

XAVIER BECERRA
Attorney General of California
SHAWN P. COOK
Supervising Deputy Attorney General
ALVARO MEJIA
Deputy Attorney General
State Bar No. 216956
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6284
Facsimile: (213) 897-2804

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:

Case No. 79/16-13689

**A & R BROTHERS,
SERGIO ARMANDO RODAS, OWNER
4625 ½ S. Figueroa Street
Los Angeles, CA 90037**

A C C U S A T I O N

Automotive Repair Dealer Registration No.
ARD 278789
Smog Check, Test Only, Station License No.
TC 278789

**H & M SMOG
SERGIO ARMANDO RODAS, OWNER
8429 S. Figueroa Street
Los Angeles, CA 90003**

Automotive Repair Dealer Registration No.
ARD 280031
Smog Check, Test Only, Station License No.
TC 280031

**SERGIO ARMANDO RODAS
919 W. 62nd St.
Los Angeles, CA 90044**

Smog Check Inspector License No. EO 636016

and

1 **JUAN CARLOS RODAS,**
2 **2831 Musgrove Ave., Apt. 8**
3 **El Monte, CA 91732**

4 Smog Check Inspector License No. EO 637602

5 Respondents.

6
7 Complainant alleges:

8 **PARTIES**

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

11 **A & R Brothers**

12 2. On or about December 17, 2014, the Bureau of Automotive Repair (Bureau) issued
13 Automotive Repair Dealer Registration Number ARD 278789 to Respondent Sergio Armando
14 Rodas, Owner, doing business as A & R Brothers (collectively, "A & R Brothers"). The
15 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
16 charges brought herein. The Automotive Repair Dealer Registration is due to expire on
17 December 31, 2018, unless renewed.

18 3. On or about January 8, 2015 the Bureau issued Smog Check, Test Only, Station
19 License Number TC 278789 to Respondent A & R Brothers. The Smog Check, Test Only,
20 Station License was in full force and effect at all times relevant to the charges brought herein.
21 The Smog Check, Test Only, Station License is due to expire on December 31, 2018, unless
22 renewed.

23 **H & M Smog**

24 4. On or about April 23, 2015, the Bureau issued Automotive Repair Dealer Registration
25 Number ARD 280031 to Respondent Sergio Armando Rodas, Owner, doing business as H & M
26 Smog (collectively, "H & M Smog"). The Automotive Repair Dealer Registration was in full
27 force and effect at all times relevant to the charges brought herein. The Automotive Repair
28 Dealer Registration is due to expire on April 30, 2018, unless renewed.

1 5. On or about May 29, 2015 the Bureau issued Smog Check, Test Only, Station
2 License Number TC 280031 to Respondent H & M Smog. The Smog Check, Test Only, Station
3 License was in full force and effect at all times relevant to the charges brought herein. The Smog
4 Check, Test Only, Station License is due to expire on April 30, 2018, unless renewed.

5 **Sergio Armando Rodas**

6 6. On or about September 11, 2013 the Bureau issued Smog Check Inspector No.
7 EO 636016 to Respondent Sergio Armando Rodas.¹ The Smog Check Inspector License
8 (“technician license”) was in full force and effect at all times relevant to the charges brought
9 herein and will expire on April 30, 2019, unless renewed.

10 **Juan Carlos Rodas**

11 7. On or about December 4, 2014 the Bureau issued Smog Check Inspector No.
12 EO 637602 to Respondent Juan Carlos Rodas. The Smog Check Inspector License (“technician
13 license”) was in full force and effect at all times relevant to the charges brought herein and will
14 expire on November 30, 2018, unless renewed.

15 **JURISDICTION**

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

19 9. Section 118, subdivision (b), of the Code provides that suspension, expiration,
20 surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed
21 with a disciplinary action during the period within which the license may be renewed, restored,
22 reissued or reinstated.

23 ///
24 ///
25 ///
26

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

STATUTORY PROVISIONS

10. Section 9884.7 of the Code states in pertinent part:

“(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may 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.”

11. Section 9889.22 states:

“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.”

12. Section 44012 of the Health and Safety Code states:

“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,

1 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
2 idle testing for vehicles with onboard diagnostic systems that the department and the state board
3 determine exhibit operational problems. The department shall ensure, as appropriate to the test
4 method, the following:

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

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

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

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

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

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

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

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

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

9 13. Section 44015 of the Health and Safety Code, subdivision (b), states:

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

12 14. Section 44032 of the Health and Safety Code states:

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

18 15. Section 44059 of the Health and Safety Code states:

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

23 16. Section 44072.2 of the Health and Safety code states, in pertinent part:

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

27 (a) Violates any section of this chapter and the regulations adopted pursuant to it, which
28 related to the licensed activities.

1 ...

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

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

4 ...

