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

11  
12 In the Matter of the Accusation Against:  
13 **NESTOR ALONSO RODRIGUEZ, DBA**  
**ROMAN SMOG TEST ONLY;**  
14 **6645 Mission Blvd., Suite C**  
**Riverside, CA 92509**  
15  
**Automotive Repair Dealer Registration No.**  
16 **ARD 267565**  
**Smog Check-Test Only Station License No.**  
17 **TC 267565**  
18 **ALFREDO IVAN ROMAN;**  
**24117 Kernwood Drive**  
19 **Moreno Valley, CA 92557**  
**Advanced Emissions Specialist Technician**  
20 **License No. EA 631208 (to be redesignated**  
**upon renewal as EO 631208 and/or**  
21 **EI631208),**  
22 **CHARLES GUZMAN ROMAN**  
**3725 Arora Street**  
23 **Riverside, CA 92509**  
**Advanced Emissions Specialist Technician**  
24 **License No. EA 634710 (to be redesignated**  
**upon renewal as EO 634710 and/or EI**  
25 **634710)**

Case No. 79/13-53  
**FIRST AMENDED ACCUSATION**

26  
27 Respondents.  
28

1 Complainant alleges:

2 **PARTIES**

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

6 **Automotive Repair Dealer Registration**

7 2. On December 28, 2011, the Bureau issued Automotive Repair Dealer Registration  
8 Number ARD 267565 (“registration”) to Nestor Alonso Rodriguez (“Respondent Rodriguez”),  
9 doing business as Roman Smog Test Only. The registration was in full force and effect at all  
10 times relevant to the charges brought herein and expired on December 31, 2013.

11 **Smog Check Test Only Station License**

12 3. On January 12, 2012, the Bureau issued Smog Check Test Only Station License  
13 Number TC 267565 (“station license”) to Respondent Rodriguez. The station license was in full  
14 force and effect at all times relevant to the charges brought herein and expired December 31,  
15 2013.

16 **Advanced Emission Specialist Technician License**

17 4. On or about July 27, 2009, the Bureau issued Advanced Emission Specialist  
18 Technician License Number EA 631208 (“technician license”) to Alfredo Ivan Roman  
19 (“Respondent Alfredo”). The technician license was in full force and effect at all times relevant  
20 to the charges brought herein and will expired on December 31, 2013. Upon renewal Respondent  
21 Alfredo Ivan Roman’s license will be redesignated as EO 631208 and/or EI 631208.<sup>1</sup>

22 **Advanced Emission Specialist Technician License**

23 5. On or about August 30, 2012, the Bureau issued Advanced Emission Specialist  
24 Technician License Number EA 634710 (“technician license”) to Charles Guzman Roman  
25 (“Respondent Charles”). The technician license was in full force and effect at all times relevant

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

1 to the charges brought herein and will expire on November 30, 2014, unless renewed. Upon  
2 renewal Respondent Charles Guzman Roman's license will be redesignated as EO 634710 and/or  
3 EI 634710.

#### 4 JURISDICTION

5 6. This First Amended Accusation is brought before the Director of Consumer Affairs  
6 (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

7 7. Business and Professions Code ("Code") section 477 provides, in pertinent part, that  
8 "Board" includes "bureau," "commission," "committee," "department," "division," "examining  
9 committee," "program," and "agency." "License" includes certificate, registration or other means  
10 to engage in a business or profession regulated by the Code.

11 8. Section 9884.7 of the Code states, in pertinent part:

12 (a) The director, where the automotive repair dealer cannot show there  
13 was a bona fide error, may refuse to validate, or may invalidate temporarily  
14 or permanently, the registration of an automotive repair dealer for any of the  
15 following acts or omissions related to the conduct of the business of the  
16 automotive repair dealer, which are done by the automotive repair dealer or  
17 any automotive technician, employee, partner, officer, or member of the  
18 automotive repair dealer.

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

23 ...

