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

In the Matter of the Accusation Against**:** **GILBERT ROMAN, d.b.a. EL TAPATIO SMOG CHECK** **10557 ½ Magnolia Avenue** **Riverside, CA 92505** **Automotive Repair Dealer Registration Number ARD 306354; Smog Check, Test-Only, Station License Number TC 306354** **-and-** **GILBERT ROMAN** **5578 34th St Apt 5** **Riverside, CA 92509** **Smog Check Inspector License Number EO 644486** Respondents.	Case No. **79/26-16962** OAH No. **ACCUSATION**

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.

2. On or about July 11, 2023, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 306354 to Gilbert Roman, dba El Tapatio Smog Check

(Respondent El Tapatio Smog Check). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2027, unless renewed.

3. On or about November 8, 2023, the Bureau of Automotive Repair issued Smog Check, Test-Only, Station License Number TC 306354 to Gilbert Roman, dba El Tapatio Smog Check (Respondent). The Smog Check, Test-Only, Station License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2027, unless renewed.

4. Respondent El Tapatio Smog Check is also certified as a STAR station. The certification was issued on July 24, 2026, and will remain active unless the ARD registration and/or Smog Check station license is revoked, cancelled, licenses become delinquent, or certification is suspended.

5. On or about August 14, 2023, the Bureau of Automotive Repair issued Smog Check Inspector License Number EO 644486 to Gilbert Roman (Respondent Roman). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2027, unless renewed.

JURISDICTION

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

7. Section 9884.7 of the Business and Professions Code[1] provides that the Director may revoke an ARD registration.

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

[1] All statutory references herein shall be to the Business and Professions Code unless specifically stated otherwise.

9. Section 44002 of the Health and Safety Code 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.

10. Section 44072.6 of the Health and Safety Code 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

11. Section 9884.7 of the Code states:

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

12. Section 44072.2 of the Health and Safety Code states:

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, ' 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> . . .
>
> (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.

. . .

13. Section 44072.10 of the Health and Safety Code states, in pertinent part:

. . .

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

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

. . .

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

. . ."

REGULATORY PROVISIONS

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

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.

15. California Code of Regulations, title 16, section 3340.30, states:

A smog check technician shall comply with the following requirements at all times while licensed.

(a) A licensed technician shall inspect, test and repair vehicles 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.

. . .

16. California Code of Regulations, title 16, section 3340.35, states, 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. . . .

17. 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.

COST RECOVERY

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

VID DATA REVIEW

19. Beginning March 9, 2015, California's Smog Check Program was updated to require the use of an On-Board Diagnostic Inspection System ("OIS"). OIS is the Smog Check equipment required in all areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition Device ("DAD"), computer, bar code scanner, and printer. The DAD is an On-Board Diagnostic ("OBD") scan tool that, when requested by the California OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it supports is requested by the California OIS software and will be retrieved. The DAD connects between the OIS computer and the vehicle's DLC. The California OIS software requires a continuous Internet connection when performing a Smog Check inspection and the OIS software communicates with BAR's central database through the Internet connection. The bar code scanner is used to input technician information, the vehicles identification number ("VIN"), and DMV renewal information. The printer provides a Vehicle Inspection Report ("VIR") containing inspection results for motorists and a Smog Check Certificate of Compliance number for passing vehicles.

20. Data retrieved and recorded during an OIS smog check includes; the eVIN, which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module ("PCM"); the communication protocol, which is the manufacturer/vehicle specific language the PCM uses to

relay information; and the number of Parameter Identifications ("PIDs"), which is the number of specific data values each PCM uses related to emissions controls.

21. During an OIS inspection, engine operating parameters are retrieved from the vehicle's OBD II system and recorded to the VID. This is accomplished during the functional portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- Engine speed in revolutions per minute (RPM)
- Throttle position as measured by a throttle position sensor (TPS) mounted onto the throttle shaft. Measured in a percentage of opening from 0% at idle and near or up to 100% at full throttle.
- Manifold absolute pressure as measured by a manifold air pressure sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at sea level.
- Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air intake tract. Measured in grams per second (gps).[2]
- Ignition timing is set by the vehicle PCM based on engine speed and load, and is measured in degrees Before Top Dead Center (BTDC).