5 (h) Violates or attempts to violate the provisions of this chapter relating to the particular
6 activity for which he or she is licensed.”

7 17. Section 44072.8 of the Health and Safety Code states:

8 “When a license has been revoked or suspended following a hearing under this article, any
9 additional license issued under this chapter in the name of the licensee may be likewise revoked
10 or suspended by the director.”

11 18. Section 44072.10 of the Health and Safety Code, subdivision (c) states, in pertinent
12 part:

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

16 ...

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

18 ...

19 **REGULATORY PROVISIONS**

20 19. California Code of Regulations, title 16, section 3340.30, subdivision (a), states:

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

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

26 ...

27 ///

28 ///

1 20. California Code of Regulations, title 16, section 3340.35, subdivision (c), states:

2 “(c) A licensed station shall issue a certificate of compliance or noncompliance to the
3 owner or operator of any vehicle that has been inspected in accordance with the procedures
4 specified in section 3340.42 of this article and has all the required emission control equipment
5 and devices installed and functioning correctly. The following conditions shall apply:

6 (1) Customers shall be charged the same price for certificates as that paid by the
7 licensed station; and

8 (2) Sales tax shall not be assessed on the price of certificates.”

9 21. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

10 “(c) No person shall enter into the emissions inspection system any vehicle identification
11 information or emission control system identification data for any vehicle other than the one
12 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
13 information about the vehicle being tested.”

14 22. California Code of Regulations, title 16, section 3340.45, states:

15 “(a) All Smog Check inspections shall be performed in accordance with requirements and
16 procedures prescribed in the following:

17 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
18 incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

19 (2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
20 manual shall become effective on or after January 1, 2013.”

21 23. California Code of Regulations, title 16, section 3373, states:

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

27 ///

28 ///

1 **COST RECOVERY**

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

8 **FACTUAL BACKGROUND**

9 25. At all times alleged herein, Respondent Sergio Armando Rodas and Respondent Juan
10 Carlos Rodas were acting in the course and within the scope of an owner, technician, employee,
11 partner, officer, and/or member of Respondent A & R Brothers.

12 26. In certain Enhanced areas of the State, the Smog Check inspection is an Acceleration
13 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
14 as a BAR 97. The EIS is a computer based five-gas analyzer that measures Hydrocarbons (HC),
15 Carbon Monoxide (CO), Oxides of Nitrogen (NO_x), Carbon Dioxide (CO₂), and Oxygen (O₂).
16 The first part of the test is a loaded mode test of the vehicle's tailpipe emissions on a
17 dynamometer. This puts the vehicle's drive wheels on rollers and the vehicle is driven at speeds
18 of fifteen and twenty-five miles per hour to simulate driving conditions while the emissions are
19 sampled by the EIS.

20 27. In Basic areas of the state, a similar test, called a Two Speed Idle Test (TSI) is
21 performed, but instead of applying a load to the vehicle's drive wheels with a dynamometer, the
22 EIS measures the emission of HC, CO, O₂, and CO₂ at idle as well as 2500 revolutions per minute
23 (RPM).

24 28. In addition to a tailpipe test, visual and functional tests are also performed on the
25 vehicle. The visual inspection of the emission control components verifies the required emission
26 control devices are present and properly connected. Functional tests may include checking the
27 ignition timing, malfunction indicator light, exhaust gas recirculation system, a low pressure test
28 of the evaporative emissions controls, a visible smoke test, and a pressure test of the gas cap.

1 29. The EIS is connected to BAR's Vehicle Information Database (VID). If the vehicle
2 passes the visual, functional, and tailpipe tests, it passes the overall inspection and a Certificate of
3 compliance is issued and transmitted electronically to the VID. All data gathered during a Smog
4 Check inspection is transmitted to and retained in the VID.

5 30. On or about August 10, 2016, a Bureau representative and Air Quality Engineer for
6 BAR initiated a review of BAR 97 second by second data for Smog Check inspections performed
7 at A & R Brothers for the period of April 15, 2015 through August 9, 2016. The review included
8 establishing baseline readings for unaltered second by second patterns obtained through a random
9 sampling of vehicles selected for roadside emissions tests. These patterns were then compared to
10 second by second data obtained from selected Smog Test facilities statewide. In addition, the
11 BAR Air Quality Engineer conducted a detailed review of the VID second by second data for
12 Smog Check inspections performed at A & R Brothers. The following ten vehicles were all
13 certified using the clean gassing method as determined by a review of the second by second data,
14 and are representative of the over twenty vehicles identified. The vehicles receiving smog
15 certificates were not tested legitimately but instead had a surrogate gas introduced in order to
16 pass, which constitutes "clean gassing."²

17 a. Clean Gassing Number 1: July 20, 2015

18 BAR 97 Test Detail and second by second test data for A & R Brothers indicate that on July
19 16, 2015, a 1996 Pontiac Grand Am, license plate number 4BIK529, was tested and failed under
20 licensed Smog Check Inspector No. EO 637602, Juan Carlos Rodas. The mileage was recorded
21 as 191,477. The second by second test data for the 1996 Pontiac Grand Am, shows CO₂ readings
22 fluctuating between 13-16%, as expected for gasoline-fueled engines. The vehicle failed as a
23 gross polluter and for "functional."

