data Acquisition Device (DAD) was not connected to the 2006 Chevrolet Silverado K2500 Heavy Duty being certified, causing the issuance of a fraudulent smog certificate of compliance.

37. **Vehicle No. 7 – 2006 Chevrolet Silverado K2500 Heavy Duty**

Test Date	Vehicle Certified & Plate No.	Certificate No.	Technician	OIS Test Data Details
10/11/2022	2006 Chevrolet Silverado K2500 Heavy Duty 51208A3	SY496027C	EO641766 (Respondent Rodriquez)	eVIN: 1GCHK23256F113440 Expected: 1GCHK23256F113440 Protocol: JVPW Expected: ICAN11bt5 PID Count: 12/2 Expected: 26/9/3 or 28/3 or 28/9/3

The discrepancies in the OIS test data prove the OIS Data Acquisition Device (DAD) was not connected to the 2006 Chevrolet Silverado K2500 Heavy Duty being certified, causing the issuance of a fraudulent smog certificate of compliance.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements – Respondent Alder Smog & Tires)

38. Respondent Alder Smog & Tires' Automotive Repair Dealer Registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(1), in that between on or about June 21, 2022 through October 11, 2022, with respect to Vehicle Nos. 1 through 7 identified above, Respondent Alder Smog & Tires made or authorized statements which they knew, or in

the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Alder Smog & Tires certified that the seven (7) vehicles identified above had passed inspection and were in compliance with applicable laws and regulations, when in fact, Respondent Alder Smog & Tires conducted the inspections on the vehicles using the clean plugging method by substituting or using different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Fraud – Respondent Alder Smog & Tires)

39. Respondent Alder Smog & Tires' Automotive Repair Dealer Registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(4), in that between on or about June 21, 2022 through October 11, 2022, with respect to Vehicle Nos. 1 through 7 identified above, Respondent Alder Smog & Tires committed acts which constitute fraud by issuing electronic smog certificates of compliance for the seven (7) vehicles without performing bona fide inspections of the emissions control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Material Violation of Automotive Repair Act – Respondent Alder Smog & Tires)

40. Respondent Alder Smog & Tires' Automotive Repair Dealer Registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(6), in that that between on or about June 21, 2022 through October 11, 2022, with respect to Vehicle Nos. 1 through 7 identified above, Respondent Alder Smog & Tires failed in a material respect to comply with the provisions of this chapter or regulations adopted pursuant to it by issuing electronic smog certificates of compliance for the seven (7) vehicles without performing bona fide inspections of the emissions control devices and systems on those vehicles, thereby depriving the People of the

State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program – Respondent Alder Smog & Tires)

41. Respondent Alder Smog & Tires' Smog Check Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that between on or about June 21, 2022 through October 11, 2022, with respect to Vehicle Nos. 1 through 7 identified above, Respondent Alder Smog & Tires failed to comply with the following sections of the Health and Safety Code:

a. **Section 44012:** Respondent Alder Smog & Tires failed to ensure that the emission control tests were performed on the seven (7) vehicles identified above in accordance with procedures prescribed by the Bureau.

b. **Section 44015, subdivision (b):** Respondent Alder Smog & Tires issued electronic smog certificates of compliance for the seven (7) vehicles identified above without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

c. **Section 44059:** Respondent Alder Smog & Tires willfully made false entries for the electronic smog certificates of compliance for the seven (7) vehicles identified above by certifying that the vehicles had been inspected as required when, in fact, they had not.

