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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:

Case No. 79/13-53

13 **NESTOR ALONSO RODRIGUEZ, DBA**
ROMAN SMOG TEST ONLY;
14 **6645 Mission Blvd., Suite C**
Riverside, CA 92509

ACCUSATION

(Smog Check)

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**

21 **CHARLES GUZMAN ROMAN**
22 **3725 Arora Street**
Riverside, CA 92509
23 **Advanced Emissions Specialist Technician**
24 **License No. EA 634710**

25
26 Respondents.

27
28 Complainant alleges:

1 **PARTIES**

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

4 **Automotive Repair Dealer Registration**

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

10 **Smog Check Test Only Station License**

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

15 **Advanced Emission Specialist Technician License**

16 4. On or about July 27, 2009, the Bureau issued Advanced Emission Specialist
17 Technician License Number EA 631208 ("technician license") to Alfredo Ivan Roman
18 ("Respondent Alfredo"). The technician license was in full force and effect at all times relevant
19 to the charges brought herein and will expire on December 31, 2013, unless renewed.

20 **Advanced Emission Specialist Technician License**

21 5. On or about August 30, 2012, the Bureau issued Advanced Emission Specialist
22 Technician License Number EA 634710 ("technician license") to Charles Guzman Roman
23 ("Respondent Charles"). The technician license was in full force and effect at all times relevant
24 to the charges brought herein and will expire on November 30, 2014, unless renewed.

25 **JURISDICTION**

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

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

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

6 (a) The director, where the automotive repair dealer cannot show there
7 was a bona fide error, may refuse to validate, or may invalidate temporarily
8 or permanently, the registration of an automotive repair dealer for any of the
9 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.

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

14 ...

15 (4) Any other conduct which constitutes fraud.

16 ...

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

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

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

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

1 **STATUTORY PROVISIONS**

2 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

7 ...

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

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

11 12. Health & Saf. Code section 44072.4 states, in pertinent part:

12 The director may take disciplinary action against any licensee after a
hearing as provided in this article by any of the following:

13 (a) Imposing probation upon terms and conditions to be set forth by
14 the director.

15 (b) Suspending the license.

16 (c) Revoking the license.

17 13. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
18 suspension of a license by operation of law, or by order or decision of the Director of Consumer
19 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
20 of jurisdiction to proceed with disciplinary action.

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

24 **COST RECOVERY**

25 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **BACKGROUND**

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

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

9 17. On or about July 31, 2012, the Bureau performed a surveillance operation at
10 Respondent, Roman Smog Test Only. The surveillance operation and information obtained from
11 the Bureau's Vehicle Information Database ("VID") revealed that between 1725 hours and 1746
12 hours, Respondent Alfredo performed a smog inspection that resulted in the issuance of electronic
13 certificate of compliance for a 1993 Honda Accord set forth as vehicle number 1 in Table 1,
14 below, certifying that he had tested and inspected that vehicle and that the vehicle was in
15 compliance with applicable laws and regulations. In fact, Respondent Alfredo performed the
16 smog inspection using the clean piping method.¹ Alfredo used the tail pipe emissions of a Nissan
17 pickup in order to issue the electronic certificate of compliance. Further, Respondent Charles
18 assisted in the performance of the smog inspection and certification of the 1993 Honda Accord
19 listed as vehicle number 1 in Table 1 below.

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

21 18. On or about September 6, 2012, the Bureau performed a second surveillance
22 operation at Respondent, Roman Smog Test Only. The surveillance operation and information
23 obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 1707
24 hours and 1740 hours, Respondent Alfredo performed two (2) smog inspections that resulted in
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26 ¹ "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.

1 the issuance of electronic certificates of compliance for vehicles number 2 and 3 set forth in Table
 2 1 below, certifying that he had tested and inspected those vehicles and that the vehicles were in
 3 compliance with applicable laws and regulations. In fact, Respondent Alfredo performed the
 4 smog inspections on vehicles number 2 and 3 set forth in Table 1 below using the clean piping
 5 method. Alfredo used the tail pipe emissions of a 2000 Ford Expedition in order to issue the
 6 electronic certificates of compliance. The Chevrolet Silverado and Mercury Villager certified
 7 were not in the test bay at the time of the smog inspections. Further, Respondent Charles assisted
 8 in the performance of the smog inspections and certifications on the 2006 Chevrolet Silverado
 9 and 2000 Mercury Villager on vehicles number 2 and 3 set forth in Table 1 below.