24 Subsequently, BAR 97 Test detail and second by second test data for A & R Brothers
25 indicate that on July 20, 2015, the same 1996 Pontiac Grand Am, license plate number 4BIK529,
26

27 ². "Clean gassing" is a method by which a surrogate gas is introduced into the EIS, so that
28 the EIS will measure the surrogate gas or a mixture of surrogate gas and exhaust emissions and
issue a passing test result based upon those readings rather than the actual vehicle emissions.

1 was re-tested and smog certificate No. YT293773C was issued under smog check inspector No.
2 E0 637602, Juan Carlos Rodas. The mileage was recorded as 191,700.

3 At or about 54 and again at 97 seconds into the re-test, the analyzer reported a high
4 concentration of a gas or gasses containing CO₂, corresponding with an observed sudden,
5 dramatic, and coordinated drop in HC, CO, and NO_x to the point that the measurements of the
6 pollutants fell below the "cutpoints" allowing the test to complete with a passing result.

7 The discrepancies in the second by second test data are consistent with a surrogate gas with
8 a high concentration of CO₂ being introduced into the emissions sample in order to replace the
9 sample, resulting in measurement of the clean injected gas, rather than vehicle exhaust, and the
10 issuance of a fraudulent Smog Certificate of Compliance. Based upon his review, the BAR Air
11 Quality Engineer stated, "... CO₂ rose sharply to a level of about 29%. This CO₂ level is far
12 above the normal range of 13-16% for a Smog Check and is impossible for a spark ignition
13 engine burning conventional gasoline in air." The second by second data is not consistent with a
14 valid Smog Check and the only plausible explanation for these second by second measurements is
15 the use of a surrogate gas.

16 b. Clean Gassing Number 2: July 27, 2015

17 BAR 97 Test Detail and second by second test data for A & R Brothers indicate that on July
18 24, 2015, a 1998 Toyota Corolla, license plate number 5NVZ865, was tested and failed under
19 licensed Smog Check Inspector No. EO 637602, Juan Carlos Rodas. The mileage was recorded
20 as 211,855. The second by second test data for the 1998 Toyota Corolla, shows CO₂ readings
21 fluctuating between 13-16%, as expected for gasoline-fueled engines. The vehicle failed for NO_x,
22 "functional," and "tamper."

23 Subsequently, BAR 97 Test detail and second by second test data for A & R Brothers
24 indicate that on July 27, 2015, the same 1998 Toyota Corolla, license plate number 5NVZ865,
25 was re-tested and smog certificate No. YT293785C was issued under licensed smog check
26 inspector No. EO 637602, Juan Carlos Rodas. The mileage was recorded at 211,980.

27 At or about 62 seconds into the re-test, the analyzer reported a high concentration of a gas
28 or gasses containing CO₂, corresponding with an observed sudden, dramatic, and coordinated

1 drop in HC, CO, and NO_x to the point that the measurements of the pollutants fell below the
2 “cutpoints” allowing the test to complete with a passing result.

3 The discrepancies in the second by second test data are consistent with a surrogate gas with
4 high concentration of CO₂ being introduced into the emissions sample in order to replace the
5 sample, resulting in measurement of clean gas, rather than vehicle exhaust, and the issuance of a
6 fraudulent Smog Certificate of Compliance. Based upon his review, the BAR Air Quality
7 Engineer stated, “... CO₂ increased sharply to the impossibly high level of 29% for a spark
8 ignition engine burning conventional gasoline.” The second by second data is not consistent with
9 a valid Smog Check and the only plausible explanation for these second by second measurements
10 is the use of a surrogate gas.

11 c. Clean Gassing Number 3: April 27, 2016

12 BAR 97 Test Detail and second by second test data for A & R Brothers indicate that on
13 April 27, 2016, a 1995 Chevrolet C1500 Pickup, license plate number 7Z16210, was tested and
14 smog certificate No. ZD084667C was issued under licensed Smog Check Inspector No.
15 E0 637602, Juan Carlos Rodas. The mileage was recorded as 164,890.

16 At or about 39 seconds into the test, the analyzer reported a high concentration of a gas or
17 gasses containing CO₂, corresponding with an observed sudden, dramatic, and coordinated drop
18 in HC, CO, and NO_x to the point that the measurement of the pollutants fell below the “cutpoints”
19 allowing the test to complete with a passing result.