22. During normal engine operation at idle, engine speed is relatively steady around its target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or MAF readings are also steady. For the engine speed to increase, the throttle would have to be opened to increase airflow through the engine. The engine's management systems supply fuel and spark timing appropriate to any changes in throttle position and engine speed. An increase in throttle, measured by the TPS, which increases engine RPM, would result in corresponding

[2] Not all vehicles include both MAP and MAF parameters. Many vehicles will have either MAP or MAF parameters separately.

increases in MAF as well as a change in MAP. Stated another way, any movement in the throttle from the idle position will result in an increase of airflow through the engine with corresponding increases RPM and/or MAF along with changes in MAP.

23. During an OIS Smog Check inspection, along with other visual and functional inspections, there is an OBD II query portion of the inspection. The OBD II query is performed with the engine idling and, when requested by the OIS analyzer, and an elevated or increased engine speed.

24. If the vehicle passes the visual, functional and tailpipe tests, it passes the overall inspection, and a Certificate of Compliance is issued and transmitted electronically to the Vehicle Information Database ("VID"). These Certificates of Compliance are purchased in blocks of fifty (50) through the OIS from the VID, using a pre-arranged electronic bank account debit system or by check, via mail, from Bureau Headquarters in Sacramento. Each Certificate of Compliance has a unique control number so that it can be tracked to determine which Smog Check Station purchased the Certificate of Compliance and to which vehicle it was issued.

25. The VID contains registration data from Department of Motor Vehicles ("DMV") plus emission standards, vehicle smog check inspections, smog check stations and technicians, and Certificates of Compliance. The VID receives the passing smog check results immediately following the inspection. During the vehicle registration process, the DMV accesses the VID to verify that the vehicle has been tested and certified. The Bureau can also access the VID to view test data on smog check inspections performed at any Smog Check Station, or search for, retrieve, and print a test record for a particular vehicle which has been tested. The OIS, depending on the test type, also prints a Vehicle Inspection Report ("VIR"), which is a physical record of the test results and shows the Certificate of Compliance number that was issued if the vehicle passed the smog inspection.

26. The smog check technician must sign the VIR under penalty of perjury to indicate that the inspection was done within Bureau guidelines. Smog Check Stations are required by law to maintain a copy of the VIR along with a copy of the repair invoice for three years. The consumer's VIR serves as a receipt and proof that the VID was updated, and a Certificate of

Compliance was issued. Licensed Smog Check Technicians are the only persons authorized by the Bureau to perform official inspections. They are issued a personal access code and a license, which are used to gain access to the OIS to perform smog check inspections. Unauthorized use of another technician's access code or license is prohibited.

27. Respondents have engaged in numerous acts or omissions constituting violations of the Automotive Repair Act (Business and Professions Code section 9880 *et seq*.) and Motor Vehicle Inspection Program (Health and Safety Code section 44000 *et seq*.) through their practice of "clean plugging."[3] Respondent's employees' OIS Test Data available on the State database indicates that Respondents are involved in fraudulent smog inspection activities. A Bureau representative initiated an investigation based on information transmitted to the VID for smog check inspections performed by Respondent's employees. The investigation revealed that the data related to certain vehicles certified by Respondent's employees contained a pattern of unmistakable discrepancies between the information transmitted during the inspections and documented information known about the vehicles at issue. Specifically, the representative compared the data received from the certified vehicles to data from vehicles of the same year, make, and model and determined that the data from at least six (6) of the certified vehicles were fraudulently tested by Respondent's employees during the smog inspection using the "clean plugging" method as follows:

Clean Plug # 1

28. Bureau representative M.A. reviewed the OIS Test Data for El Tapatio Smog Check. The review shows that on February 13, 2024, a 2000 Jeep Cherokee Sport, VIN# 1J4FT48S1YL168135, CA License # 4UZH911 was tested and smog certificate # IX223196C was issued by El Tapatio Smog Check under licensed Smog Check Inspector #EO 644486, Gilbert Roman.

[3] "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 and/or not present for testing.

29. The OBD Data (Dynamic) and Dynamic Data Charts for the 2000 Jeep Cherokee Sport show that between time stamp 1280 and 22711, the engine RPM is relatively at around 700 RPM. During this time, the data shows the throttle is fixed at 16.5 % opening, and the MAP is also fixed at 39 kPa. After time stamp 22711, the data shows that the engine RPM increases and is ultimately held steady at no less than 1660 RPM. During this time, the data shows that the throttle continued to stay fixed at the same 16.5 % opening, and the MAP also continued to stay fixed at the same 39 kpa.