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program – Respondent Alder Smog & Tires)

42. Respondent Alder Smog & Tires' Smog Check Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that between on or about June 21, 2022 through October 11, 2022, with respect to Vehicle Nos. 1

through 7 identified above, Respondent Alder Smog & Tires failed to comply with provisions of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Alder Smog & Tires issued false or fraudulent certificates of compliance for the seven (7) vehicles identified above.

b. **Section 3340.35, subdivision (c):** Respondent Alder Smog & Tires issued electronic smog certificates of compliance for the seven (7) vehicles identified above even though the vehicles had not been inspected in accordance with section 3340.42 of the California Code of Regulations, title 16.

c. **Section 3340.41, subdivision (c):** Respondent Alder Smog & Tires knowingly entered false information into the emissions inspection system for the seven (7) vehicles identified above.

d. **Section 3340.42:** Respondent Alder Smog & Tires failed to ensure that the required smog tests were conducted on the seven (7) vehicles identified above in accordance with the Bureau's specifications.

e. **Section 3373:** Respondent Alder Smog & Tires withheld or inserted statements or information in an estimate, invoice, work order, or record required to be maintained by California Code of Regulations, title 16, section 3340.15, subdivision (e), which caused the document to be false or misleading for the seven (7) vehicles identified above.

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit – Respondent Alder Smog & Tires)

43. Respondent Alder Smog & Tires' Smog Check Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10, subdivision (c), in that between on or about June 21, 2022 through October 11, 2022, with respect to Vehicle Nos. 1 through 7 identified above, Respondent Alder Smog & Tires committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates of compliance for the seven (7)

vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program – Respondent Rodriguez)

44. Respondent Rodriguez's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that between on or about June 21, 2022 through October 11, 2022, with respect to the vehicles identified above, Respondent Rodriguez violated the following Health and Safety Code sections:

a. **Section 44012, subdivision (a):** Respondent Rodriguez failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the vehicles identified above in accordance with test procedures prescribed by the Bureau.

b. **Section 44012, subdivision (f):** Respondent Diaz failed to perform emission control tests on the vehicles identified above in accordance with procedures prescribed by the Bureau.

c. **Section 44032:** Respondent Diaz failed to perform tests of the emission control devices and systems on the vehicles identified above in accordance with section 44012 of the Health and Safety Code, in that the vehicles had been clean plugged.

d. **Section 44059:** Respondent Diaz willfully made false entries for the electronic certificates of compliance by certifying that the vehicles identified above had been inspected as required when, in fact, they had not.

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

EIGHTH CAUSE FOR DISCIPLINE

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

45. Respondent Rodriguez's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that between on or about

June 21, 2022 through October 11, 2022, with respect to the vehicles identified above, Respondent Rodriguez failed to comply with provisions of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Rodriguez issued false or fraudulent electronic smog certificates of compliance for the vehicles identified above.

b. **Section 3340.30, subdivision (a):** Respondent Rodriguez failed to inspect and test the vehicles identified above in accordance with Health and Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.41, subdivision (c):** Respondent Rodriguez knowingly entered false information into the emissions inspection system for the vehicles identified above.

d. **Section 3340.42:** Respondent Rodriguez failed to ensure that the required smog tests were conducted on the vehicles identified above in accordance with the Bureau's specifications.

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit – Respondent Rodriguez)

46. Respondent Rodriguez's Smog Check Inspector License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10, subdivision (c), in that between on or about June 21, 2022 through October 11, 2022, with respect to the vehicles identified above, Respondent Rodriguez committed acts involving dishonesty, fraud, or deceit when he issued electronic smog certificates of compliance for the vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

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TENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program – Respondent Abarca)

47. Respondent Abarca's Smog Check Inspector and Smog Check Repair Technician Licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that on or about June 24, 2022, with respect to the one (1) vehicle identified above, Respondent Abarca violated the following Health and Safety Code sections:

a. **Section 44012, subdivision (a):** Respondent Abarca failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the one (1) vehicle identified above in accordance with test procedures prescribed by the Bureau.

b. **Section 44012, subdivision (f):** Respondent Abarca failed to perform emission control tests on the one (1) vehicle identified above in accordance with procedures prescribed by the Bureau.

c. **Section 44032:** Respondent Abarca failed to perform tests of the emission control devices and systems on the one (1) vehicle identified above in accordance with section 44012 of the Health and Safety Code, in that the vehicle had been clean plugged.

d. **Section 44059:** Respondent Abarca willfully made false entries for the electronic certificates of compliance by certifying that the one (1) vehicle identified above had been inspected as required when, in fact, it had not.