20 The discrepancies in the second by second test data are consistent with a surrogate gas with
21 a high concentration of CO₂ being introduced into the emissions sample in order to replace the
22 sample, resulting in measurement of the clean injected gas, rather than vehicle exhaust, and the
23 issuance of a fraudulent Smog Certificate of Compliance. Based upon his review, the BAR Air
24 Quality Engineer stated, “... CO₂ increased sharply to the impossibly high level of approximately
25 20-22% for a spark ignition engine burning conventional gasoline in air.” The second by second
26 data is not consistent with a valid Smog Check and the only plausible explanation for these
27 second by second measurements is the use of a surrogate gas.

28 ///

1 d. Clean Gassing Number 4: April 27, 2016

2 BAR 97 Test Detail and second by second test data for A & R Brothers indicate that on
3 April 27, 2016, a 1998 Chevrolet Blazer, license plate number 7CNJ249, was tested and smog
4 certificate No. ZD084668C was issued under licensed smog check inspector No. EO 637602,
5 Juan Carlos Rodas. The mileage was recorded as 0. The last time the mileage was reported to the
6 Bureau was during a test conducted by State Wide Smog Check (TC 247396) on April 20, 2010,
7 and was recorded as 182,136.

8 At or about 32 seconds into the test, the analyzer reported a high concentration of a gas or
9 gasses containing CO₂, corresponding with an observed sudden, dramatic, and coordinated drop
10 in HC, CO, and NO_x to the point that the measurements of the pollutants fell below the
11 “cutpoints” allowing the test to complete with a passing result.

12 The discrepancies in the second by second test data are consistent with a surrogate gas with
13 a high concentration in CO₂ being introduced into the emissions sample in order to replace the
14 sample, resulting in measurement of the clean injected gas, rather than vehicle exhaust, and the
15 issuance of a fraudulent Smog Certificate of Compliance. Based upon his review, the BAR Air
16 Quality Engineer stated, “... CO₂ increased sharply to the impossibly high level of approximately
17 23-24% for a spark ignition engine burning conventional gasoline.” The second by second data is
18 not consistent with a valid Smog Check and the only plausible explanation for these second by
19 second measurements is the use of a surrogate gas.

20 e. Clean Gassing Number 5: April 27, 2016

21 BAR 97 Test Detail and second by second test data for A & R Brothers indicate that on
22 April 27, 2016, a 1991 Cadillac Deville, license plate number 6LAU325, was tested and smog
23 certificate No. ZD084669C was issued under licensed smog check inspector No. EO 637602,
24 Juan Carlos Rodas. The mileage was recorded as 131,967.

25 At or about 53 seconds into the test, the analyzer reported a high concentration of a gas or
26 gasses containing CO₂, corresponding with an observed sudden, dramatic, and coordinated drop
27 in HC, CO, and NO_x to the point that the measurements of the pollutants fell below the
28 “cutpoints” allowing the test to complete with a passing result.

1 The discrepancies in the second by second test data are consistent with a surrogate gas with
2 a high concentration of CO₂ being introduced into the emissions sample in order to replace the
3 sample, resulting in measurement of the clean injected gas, rather than vehicle exhaust, and the
4 issuance of a fraudulent smog certificate of compliance. Based upon his review, the BAR Air
5 Quality Engineer stated, "... CO₂ increased sharply to the impossibly high level of approximately
6 24-25% for a spark ignition engine burning conventional gasoline." The second by second data is
7 not consistent with a valid Smog Check and the only plausible explanation for these second by
8 second measurements is the use of a surrogate gas.

9 f. Clean Gassing Number 6: April 29, 2016

10 BAR 97 Test Detail and second by second test data for A & R Brothers indicate that on
11 April 29, 2016, a 1995 Honda Accord, license plate number 5JLV924, was tested and smog
12 certificate No. ZD084672C was issued under licensed smog check inspector No. EO 637602,
13 Juan Carlos Rodas. The mileage was recorded as 207,168.

14 At or about 21 and again at 69 seconds into the test, the analyzer reported a high
15 concentration of a gas or gasses containing CO₂, corresponding with an observed sudden,
16 dramatic, and coordinated drop in HC, CO, and NO_x to the point that the measurements of the
17 pollutants fell below the "cutpoints" allowing the test to complete with a passing result.

18 The discrepancies in the second by second test data are consistent with a surrogate gas with
19 a high concentration of CO₂ being introduced into the emissions sample in order to replace the
20 sample, resulting in measurement of the clean injected gas, rather than vehicle exhaust, and the
21 issuance of a fraudulent Smog Certificate of Compliance. Based upon his review, the BAR Air
22 Quality Engineer stated, "... CO₂ increased sharply to the impossibly high level of approximately
23 26-27% for a spark ignition engine burning conventional gasoline." The second by second data is
24 not consistent with a valid Smog Check and the only plausible explanation for these second by
25 second measurements is the use of a surrogate gas.