30. The OIS Test Data collected during the Smog Check inspection for the 2000 Jeep Cherokee Sport showed anomalies inconsistent with genuine engine operation. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position and MAP readings remained unchanged even though the engine RPM increased. These readings are not characteristic or expected for normal engine operation, as with increased engine RPM, the throttle position readings are expected to increase and MAP readings are expected to decrease and not remain fixed at the same idle readings. The discrepancies in the OIS Test Data prove that the Data Acquisition Device was not connected as required to the 2000 Jeep Cherokee Sport being certified, resulting in the issuance of a fraudulent Smog Check Certificate of Compliance.

Clean Plug # 2

31. Bureau representative M.A. reviewed the OIS Test Data for El Tapatio Smog Check. The review shows that on March 29, 2024, a 2004 Pontiac GTO, VIN# 6G2VX12GX4L281043, CA License # 6ASY048 was tested and smog certificate # TU547910C was issued by El Tapatio Smog Check under licensed Smog Check Inspector #EO 644486, Gilbert Roman.

32. The OBD Data (Dynamic) and Dynamic Data Charts for the 2004 Pontiac GTO show that between time stamp 41 and 19964, the engine RPM is relatively at around 780 RPM. During this time, the data shows the throttle drops from a 4.3 % opening to 3.9 % opening, the MAF ultimately rises from 8.77 gram/sec to 9.53 gram/sec, and the MAP is at 43 kPa and then ultimately drops to 32 kPa. After time stamp 19964, the data shows that the engine RPM increases and is ultimately held at around 1600 RPM. During this time, the data shows that the

throttle drops from a 1.2 % opening to 0.8 % opening, the MAF drops from 10.18 gram/sec to 9.66 gram/sec, and the MAP rises from 34 kPa and 37 kPa.

33. The OIS Test Data collected during the Smog Check inspection for the 2004 Pontiac GTO showed anomalies inconsistent with genuine engine operation. The steady idle and elevated engine RPMs along with the improbable throttle positions, MAF and MAP readings are not characteristic or expected for normal engine operation. The throttle position, MAF, and MAP readings are expected to be stable at idle and at the elevated engine RPM, not drop and rise unexpectedly. Additionally, during the elevated engine RPM, the throttle position and MAF readings are expected to increase, not decrease to values lower than or equal to idle readings, and the MAP readings are expected to decrease, not increase to above idle readings. The discrepancies in the OIS Test Data prove the Data Acquisition Device was not connected as required to the 2004 Pontiac GTO being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Clean Plug # 3

34. Bureau representative M.A. reviewed the OIS Test Data for El Tapatio Smog Check. The review shows that on April 27, 2024, a 2003 Mazda MPV Wagon, VIN# JM3LW28A730353755, CA License # 5CCE891 was tested and smog certificate # TW521254C was issued by El Tapatio Smog Check under licensed Smog Check Inspector #EO 644486, Gilbert Roman.

35. The OBD Data (Dynamic) and Dynamic Data Charts for the 2003 Mazda MPV Wagon shows that between time stamp 138 and 17014, the engine RPM is relatively steady at around 710 RPM. During this time, the data shows the throttle is fluctuating between 2 % opening and 5.1 % opening, and the MAF is fluctuating between 3.16 gram/sec and 4.89 gram/sec. After time stamp 17014, the data shows that the engine RPM increases and is ultimately held steady at around 1640 RPM. During this time, the data shows that throttle continues to fluctuate between 1.6 % opening and 4.3 % opening, and the MAF continues to fluctuate between 2.87 gram/sec and 4.43 gram/sec.

36. The OIS Test Data collected during the Smog Check inspection for the 2003 Mazda MPV Wagon showed anomalies inconsistent with genuine engine operation. The steady idle and steady elevated engine RPMs along with the improbable throttle positions and MAF readings are not characteristic or expected for normal engine operation. The throttle position and MAF readings are expected to be stable at idle and at the elevated engine RPM, not drop and rise unexpectedly. Additionally, during the elevated engine RPM, the throttle position and MAF readings are expected to increase, not decrease to values lower than idle readings. The discrepancies in the OIS Test Data prove the Data Acquisition Device was not connected as required to the 2003 Mazda MPV Wagon being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Clean Plug # 4

37. Bureau representative M.A. reviewed the OIS Test Data for El Tapatio Smog Check. The review shows that on May 2, 2024, a 2002 Volkswagen GTI Base, VIN# 9BWDE61J124035998, CA License # 6JMR570 was tested and smog certificate # TW521260C was issued by El Tapatio Smog Check under licensed Smog Check Inspector #EO 644486, Gilbert Roman.