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

ELEVENTH CAUSE FOR DISCIPLINE

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

48. Respondent Abarca's Smog Check Inspector and Smog Check Repair Technician Licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that on or about June 24, 2022, with respect to the one (1) vehicle identified

above, Respondent Abarca failed to comply with provisions of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent Abarca issued false or fraudulent electronic smog certificate of compliance for the one (1) vehicle identified above.

b. **Section 3340.30, subdivision (a):** Respondent Abarca failed to inspect and test the one (1) vehicle identified above in accordance with Health and Safety Code sections 44012 and 44035 and California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.41, subdivision (c):** Respondent Abarca knowingly entered false information into the emissions inspection system for the one (1) vehicle identified above.

d. **Section 3340.42:** Respondent Abarca failed to ensure that the required smog tests were conducted on the one (1) vehicle identified above in accordance with the Bureau's specifications.

Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

TWELFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit – Respondent Abarca)

49. Respondent Abarca's Smog Check Inspector and Smog Check Repair Technician Licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10, subdivision (c), in that on or about June 24, 2022, with respect to the one (1) vehicle identified above, Respondent Abarca committed acts involving dishonesty, fraud, or deceit when he issued an electronic smog certificate of compliance for the vehicle without performing bona fide inspections of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 28-37, as though fully set forth herein.

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DISCIPLINE CONSIDERATIONS

50. To determine the degree of discipline, if any, to be imposed on Respondent Abarca, Complainant alleges that on or about July 9, 2021, in a prior action, the Bureau of Automotive Repair issued Citation Number M2021-574 to Respondent Abarca and ordered Respondent Abarca to complete an 8-Hour BAR Certified Smog Check Citation Training Course. That Citation is now final, and became effective on May 21, 2022.

OTHER MATTERS

51. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Alder Smog & Tires, upon a finding that Respondent Alder Smog & Tires has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

52. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License No. RC 296598, issued to Respondent Alder Smog & Tires, is revoked or suspended following a hearing under this article, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

53. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector License No. EO 641766, issued to Respondent Rodriguez is revoked or suspended following a hearing under this article, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

54. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector License No. EO 641773 and/or Smog Check Repair Technician License No. EI 641773, issued to Respondent Abarca is revoked or suspended following a hearing under this article, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 296598, issued to Alder Smog & Tires, LLC, Armando Neftali Abarca, Luis Armando Rodriguez;

2. Revoking or suspending Smog Check Station License Number RC 296598, issued to Alder Smog & Tires, LLC, Armando Neftali Abarca, Luis Armando Rodriguez;

3. Revoking or suspending Smog Check Inspector License Number EO 641766, issued to Luis Rodriguez;

4. Revoking or suspending Smog Check Inspector License Number EO 641773, issued to Armando Neftali Abarca;

5. Revoking or suspending Smog Check Repair Technician License Number EI 641773, issued to Armando Neftali Abarca;

6. Revoking or suspending any other Automotive Repair Dealer Registration issued to Alder Smog & Tires, LLC;

7. Revoking or suspending any additional license issued under Chapter 5, Part 5 of Division 26 of the Health and Safety Code in the name of Alder Smog & Tires, LLC;

8. Revoking or suspending any other smog check license under Chapter 5, Part 5 of Division 26 of the Health and Safety Code in the name of Luis Rodriguez;

9. Revoking or suspending any other smog check license under Chapter 5, Part 5 of Division 26 of the Health and Safety Code in the name of Armando Neftali Abarca;

10. Ordering Alder Smog & Tires, LLC, Luis Rodriguez and Armando Neftali Abarca to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: As of digital signature date

Dorais, Patrick@DCA

Digitally signed by Dorais, Patrick@DCA
Date: 2023.03.20 10:49:35 -07'00'

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

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