26 g. Clean Gassing Number 7: April 30, 2016

27 BAR 97 Test Detail and second by second test data for A & R Brothers indicate that on
28 April 30, 2016, a 1994 Lexus ES300, license plate number 3HPJ618, was tested and smog

1 certificate number ZD084676C was issued under licensed Smog Check Inspector No.
2 EO 637602, Juan Carlos Rodas. The mileage was recorded as 190,335.

3 At or about 48 and again at 101 seconds into the test, the analyzer reported a high
4 concentration of a gas or gasses containing CO₂, corresponding with an observed sudden,
5 dramatic, and coordinated drop in HC, CO, and NO_x to the point that the measurements of the
6 pollutants fell below the "cutpoints" allowing the test to complete with a passing result.

7 The discrepancies in the second by second test data are consistent with a surrogate gas with
8 a high concentration of CO₂ being introduced into the emissions sample in order to replace the
9 sample, resulting in measurement of the clean injected gas, rather than vehicle exhaust, and the
10 issuance of a fraudulent Smog Certificate of Compliance. Based upon his review, the BAR Air
11 Quality Engineer, stated "... CO₂ increased sharply to the impossibly high level of approximately
12 27% for a spark ignition engine burning conventional gasoline." The second by second data is
13 not consistent with a valid Smog Check and the only plausible explanation for these second by
14 second measurements is the use of a surrogate gas.

15 h. Clean Gassing Number 8: July 15, 2016

16 BAR 97 Test Detail and second by second test data for A & R Brothers indicate that on July
17 12, 2016, a 1992 Toyota Paseo, license plate number 6HMY939, was tested and failed under
18 licensed smog check inspector No. EO 637602, Juan Carlos Rodas. The vehicle failed for HC,
19 NO_x, "visual," functional," and was marked as "tampered." The mileage was recorded as 241,
20 216.

21 Subsequently, BAR 97 Test detail and second by second test data for A & R Brothers
22 indicate that on July 15, 2016, the same Toyota Paseo, license plate number 6HMY939, was re-
23 tested and smog certificate No. ZF665736C was issued under licensed smog check inspector No.
24 EO 637602, Juan Carlos Rodas. The mileage was recorded as 241,299.

25 At or about 26 seconds into the re-test and again at or about 94 seconds, the analyzer
26 reported an inexplicable, sudden, dramatic, and coordinated, drop in HC, CO, and NO_x, to the
27 point that the measurements of the pollutants fell below the "cutpoints" allowing the test to
28 complete with a passing result.

1 The discrepancies in the second by second test data are consistent with a surrogate gas
2 being introduced into the emissions sample in order to replace the sample resulting in
3 measurement of the clean injected gas rather than vehicle exhaust and the issuance of a fraudulent
4 Smog Certificate of Compliance. Based upon his review, the Bar Air Quality Engineer stated,
5 "... sharp coordinated movement of HC, CO, and NO_x cannot occur in real engine burning
6 gasoline in air because it contradicts the mechanisms of pollutant formation under rich and lean
7 conditions. Nor can it be explained by catalyst light-off because catalysts do not light-off and
8 then 'unlight' during loaded ASM testing." The second by second data is not consistent with a
9 valid Smog Check and the only plausible explanation for these second by second measurements is
10 the use of a surrogate gas.

11 i. Clean Gassing Number 9: August 3, 2016

12 BAR 97 Test Detail and second by second test data for A & R Brothers indicate that on
13 August 3, 2016, a 1994 Acura Legend, license plate number 6HYZ531 was tested and smog
14 certificate No. ZH333386C was issued under licensed smog check inspector No. EO 637602,
15 Juan Carlos Rodas. The mileage was recorded as 251, 517.

16 At or about 44 seconds into the test, the analyzer reported a slight drop in the concentration
17 CO₂, corresponding with an observed sudden, dramatic, and coordinated drop in HC, CO, and
18 NO_x to the point that the measurements of the pollutants fell below the "cutpoints" allowing the
19 test to complete with a passing result. A decrease in CO₂ concentration is inconsistent with a
20 corresponding drop in HC and CO.

21 The discrepancies in the second by second test data are consistent with a surrogate gas
22 being introduced into the emissions sample in order to replace the sample, resulting in
23 measurement of the clean injected gas, rather than vehicle exhaust, and the issuance of a
24 fraudulent smog certificate of compliance. Based upon his review, the BAR Air Quality Engineer
25 stated, in part:

26 Beginning at about second 44, and during a period of steady state vehicle
27 operation (based on the flat speed trace), the test record showed the following:
28 HC, CO, and NO_x dropped sharply and simultaneously to near zero; O₂
concentration spiked sharply and then dropped to zero; and CO₂ decreased to
about 13% after spiking downward briefly to a level of 10.6%. This significant
reduction in CO₂ during a steady state ASM cannot be explained by air dilution

1 because that would increase O₂ concentration, which is the opposite of what was
2 observed here. Furthermore, absent increased dilution, it is inconsistent with
mass balance of carbon in the fuel for CO₂ to decrease at the same time that both
3 HC and CO have decreased.