24 (4) Any other conduct which constitutes fraud.

25 ...

26 (b) Except as provided for in subdivision (c), if an automotive repair  
27 dealer operates more than one place of business in this state, the director  
28 pursuant to subdivision (a) shall only invalidate temporarily or permanently  
the registration of the specific place of business which has violated any of  
the provisions of this chapter. This violation, or action by the director, shall  
not affect in any manner the right of the automotive repair dealer to operate  
his or her other places of business.

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

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1 14. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
2 suspended following a hearing under this article, any additional license issued under this chapter  
3 in the name of the licensee may be likewise revoked or suspended by the director.

4 **REGULATORY PROVISIONS**

5 15. California Code of Regulations, title 16, section 3340.28, states:

6 ...

7 (e) Upon renewal of an unexpired Basic Area Technician license or an  
8 Advanced Emission Specialist Technician license issued prior to the  
9 effective date of this regulation, the licensee may apply to renew as a Smog  
10 Check Inspector, Smog Check Repair Technician, or both.

11 ...

12 **COST RECOVERY**

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

19 **BACKGROUND**

20 17. On July 31, 2012 and September 6, 2012, the Bureau of Automotive Repair (BAR)  
21 investigated Roman Smog Test Only station and found multiple instances of fraud. During the  
22 two days of surveillance all three Respondent's were video recorded falsifying smog test results  
23 using the clean piping method and issuing fraudulent electronic certificates of compliance.

24 **SURVEILLANCE OPERATION – JULY 31, 2012**

25 18. On or about July 31, 2012, the Bureau performed a surveillance operation at  
26 Respondent, Roman Smog Test Only. The surveillance operation and information obtained from  
27 the Bureau's Vehicle Information Database ("VID") revealed that between 1725 hours and 1746  
28 hours, Respondent Alfredo performed a smog inspection that resulted in the issuance of electronic  
certificate of compliance for a 1993 Honda Accord set forth as vehicle number 1 in Table 1,  
below, certifying that he had tested and inspected that vehicle and that the vehicle was in

1 compliance with applicable laws and regulations. In fact, Respondent Alfredo performed the  
 2 smog inspection using the clean piping method.<sup>2</sup> Alfredo used the tail pipe emissions of a Nissan  
 3 pickup in order to issue the electronic certificate of compliance. Further, Respondent Charles  
 4 assisted in the performance of the smog inspection and certification of the 1993 Honda Accord  
 5 listed as vehicle number 1 in Table 1 below.

6 **SURVEILLANCE OPERATION – SEPTEMBER 6, 2012**

7 19. On or about September 6, 2012, the Bureau performed a second surveillance  
 8 operation at Respondent, Roman Smog Test Only. The surveillance operation and information  
 9 obtained from the Bureau’s Vehicle Information Database (“VID”) revealed that between 1707  
 10 hours and 1740 hours, Respondent Alfredo performed two (2) smog inspections that resulted in  
 11 the issuance of electronic certificates of compliance for vehicles number 2 and 3 set forth in Table  
 12 1 below, certifying that he had tested and inspected those vehicles and that the vehicles were in  
 13 compliance with applicable laws and regulations. In fact, Respondent Alfredo performed the  
 14 smog inspections on vehicles number 2 and 3 set forth in Table 1 below using the clean piping  
 15 method. Alfredo used the tail pipe emissions of a 2000 Ford Expedition in order to issue the  
 16 electronic certificates of compliance. The Chevrolet Silverado and Mercury Villager certified  
 17 were not in the test bay at the time of the smog inspections. Further, Respondent Charles assisted  
 18 in the performance of the smog inspections and certifications on the 2006 Chevrolet Silverado  
 19 and 2000 Mercury Villager on vehicles number 2 and 3 set forth in Table 1 below.