38. The OBD Data (Dynamic) and Dynamic Data Charts for the 2002 Volkswagen GTI Base show that between time stamp 103 and 17325, the engine RPM is relatively at around 800 RPM. During this time, the data shows the throttle is fluctuating between 13.3 % opening and 17.3 % opening, and the MAF is fluctuating between 3.49 gram/sec and 5 gram/sec. After time stamp 17325, the data shows that the engine RPM increases and is ultimately held steady at around 1950 RPM. During this time, the data shows that throttle continues to fluctuate between 12.5 % opening and 17.3 % opening, and the MAF continues to fluctuate between 2.74 gram/sec and 4.99 gram/sec.

39. The OIS Test Data collected during the Smog Check inspection for the 2002 Volkswagen GTI Base showed anomalies inconsistent with genuine engine operation. The steady idle and steady elevated engine RPMs, along with the improbable throttle positions and MAF readings, are not characteristic or expected for normal engine operation. The throttle position and

MAF readings are expected to be stable at idle and at the elevated engine RPM, not dropping and rising unexpectedly. Additionally, during the elevated engine RPM, the throttle position and MAF readings are expected to increase, not decrease to values lower than idle readings. The discrepancies in the OIS Test Data prove that the Data Acquisition Device was not connected as required to the 2002 Volkswagen GTI Base being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Clean Plug # 5

40. Bureau representative M.A. reviewed the OIS Test Data for El Tapatio Smog Check. The review shows that on May 8, 2024, a 2002 Ford Ranger Super Cab, VIN# 1FTYR14U42PB42924, CA License # 6Z08403 was tested and smog certificate # TW521267C was issued by El Tapatio Smog Check under licensed Smog Check Inspector #EO 644486, Gilbert Roman.

41. The OBD Data (Dynamic) and Dynamic Data Charts for the 2002 Ford Ranger Super Cab show that between time stamp 21 and 16603, the engine RPM is relatively around 830 RPM. During this time, the data shows that the throttle is at 13.3 % opening and then ultimately rises to 18 % opening, and the MAF is fluctuating between 0.17 gram/sec and 2.23 gram/sec. After time stamp 16603, the data shows that the engine RPM increases and is ultimately held steady at around 1630 RPM. During this time, the data shows that the throttle is fluctuating between 12.5 % opening and 18 % opening, and the MAF continues to fluctuate between 0.32 gram/sec and 2.05 gram/sec.

42. The OIS Test Data collected during the Smog Check inspection for the 2002 Ford Ranger Super Cab showed anomalies inconsistent with genuine engine operation. The steady idle and steady elevated engine RPMs, along with the improbable throttle position and MAF readings, are not characteristic or expected for normal engine operation. The throttle position and MAF readings are expected to be stable at idle and at elevated engine RPM, not dropping and rising unexpectedly or varying abnormally. Additionally, during elevated engine RPM, the throttle position and MAF readings are expected to increase, not decrease to values lower than idle readings. The discrepancies in the OIS Test Data prove that the Data Acquisition Device was not

connected as required to the 2002 Ford Ranger Super Cab being certified, resulting in the issuance of a fraudulent Smog Check Certificate of Compliance.

Clean Plug # 6

43. Bureau representative M.A. reviewed the OIS Test Data for El Tapatio Smog Check. The review shows that on May 14, 2024, a 2003 Ford Mustang Cobra SVT, VIN# 1FAFP48Y03F306081, CA License # SVT1893 was tested and smog certificate # TW521280C was issued by El Tapatio Smog Check under licensed Smog Check Inspector #EO 644486, Gilbert Roman.

44. The OBD Data (Dynamic) and Dynamic Data Charts for the 2003 Ford Mustang Cobra SVT show that between time stamp 25 and 16624, the engine RPM is relatively steady at around 730 RPM. During this time, the data shows the throttle is fluctuating between 13.3 % opening and 18 % opening, and the MAF is fluctuating between 2.97 gram/sec and 4.51 gram/sec. After time stamp 16624, the data shows that the engine RPM increases and is ultimately held steady at around 1805 RPM. During this time, the data shows that throttle continues to fluctuate between 12.5 % opening and 16.5 % opening, and the MAF continues to fluctuate between 2.85 gram/sec and 4.87 gram/sec.