4 The Only plausible explanation known to BAR which could produce all of
these results is the intermittent injection of a 'clean' surrogate gas containing CO₂
and not containing any significant concentration of HC, CO, NO_x, or O₂, into the
5 EIS system in place of some or all of the exhaust from the subject vehicle during
the identified segment of the subject test.

6
7 The second by second data is not consistent with a valid smog check and the only plausible
8 explanation for these second by second measurements is the use of a surrogate gas.

9 j. Clean Gassing Number 10: August 9, 2016

10 BAR 97 Test Detail and second by second test data for A & R Brothers indicate that on
11 August 9, 2016, a 1997 Honda Civic, license plate number 6WGY380, was tested and smog
12 certificate No. ZH871204C was issued under licensed smog check inspector No. EO 637602,
13 Juan Carlos Rodas. The mileage was recorded as 268,463.

14 At or about 62 seconds into the test, the analyzer reported an inexplicable, sudden,
15 dramatic, and coordinated drop in HC, CO, and NO_x to the point that the measurements of the
16 pollutants fell below the "cutpoints" allowing the test to complete with a passing result.

17 The discrepancies in the second by second test data are consistent with a surrogate gas
18 being introduced into the emissions sample in order to replace the sample resulting in
19 measurement of the clean injected gas rather than vehicle exhaust and the issuance of a fraudulent
20 smog certificate of compliance. Based upon his review, the BAR Air Quality Engineer stated, in
21 part:

22 Beginning at about second 62, and during a period of steady state vehicle
operation (based on the flat speed trace), the test record showed the following:
23 HC, CO, and NO_x dropped sharply and simultaneously to near zero; O₂
concentration spiked sharply and then dropped back to near-zero; and CO₂
24 decreased from about 13.4% to about 12.6% after spiking downward briefly to a
level of about 8%. These levels persisted until about second 94, when HC, CO,
25 NO_x and CO₂ all increased to near their levels immediately prior to second 62.
This significant reduction in CO₂ during a steady state ASM cannot be explained
26 by air dilution because that would increase O₂ concentration, which did not occur
here. Furthermore, absent increased dilution, it is inconsistent with mass balance
27 of carbon in the fuel for CO₂ to decrease at the same time that both HC and CO
have decreased. Nor could the test result be explained by catalyst light-off,
28 because catalysts do not 'un-light' during a steady-state loaded mode test.

The only plausible explanation known to BAR which could produce all of these results is the intermittent injection of a 'clean' surrogate gas containing CO₂ and not containing any significant concentration of HC, CO, NO_x, or O₂, into the EIS system in place of some or all of the exhaust from the subject vehicle during the identified segment of the subject test. This surrogate gas tricked the analyzer into passing the vehicle that would otherwise fail due to excessive pollutant concentrations.

31. The following table summarizes Respondents' clean gassing:

TABLE 1

	Condition	Vehicle	License Plate Number	VIN	Test Dates	Certificate Issued
1.	Clean Gas	1996 Pontiac Grand Am	4BIK529	1G2NE52T1TM564785	July 16, 2015	Failed
					July 20, 2015	YT293773C
2.	Clean Gas	1998 Toyota Corolla	5NVZ865	11NXBR12E7WZ015461	July 24, 2015	Failed
					July 27, 2015	YT293785C
3.	Clean Gas	1995 Chevrolet C1500 Pickup	7Z16210	2GCEC19K8S1126332	April 27, 2016	ZD084667C
4.	Clean Gas	1998 Chevrolet Blazer	7CNJ249	1GNDT13W8W2232915	April 27, 2016	ZD084668C
5.	Clean Gas	1991 Cadillac Deville	6LAU325	1G6CD53BXM4265666	April 27, 2016	ZD084669C
6.	Clean Gas	1995 Honda Accord	5JLV924	JHMCD5650SC059289	April 29, 2016	ZD084672C
7.	Clean Gas	1994 Lexus ES300	3HPJ618	JT8GK13T4R0051730	April 30, 2016	ZD084676C
8.	Clean Gas	1992 Toyota Paseo	6HMY939	JT2EL45F8N0104298	July 12, 2016	Failed
					July 15, 2016	ZF665736C
9.	Clean Gas	1994 Acura Legend	6HYZ531	JH4KA7667RC001196	August 3, 2016	ZH333386C
10.	Clean Gas	1997 Honda Civic	6WGY380	2HGEJ6670VH523825	August 9, 2016	ZH871204C