10 **Table 1**

11 Test Dates/ Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
12 1. 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
14 2. 9/6/2012 1707 hours to 1717 hours	2006 Chevrolet Silverado (8T72626)	2000 Ford Expedition	XL208744C	Ford Expedition used to certify the 2006 Chevrolet
16 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

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Misleading Statements)**

21 19. Respondent Rodriguez has subjected its registration to discipline under Code section
 22 9884.7, subdivision (a)(1), in that on or about July 31, 2012 and September 6, 2012, Respondent
 23 made statements which he knew, or which by exercise of reasonable care should have known,
 24 were untrue or misleading when Respondent Rodriguez issued electronic certificates of
 25 compliance for the vehicles set forth in Table 1 above, certifying that the vehicles were in
 26 compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

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

9 **THIRD CAUSE FOR DISCIPLINE**

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

11 21. Respondent Rodriguez has subjected his station license to discipline under Health and
12 Safety Code section 44072.2, subdivision (a), in that on or about July 31, 2012 and September 6,
13 2012, regarding the vehicles set forth in Table 1, above, Respondent violated sections of that
14 Code, as follows:

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

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

20 **FOURTH CAUSE FOR DISCIPLINE**

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

22 22. Respondent Rodriguez has subjected its station license to discipline under Health and
23 Safety Code section 44072.2, subdivision (c), in that on or about July 31, 2012 and September 6,
24 2012, regarding the vehicles set forth in Table 1 above, Respondent violated sections of the
25 California Code of Regulations, title 16, as follows:

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

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

3 **FIFTH CAUSE FOR DISCIPLINE**

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

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

12 **SIXTH CAUSE FOR DISCIPLINE**

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

14 24. Respondent Alfredo Roman has subjected his technician license to discipline under
15 Health and Safety Code section 44072.2, subdivision (a), in that on or about July 31, 2012 and
16 September 6, 2012, regarding the vehicles set forth in Table 1 above, he violated sections of that
17 Code, as follows:

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

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

23 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

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

3 b. **Section 3340.41, subdivision (c):** Respondent entered false information into
4 the Emission Inspection System for the electronic certificates of compliance by entering vehicle
5 emission control information for vehicles other than the vehicles being certified.

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

8 **EIGHTH CAUSE FOR DISCIPLINE**

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

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

17 **NINTH CAUSE FOR DISCIPLINE**

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

19 27. Respondent Charles Roman has subjected his technician license to discipline under
20 Health and Safety Code section 44072.2, subdivision (a), 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 that
22 Code, as follows:

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

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

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1 **TENTH CAUSE FOR DISCIPLINE**

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

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

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

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

11 **ELEVENTH CAUSE FOR DISCIPLINE**

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

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

20 **VID DATA REVIEW**

21 30. A Bureau representative conducted a detailed review of VID data for all smog
22 inspections performed at Respondent Rodriguez' automotive repair dealership for the period of
23 May 23, through June 9, 2012. The review of the OBD II functional tests² showed a pattern of the

24 ² The On Board Diagnostic, generation II ("OBD II"), functional test is an automated
25 function of the BAR-97 Emissions Inspection System analyzer ("EIS"). The EIS includes a
26 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect
27 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional
28 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

(continued...)

1 same OBD II diagnostic trouble code, (P1298), stored in the memory of the power train control
 2 module (PCM) on fourteen different vehicles that received smog certificates during that
 3 timeframe. The BAR specifically examined the VID data, in detail, for five of the vehicles that
 4 were certified from May 23, 2012, to June 6, 2012, and it was determined that none of them
 5 support the P1298 OBD II code. Table 2 below documents all five vehicles that were certified
 6 with pending OBD II codes stored in the PCM memory that, according to the original equipment
 7 manufacturer (OEM) service information, are not supported. The five vehicles identified in Table
 8 2 below were issued electronic certificates of compliance using clean plugging³ methods.

9 **Table 2**

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

16 II functional test, it will fail the overall inspection.

17 ³ Clean-plugging is the use of the OBD II readiness monitor status and stored code status
 18 of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that
 19 is not in compliance due to the noncompliant vehicle's failure to complete the minimum number
 20 of self tests, known as monitors, or due to the presence of a stored fault code that indicates an
 21 emission control system or component failure. Clean plugging occurs during the inspection of a
 22 vehicle that has an OBD II system. To clean plug a vehicle, the smog technician enters
 23 information into the EIS for the vehicle the technician wishes to certify and then plugs the OBD II
 24 system connector from the EIS into another vehicle that has a properly functioning OBD II
 25 system for the purpose of obtaining a "Passing" OBD II functional test result.

1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 31. Respondent Rodriguez' registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(1), in that he made or authorized statements which he
5 knew, or in the exercise of reasonable care should have known to be untrue or misleading as follows:
6 Respondent certified that vehicles 1 through 5, identified in Table 2 above, had passed inspection and
7 were in compliance with applicable laws and regulations. In fact, Respondent conducted the
8 inspections on the vehicles using clean-plugging methods in that, a different vehicle(s) was
9 substituted during the OBD II functional tests in order to issue smog certificates of compliance for the
10 vehicles, and the vehicles were not tested or inspected, as required by Health and Safety Code section
11 44012.