20 **Table 1**

21 <b>Test Dates/ Times</b>	<b>Vehicle Certified</b>	<b>Vehicle Actually Tested</b>	<b>Certificate Issued</b>	<b>Details</b>
22 <b>1.</b> 7/31/2012 1725 hours to 1746 hours	1993 Honda Accord (3ENZ279)	Nissan Pickup	XJ623789C	1993 Honda Accord never seen. Nissan pickup used for test
24 <b>2.</b> 9/6/2012	2006 Chevrolet	2000 Ford	XL208744C	Ford Expedition

26 <sup>2</sup> “Clean piping” is sampling the (clean) tailpipe emissions and/or the RPM readings of  
 27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in  
 28 compliance or are not present in the smog check area during the time of the certification.

Test Dates/ Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
1707 hours to 1717 hours	Silverado (8T72626)	Expedition		used to certify the 2006 Chevrolet
3. 9/6/2012 1721 hours to 1740 hours	2000 Mercury Villager (6PFT338)	2000 Ford Expedition	XL208745C	Ford Expedition used to certify the 2000 Mercury

**FIRST CAUSE FOR DISCIPLINE**

**(Misleading Statements)**

20. Respondent Rodriguez has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about July 31, 2012 and September 6, 2012, Respondent made statements which he knew, or which by exercise of reasonable care should have known, were untrue or misleading when Respondent Rodriguez issued electronic certificates of compliance for the vehicles set forth in Table 1 above, certifying that the vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

**SECOND CAUSE FOR DISCIPLINE**

**(Fraud)**

21. Respondent Rodriguez has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about July 31, 2012 and September 6, 2012, Respondent committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 1 above, without performing bona fide inspections of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

**THIRD CAUSE FOR DISCIPLINE**

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

22. Respondent Rodriguez has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about July 31, 2012 and September 6, 2012, regarding the vehicles set forth in Table 1, above, Respondent violated sections of that Code, as follows:

///

1 a. **Section 44012:** Respondent failed to ensure that the emission control tests  
2 were performed on the vehicles in accordance with procedures prescribed by the department.

3 b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of  
4 compliance without properly testing and inspecting the vehicles to determine if they were in  
5 compliance with section 44012 of that Code.

6 **FOURTH CAUSE FOR DISCIPLINE**

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

8 23. Respondent Rodriguez has subjected its station license to discipline under Health and  
9 Safety Code section 44072.2, subdivision (c), in that on or about July 31, 2012 and September 6,  
10 2012, regarding the vehicles set forth in Table 1 above, Respondent violated sections of the  
11 California Code of Regulations, title 16, as follows:

12 a. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
13 compliance even though the vehicles had not been inspected in accordance with section 3340.42  
14 of that Code.

15 b. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
16 inspections on the vehicles in accordance with the Bureau's specifications.

17 **FIFTH CAUSE FOR DISCIPLINE**

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

19 24. Respondent Rodriguez has subjected his station license to discipline under Health  
20 and Safety Code section 44072.2, subdivision (d), in that on or about July 31, 2012 and  
21 September 6, 2012, regarding the vehicles set forth in Table 1 above, Respondent committed acts  
22 involving dishonesty, fraud or deceit whereby another was injured by issuing an electronic  
23 certificates of compliance for the vehicles without performing bona fide inspections of the  
24 emission control devices and systems on the vehicles, thereby depriving the People of the State of  
25 California of the protection afforded by the Motor Vehicle Inspection Program.

26 ///

27 ///

28 ///





1 September 6, 2012, he committed acts involving dishonesty, fraud or deceit whereby another was  
2 injured by issuing electronic certificates of compliance for the vehicles set forth in Table 1 above,  
3 without performing bona fide inspections of the emission control devices and systems on the  
4 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
5 Motor Vehicle Inspection Program.

6 **NINTH CAUSE FOR DISCIPLINE**

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

8 28. Respondent Charles Roman has subjected his technician license to discipline under  
9 Health and Safety Code section 44072.2, subdivision (a), in that on or about July 31, 2012 and  
10 September 6, 2012, regarding the vehicles set forth in Table 1 above, he violated sections of that  
11 Code, as follows:

12 a. **Section 44012:** Respondent failed to ensure that the emission control tests  
13 were performed on the vehicles in accordance with procedures prescribed by the department.