AS TO RESPONDENT A & R BROTHERS

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

32. Complainant re-alleges and incorporates by reference the allegations set forth in paragraphs 25 through 31.

33. Respondent A & R Brothers' Automotive Repair Dealer Registration is subject to disciplinary action under section 9884.7, subdivision (a)(1), in conjunction with section 9889.22, in that Respondent A & R Brothers made or authorized statements which Respondent A & R

1 Brothers knew or in the exercise of reasonable care should have known to be untrue or
2 misleading.

3 34. Respondent A & R Brothers certified that the vehicles in Table 1, above, had passed
4 inspection and were in compliance with all applicable laws and regulations, when in fact and in
5 truth Respondent A & R Brothers inspected the vehicles using the clean gassing method to issue
6 certificates of compliance.

7 **SECOND CAUSE FOR DISCIPLINE**

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

9 35. Complainant re-alleges and incorporates by reference the allegations set forth in
10 paragraphs 25 through 34.

11 36. Respondent A & R Brothers' Automotive Repair Dealer Registration is subject to
12 disciplinary action under section 9884.7, subdivision (a)(4), and Respondent A & R Brothers'
13 Smog Station License is subject to disciplinary action under Health and Safety Code section
14 44072.2, subdivision (d), in that Respondent A & R Brothers committed dishonest, fraudulent, or
15 deceitful acts whereby another was injured by issuing a smog certificate of compliance for the
16 vehicles in Table 1 without performing bona fide inspections of the emission control devices and
17 systems on the vehicles, thereby depriving the People of the State of California of the protection
18 afforded by the Motor Vehicle Inspection Program.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Material Violation of the Automotive Repair Act)**

21 37. Complainant re-alleges and incorporates by reference the allegations set forth in
22 paragraphs 25 through 36.

23 38. Respondent A & R Brothers' Automotive Repair Dealer Registration is subject to
24 disciplinary action under section 9884.7, subdivision (a)(6), in that it failed in a "material respect
25 to comply with the provisions of this chapter or the regulations adopted pursuant to it" when it
26 issued smog certificates of compliance for the vehicles in Table 1 without performing bona fide
27 inspections of the emission control devices and systems on the vehicles, thereby depriving the
28

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Violation of the Motor Vehicle Inspection Program)**

5 39. Complainant re-alleges and incorporates by reference the allegations set forth in
6 paragraphs 25 through 38.

7 40. Respondent A & R Brothers' Smog Station License is subject to discipline under
8 Health and Safety Code section 44072.2, subdivision (a), in that Respondent A & R Brothers
9 failed to comply with the following sections of the Health and Safety Code:

10 a. **Section 44012:** Respondent A & R Brothers failed to perform the tests of the
11 emission control systems and devices on the vehicles in Table 1 in accordance with the
12 procedures prescribed by the Department.

13 b. **Section 44015, subdivision (b):** Respondent A & R Brothers issued certificates
14 of compliance for the vehicles in Table 1 without properly testing and inspecting them to
15 determine if they were in compliance with Health and Safety Code section 44012.

16 c. **Section 44059:** Respondent A & R Brothers willfully made false entries for
17 certificates of compliance for the vehicles in Table 1 by certifying that those vehicles had been
18 inspected as required when, in fact, they had not.

19 **FIFTH CAUSE FOR DISCIPLINE**

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

21 41. Complainant re-alleges and incorporates by reference the allegations set forth in
22 paragraphs 25 through 40.

23 42. Respondent A & R Brothers' Smog Station License is subject to disciplinary action
24 under Health and Safety Code section 44072.2, subdivision (c), in that Respondent A & R
25 Brothers failed to comply with the following sections of Title 16, California Code of Regulations:

26 ///

27 ///

28 ///

1 a. **Section 3340.35, subdivision (c):** Respondent A & R Brothers failed to inspect
2 and test the vehicles in Table 1 in accordance with the procedures specified in section 3340.42 of
3 the Regulations and failed to ensure that the vehicles had all the required emission control
4 equipment and devices installed and functioning correctly.

5 b. **Section 3340.42:** Respondent A & R Brothers failed to conduct the required
6 smog tests and inspections on the vehicles in Table 1 in accordance with the Bureau's
7 specifications.

8 c. **Section 3340.45:** Respondent A & R Brothers failed to perform smog check
9 inspections on the vehicles in Table 1 as prescribed in the operative Smog Check Manual.

10 d. **Section 3373:** Respondent A & R Brothers issued false and misleading records
11 when it issued a smog certificate of compliance for the vehicles in Table 1 without performing
12 bona fide inspections of the emission control devices and systems on the vehicles, thereby
13 depriving the People of the State of California of the protection afforded by the Motor Vehicle
14 Inspection Program.