12 **THIRTEENTH CAUSE FOR DISCIPLINE**

13 **(Fraud)**

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

20 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

8 **FIFTEENTH CAUSE FOR DISCIPLINE**
9 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

10 34. Respondent Rodriguez' smog check station license is subject to disciplinary action
11 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that Respondent failed to
12 comply with provisions of California Code of Regulations, title 16, as follows:

13 **a. Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic
14 smog certificates of compliance for vehicles 1 through 5, identified in Table 2 above.

15 **b. Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
16 compliance for vehicles 1 through 5, identified in Table 2 above, even though the vehicles had
17 not been inspected in accordance with section 3340.42.

18 **c. Section 3340.42:** Respondent failed to ensure that the required smog tests were
19 conducted on vehicles 1 through 5, identified in Table 2 above, in accordance with the BAR's
20 specifications.

21 **SIXTEENTH CAUSE FOR DISCIPLINE**
22 **(Dishonesty, Fraud, or Deceit)**

23 35. Respondent Rodriguez' smog check station license is subject to disciplinary action
24 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that Respondent
25 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic
26 smog certificates of compliance for the vehicles 1 through 5, identified in Table 2 above, without
27 performing bona fide inspections of the emission control devices and systems on the vehicles,

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

3 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

5 36. Respondent Alfredo's technician license is subject to disciplinary action pursuant to
6 Health & Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply with
7 the following sections of that Code:

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

11 **b. Section 44012, subdivision (f):** Respondent failed to perform the emission control
12 tests on vehicles 1 through 5, identified in Table 2 above, in accordance with procedures
13 prescribed by the department.

14 **c. Section 44059:** Respondent willfully made false entries for electronic certificates of
15 compliance for vehicles 1 through 5, identified in Table 2 above, by certifying that the vehicles
16 had been inspected as required when, in fact, they had not.

17 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

19 37. Respondent Alfredo's technician license is subject to disciplinary action pursuant to
20 Health & Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply with
21 provisions of California Code of Regulations, title 16, as follows:

22 **a. Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic
23 smog certificates of compliance for vehicles 1 through 5, identified in Table 2 above.

24 **b. Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
25 through 5, identified in Table 2 above, in accordance with Health & Safety Code sections 44012
26 and 44035, and California Code of Regulations, title 16, section 3340.42.

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1 **c. Section 3340.41, subdivision (c):** Respondent entered into the emissions inspection
2 system vehicle identification information or emission control system identification data for a
3 vehicle other than the one being tested for vehicles 1 through 5, identified in Table 2 above.

4 **d. Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
5 through 5, identified in Table 2 above, in accordance with the Bureau's specifications.

6 **NINETEENTH CAUSE FOR DISCIPLINE**

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

8 38. Respondent Alfredo's technician license is subject to disciplinary action pursuant to
9 Health & Safety Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
10 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
11 compliance for the vehicles 1 through 5, identified in Table 2 above, without performing bona
12 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
13 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
14 Program.

15 **OTHER MATTERS**

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

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

25 41. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
26 Technician License Number EA 631208, issued to Alfredo Ivan Roman, is revoked or suspended,
27 any additional license issued under this chapter in the name of said licensee may be likewise
28 revoked or suspended by the director.

1 42. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
2 Technician License Number EA 634710, issued to Charles Guzman Roman, is revoked or
3 suspended, any additional license issued under this chapter in the name of said licensee may be
4 likewise revoked or suspended by the director.

5 **PRAYER**

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

8 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
9 Number ARD 267565, issued to Nestor Alonso Rodriguez doing business as Roman Smog Test
10 Only,

11 2. Revoking, suspending or placing on probation any other automotive repair dealer
12 registration issued in the name Nestor Alonso Rodriguez;

13 3. Revoking or suspending Smog Check Test Only Station License Number TC 267565,
14 issued to Nestor Alonso Rodriguez, doing business as Roman Smog Test Only

15 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
16 and Safety Code in the name of Nestor Alonso Rodriguez;

17 5. Revoking or suspending Advanced Emission Specialist Technician License Number
18 EA 631208, issued to Alfredo Ivan Roman;

19 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
20 and Safety Code in the name of Alfredo Ivan Roman;

21 7. Revoking or suspending Advanced Emission Specialist Technician License Number
22 EA 634710, issued to Charles Guzman Roman;

23 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
24 and Safety Code in the name of Charles Guzman Roman;

25 9. Ordering Nestor Alonso Rodriguez, Alfredo Ivan Roman and Charles Guzman
26 Roman to pay the Bureau of Automotive Repair the reasonable costs of the investigation and
27 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 2/20/13

John WALLAUCH by Doug BALAH
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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