14 b. **Section 44032:** Respondent failed to perform tests of the emission control  
15 devices and systems on the vehicles in accordance with section 44012 of that Code, in that the  
16 vehicles had been clean piped.

17 **TENTH CAUSE FOR DISCIPLINE**

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

19 29. Respondent Charles has subjected his technician license to discipline under Health  
20 and Safety Code section 44072.2, subdivision (c), in that on or about July 31, 2012 and  
21 September 6, 2012, regarding the vehicles set forth in Table 1 above, he violated sections of the  
22 California Code of Regulations, title 16, as follows:

23 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the  
24 vehicles in accordance with Health and Safety Code section 44012.

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

27 ///

28 ///

1 **ELEVENTH CAUSE FOR DISCIPLINE**

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

3 30. Respondent Charles has subjected his technician license to discipline under Health  
4 and Safety Code section 44072.2, subdivision (d), in that on or about July 31, 2012, and  
5 September 6, 2012, he committed acts involving dishonesty, fraud or deceit whereby another was  
6 injured by issuing an electronic certificates of compliance for the vehicles set forth in Table 1  
7 above, without performing bona fide inspections of the emission control devices and systems on  
8 the vehicles, thereby depriving the People of the State of California of the protection afforded by  
9 the Motor Vehicle Inspection Program.

10 **VID DATA REVIEW**

11 31. A Bureau representative conducted a detailed review of VID data for all smog  
12 inspections performed at Respondent Rodriguez' automotive repair dealership for the period of  
13 May 23, through June 9, 2012. The review of the OBD II functional tests<sup>3</sup> showed a pattern of the  
14 same OBD II diagnostic trouble code, (P1298), stored in the memory of the power train control  
15 module (PCM) on fourteen different vehicles that received smog certificates during that  
16 timeframe. The BAR specifically examined the VID data, in detail, for five of the vehicles that  
17 were certified from May 23, 2012, to June 6, 2012, and it was determined that none of them  
18 support the P1298 OBD II code. Table 2 below documents all five vehicles that were certified  
19 with pending OBD II codes stored in the PCM memory that, according to the original equipment  
20 manufacturer (OEM) service information, are not supported. The five vehicles identified in Table  
21 2 below were issued electronic certificates of compliance using clean plugging<sup>4</sup> methods.

22 <sup>3</sup> The On Board Diagnostic, generation II ("OBD II"), functional test is an automated  
23 function of the BAR-97 Emissions Inspection System analyzer ("EIS"). The EIS includes a  
24 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect  
25 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional  
26 test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link  
Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically  
retrieves information from the vehicle's on-board computer about the status of the readiness  
indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD  
II functional test, it will fail the overall inspection.

27 <sup>4</sup> Clean-plugging is the use of the OBD II readiness monitor status and stored code status  
28 of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that  
is not in compliance due to the noncompliant vehicle's failure to complete the minimum number  
(continued...)

Table 2

Test Times	Vehicle Certified	Unsupported OBD II Code	Certificate Issued	Technician License No.
1. May 23, 2012 1705 hours to 1718 hours	2002 Chevrolet Camaro (5VPA248)	P1298	XH414290C	EA631208 Alfredo Roman
2. May 24, 2012 0838 hours to 0902 hours	2006 Nissan Titan (61548B1)	P1298	XH414293C	EA631208 Alfredo Roman
3. May 28, 2012 1102 hours to 1118 hours	2005 Dodge Neon (5KKD073)	P1298	XH538814C	EA631208 Alfredo Roman
4. June 5, 2012 1134 hours to 1150 hours	2001 Chrysler Town & Country (6EUK639)	P1298	XH538836C	EA631208 Alfredo Roman
5. June 6, 2012 1220 hours to 1232 hours	1999 Chevrolet Malibu (5SZF036)	P1298	XH538848	EA631208 Alfredo Roman