15 **AS TO RESPONDENT JUAN CARLOS RODAS**

16 **SIXTH CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statements)**

18 43. Complainant re-alleges and incorporates by reference the allegations set forth in
19 paragraphs 25 through 31.

20 44. Respondent Juan Carlos Rodas has subjected his Smog Check Inspector License to
21 disciplinary action under section 9889.22, in that Respondent Juan Carlos Rodas willfully made
22 false statements or entries with regard to a material matter on the certificates of compliance issued
23 for the vehicles in Table 1, above.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 45. Complainant re-alleges and incorporates by reference the allegations set forth in
4 paragraphs 25 through 31.

5 46. Respondent Juan Carlos Rodas has subjected his Smog Check Inspector License to
6 disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that
7 Respondent Juan Carlos Rodas failed to comply with the following sections of the Health and
8 Safety Code:

9 a. **Section 44012:** Respondent Juan Carlos Rodas failed to perform the tests of the
10 emission control systems and devices on the vehicles in Table 1 in accordance with the
11 procedures described by the Department.

12 b. **Section 44032:** Respondent Juan Carlos Rodas failed to perform tests of
13 emission control devices and systems in accordance with Section 44012, for the vehicles in
14 Table 1.

15 c. **Section 44059:** Respondent Juan Carlos Rodas willfully made false entries for
16 certificates of compliance for the vehicles in Table 1 by certifying that those vehicles had been
17 inspected as required when, in fact, they had not.

18 **EIGHTH CAUSE FOR DISCIPLINE**

19 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Programs)**

20 47. Complainant re-alleges and incorporates by reference the allegations set forth in
21 paragraphs 25 through 31.

22 48. Respondent Juan Carlos Rodas has subjected his Smog Check Inspector License to
23 disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that
24 Respondent Juan Carlos Rodas failed to comply with the following sections of Title 16,
25 California Code of Regulations:

26 a. **Section 3340.30, subdivision (a):** Respondent Juan Carlos Rodas failed to
27 inspect and test the vehicles in Table 1 in accordance with Health and Safety Code section 44012.

28 ///

b. **Section 3340.41, subdivision (c):** Respondent Juan Carlos Rodas entered false information into the EIS for the certificates of compliance by entering vehicle emission control information for vehicles other than the vehicles being certified, to wit: the vehicles in Table 1.

c. **Section 3340.45:** Respondent Juan Carlos Rodas failed to perform smog check inspections on the vehicles in Table 1 as prescribed in the operative Smog Check Manual.

OTHER MATTERS

49. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by Sergio Armando Rodas, upon a finding that Sergio Armando Rodas has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

50. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License Number TC 278789 is revoked or suspended, the Director may likewise revoke or suspend any additional license, issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, to Respondent Sergio Armando Rodas.

51. Under Health and Safety Code section 44072.8, if Respondent Juan Carlos Rodas's Smog Check Inspector License is revoked or suspended, any additional license issued under this Chapter in the name of Respondent Juan Carlos Rodas may be likewise revoked or suspended by the Director.

PRAYER

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


1. Revoking or suspending Automotive Repair Dealer Registration Number
ARD 278789, issued to Sergio Armando Rodas, Owner, doing business as A & R Brothers;

2. Revoking or suspending Automotive Repair Dealer Registration Number
ARD 280031, issued to Sergio Armando Rodas, Owner, doing business as H & M Smog;

3. Revoking or suspending any other Automotive Repair Dealer Registration issued to Sergio Armando Rodas;

- 1 4. Revoking or suspending Smog Check, Test Only, Station License Number
2 TC 278789, Sergio Armando Rodas, Owner, doing business as A & R Brothers;
3 5. Revoking or suspending Smog Check, Test Only, Station License Number
4 TC 280031, Sergio Armando Rodas, Owner, doing business as H & M Smog;
5 6. Revoking or suspending Smog Check Inspector License No. EO 636016 issued to
6 Sergio Armando Rodas;
7 7. Revoking or suspending Smog Check Inspector License No. EO 637602 issued to
8 Juan Carlos Rodas;
9 8. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
10 Division 26 of the Health and Safety Code in the name of Sergio Armando Rodas;
11 9. Revoking or suspending the registration for all places of business operated in this
12 State in the name of Sergio Armando Rodas;
13 10. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
14 Division 26 of the Health and Safety Code to Juan Carlos Rodas;
15 11. Ordering Sergio Armando Rodas, Owner, doing business as A & R Brothers, and
16 Juan Carlos Rodas to pay the Bureau of Automotive Repair the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3; and,
19 12. Taking such other and further action as deemed necessary and proper.

20
21 DATED: January 23, 2018


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

22
23
24
25
26
27 DOJ Matter ID: LA2017603215
28 52769821.docx