45. The OIS Test Data collected during the Smog Check inspection for the 2003 Ford Mustang Cobra SVT showed anomalies inconsistent with genuine engine operation. The steady idle and steady elevated engine RPMs, along with the improbable throttle positions and MAF readings, are not characteristic or expected for normal engine operation. The throttle position and MAF readings are expected to be stable at idle and at the elevated engine RPM, not dropping and rising unexpectedly. Additionally, during the elevated engine RPM, the throttle position and MAF readings are expected to increase, not decrease to values lower than idle readings. The discrepancies in the OIS Test Data prove that the Data Acquisition Device was not connected as required to the 2003 Ford Mustang Cobra SVT being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

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FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements - Respondent El Tapatio Smog Check)

46. Respondent El Tapatio Smog Check's registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(1), in that Respondent's employees 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's employees certified that the vehicles set forth above in paragraphs 28-45, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent's employees conducted the inspections on those vehicles using the clean plugging method in order to issue smog certificates of compliance, and did not test or inspect the vehicles as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud - Respondent El Tapatio Smog Check)

47. Respondent El Tapatio Smog Check's registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(4), in that Respondent El Tapatio Smog Check's employees committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth above in paragraphs 28-45, 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.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with the Motor Vehicle Inspection Program –

Respondent El Tapatio Smog Check)

48. Respondent El Tapatio Smog Check's smog station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in paragraphs 28-45, Respondent El Tapatio Smog Check failed to comply with the following sections of the Health and Safety Code:

(a) **Section 44012**: Respondent El Tapatio Smog Check's employees failed to ensure that the emission control tests were performed on the vehicles, in accordance with procedures prescribed by the department.

(b) **Section 44015**: Respondent El Tapatio Smog Check's employees issued electronic certificates of compliance for the vehicles, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program - Respondent El Tapatio Smog Check)

49. Respondent El Tapatio Smog Check's smog station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth above in paragraphs 28-45, Respondent's employees failed to comply with the following provisions of the California Code of Regulations, Title 16, as follows:

(a) **Section 3340.35, subdivision (c)**: Respondent El Tapatio Smog Check's employees issued electronic certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42, Title 16, of the California Code of Regulations.

(b) **Section 3340.42**: Respondent El Tapatio Smog Check's employees failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit - Respondent El Tapatio Smog Check)

50. Respondent El Tapatio Smog Check's smog station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in paragraphs 28-45, Respondent El Tapatio Smog Check's employee's committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the

emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

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

51. Respondent Roman's smog check inspector license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that regarding the vehicles set forth above in paragraphs 28-45, Respondent Roman failed to comply with sections 44012 and 44032 of the Health and Safety Code in a material respect, as follows: Respondent Roman failed to perform the emission control tests on those vehicles in accordance with procedures prescribed by the department.

SEVENTH CAUSE FOR DISCIPLINE

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

52. Respondent Roman's smog check inspector license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that regarding the vehicles set forth above in paragraphs 28-45, Respondent Roman failed to comply with provisions of the California Code of Regulations, title 16, as follows:

(a) **Section 3340.30, subdivision (a)**: Respondent Roman failed to inspect and test those vehicles in accordance with Health and Safety Code sections 44012 and 44032.

(b) **Section 3340.41, subdivision (c)**: Respondent Roman entered false information into the OIS.

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit - Respondent Roman)

53. Respondent Roman's smog check inspector license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10 subdivision (c), in that regarding the vehicles set forth above in

paragraphs 28-45, Respondent Roman committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

54. Pursuant to Business & 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 El Tapatio Smog Check upon a finding that Respondent El Tapatio Smog Check has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

55. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station License Number TC 306354 issued to Respondent El Tapatio Smog Check is revoked or suspended following a hearing under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

56. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License Number EO 644486 issued to Respondent Roman, is revoked or suspended following a hearing under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 306354, issued to Gilbert Roman;

2. Revoking or suspending any other Automotive Repair Dealer Registration issued to Respondent Gilbert Roman;

3. Revoking or suspending Smog Check, Test-Only, Station License Number TC 306354, issued to Gilbert Roman;

4. Revoking or suspending Smog Check Inspector License Number EO 644486, issued to Gilbert Roman;

5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Respondent Gilbert Roman;

6. Ordering Gilbert Roman to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3 and if placed on probation, the costs of probation monitoring; and,

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

Dorais, Patrick@DCA

Digitally signed by Dorais, Patrick@DCA
Date: 2026.10.26 11:55:13 -07'00'

DATED: As of digital signature date

PATRICK DORAIS
Chief
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