**TWELFTH CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

32. Respondent Rodriguez' registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that he made or authorized statements which he knew, or in the exercise of reasonable care should have known to be untrue or misleading as follows: Respondent certified that vehicles 1 through 5, identified in Table 2 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging methods in that, a different vehicle(s) was substituted during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and the vehicles were not tested or inspected, as required by Health and Safety Code section 44012.

of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure. Clean plugging occurs during the inspection of a vehicle that has an OBD II system. To clean plug a vehicle, the smog technician enters information into the EIS for the vehicle the technician wishes to certify and then plugs the OBD II system connector from the EIS into another vehicle that has a properly functioning OBD II system for the purpose of obtaining a "Passing" OBD II functional test result.

1 **THIRTEENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 33. Respondent Rodriguez' registration is subject to disciplinary action pursuant to Bus.  
4 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute  
5 fraud by issuing electronic smog certificates of compliance for the vehicles 1 through 5, identified  
6 in Table 2 above, without performing bona fide inspections of the emission control devices and  
7 systems on the vehicles, thereby depriving the People of the State of California of the protection  
8 afforded by the Motor Vehicle Inspection Program.

9 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

11 34. Respondent Rodriguez' smog check station license is subject to disciplinary action  
12 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that Respondent failed to  
13 comply with the following sections of that Code:

14 a. **Section 44012:** Respondent failed to ensure that all emission control devices and  
15 systems required by law for vehicles 1 through 5, identified in Table 2 above, were installed and  
16 functioning correctly in accordance with test procedures.

17 ///

18 b. **Section 44012, subdivision (f):** Respondent failed to ensure that the emission control  
19 tests were performed on vehicles 1 through 5, identified in Table 2 above, in accordance with  
20 procedures prescribed by the department.

21 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of  
22 compliance for vehicles 1 through 5, identified in Table 2 above, without ensuring that the  
23 vehicles were properly tested and inspected to determine if they were in compliance with Health  
24 & Safety Code section 44012.

25 **FIFTEENTH CAUSE FOR DISCIPLINE**

26 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

27 35. Respondent Rodriguez' smog check station license is subject to disciplinary action  
28 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that Respondent failed to





1 compliance for the vehicles 1 through 5, identified in Table 2 above, without performing bona  
2 fide inspections of the emission control devices and systems on the vehicles, thereby depriving  
3 the People of the State of California of the protection afforded by the Motor Vehicle Inspection  
4 Program.

5 **OTHER MATTERS**

6 40. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,  
7 or may invalidate temporarily or permanently, the registrations for all places of business operated  
8 in this state by Nestor Alonso Rodriguez upon a finding that he has, or is, engaged in a course of  
9 repeated and willful violations of the laws and regulations pertaining to an automotive repair  
10 dealer.

11 41. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station  
12 License Number TC 267565, issued to Nestor Alonso Rodriguez doing business as Roman Smog  
13 Test Only, is revoked or suspended, any additional license issued under this chapter in the name  
14 of said licensee may be likewise revoked or suspended by the director.

15 42. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist  
16 Technician License Number EA 631208, and/or redesignated license(s) EO 631208 and/or EI  
17 631208, issued to Alfredo Ivan Roman, are revoked or suspended, any additional license issued  
18 under this chapter in the name of said licensee may be likewise revoked or suspended by the  
19 director.

20 43. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist  
21 Technician License Number EA 634710, and/or redesignated license(s) EO 634710 and/or EI  
22 634710, issued to Alfredo Ivan Roman, are revoked or suspended, any additional license issued  
23 under this chapter in the name of said licensee may be likewise revoked or suspended by the  
24 director.

25 **PRAYER**

26 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
27 and that following the hearing, the Director of Consumer Affairs issue a decision:  
28



