

**BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation Against:

**AURELIO ACOSTA – OWNER**  
**dba A SMOG**  
18730 8th Street, Suite #A  
Bloomington, CA 92316

Automotive Repair Dealer Reg. No.  
ARD 262101  
Smog Check Test Only Station License No.  
RC 262101  
Lamp Station License No. LS 262101, Class BL  
Brake Station License No. BS 262101, Class C

and

**LUIS EMILIO HERNANDEZ**  
14142 Brandt Drive  
Moreno Valley, CA 92553

Advanced Emission Specialist Technician  
License No. EA 142918 (redesignated upon  
renewal as EO 142918 and EI 142918)  
Brake Adjuster License No. BA 142918  
Lamp Adjuster License No. LA 142918

Respondents.

Case No. 79/13-98

OAH No. 2013110644

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective August 12, 2014.

DATED: July 22, 2014

  
\_\_\_\_\_  
DONALD CHANG  
Assistant Chief Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

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

12 In the Matter of the First Amended Accusation  
Against:  
13 **AURELIO ACOSTA – OWNER**  
**dba A SMOG**  
14 18730 8th Street, Suite #A  
Bloomington, CA 92316  
15  
16 Automotive Repair Dealer Reg. No. ARD 262101  
Smog Check Test Only Station License No. RC  
262101  
17 Lamp Station License No. LS 262101, class BL  
Brake Station License No. BS 262101, class C  
18  
19 and  
20 **LUIS EMILIO HERNANDEZ**  
14142 Brandt Drive  
Moreno Valley, CA 92553  
21  
22 Advanced Emission Specialist Technician License  
No. EA 142918 (redesignated upon renewal as  
EO 142918 and EI 142918)  
23 Brake Adjuster License No. BA 142918  
Lamp Adjuster License No. LA 142918  
24  
25 Respondents.

Case No. 79/13-98

OAH No. 2013110644

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

26 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
27 entitled proceedings that the following matters are true:

28 ///

1 **PARTIES**

2 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair  
3 (Bureau). He brought this action solely in his official capacity and is represented in this matter by  
4 Kamala D. Harris, Attorney General of the State of California, by Kevin J. Rigley, Deputy  
5 Attorney General.

6 2. Respondents A Smog; Aurelio Acosta (Respondent Acosta), and Luis Emilio  
7 Hernandez (Respondent Hernandez) are representing themselves in this proceeding and both have  
8 chosen not to exercise their right to be represented by counsel.

9 **LICENSE INFORMATION**

10 **Automotive Repair Dealer Registration No. ARD 262101**

11 1. On or about June 3, 2010, the Director of Consumer Affairs (Director) issued  
12 Automotive Repair Dealer Registration Number ARD 262101 (registration) to Respondent  
13 Acosta, doing business as A Smog. Respondent Acosta's registration was in full force and effect  
14 at all times relevant to the charges brought herein and will expire on May 31, 2015, unless  
15 renewed.

16 **Smog Check Test Only Station License No. RC 262101**

17 2. On or about June 24, 2010, the Director issued Smog Check Test Only Station  
18 License Number RC 262101 (smog check station license) to Respondent Acosta. Respondent  
19 Acosta's smog check station license was in full force and effect at all times relevant to the charges  
20 brought herein and will expire on May 31, 2015, unless renewed.

21 **Lamp Station License Station License No. LS 262101**

22 3. On or about June 24, 2010, the Director issued Lamp Station License Number LS  
23 262101 (lamp station license) to Respondent Acosta. Respondent Acosta's lamp station license  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 May 31, 2015, unless renewed.

26 **Brake Station License No. BS 262101**

27 4. On or about June 24, 2010, the Director issued Brake Station License Number BS  
28 262101 (brake station license) to Respondent Acosta. Respondent Acosta's brake station license

1 was in full force and effect at all times relevant to the charges brought herein and will expire on  
2 May 31, 2015, unless renewed.

3 **Smog Check Technician License No. EA 142918**

4 6. On date uncertain in 2002 the Director issued an Advanced Emissions Specialist  
5 Technician License Number EA 142918 to Respondent Hernandez. Respondent Hernandez's  
6 technician license, which was in full force and effect at all times relevant to the charges brought  
7 herein, and due to expire on April 30, 2014, was cancelled on January 31, 2014. Pursuant to  
8 California Code of Regulations, title 16, section 3340.28, subdivision (e), said license was  
9 renewed pursuant to Respondent Hernandez's election as Smog Check Inspector (EO) License  
10 Number 142918 and Smog Check Repair Technician (EI) License Number 142918<sup>1</sup>, effective  
11 January 31, 2014. The Smog Check Inspector License and Smog Check Repair Technician  
12 License will expire on April 30, 2016, unless renewed.

13 **Lamp Adjuster License No. LA 142918**

14 7. On date uncertain in 2006 the Director issued a Lamp Adjuster License Number LA  
15 142918 to Respondent Hernandez. Respondent Hernandez's Lamp Adjuster license, which was  
16 in full force and effect at all times relevant to the charges brought herein, expired on April 30,  
17 2014, and was not renewed.

18 **Brake Adjuster License No. BA 142918**

19 8. On date uncertain in 2006 the Director issued a Brake Adjuster License Number BA  
20 142918 to Respondent Hernandez. Respondent Hernandez's Brake Adjuster license, which was  
21 in full force and effect at all times relevant to the charges brought herein, expired on April 30,  
22 2014, and was not renewed.

23 **JURISDICTION**

24 9. First Amended Accusation No. 79/13-98 was filed before the Director of Consumer  
25 Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending

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

1 against Respondents. The First Amended Accusation and all other statutorily required documents  
2 were properly served on Respondents on June 18, 2013. Respondents timely filed their Notices  
3 of Defense contesting the First Amended Accusation.

4 10. A copy of First Amended Accusation No. 79/13-98 is attached as exhibit A and  
5 incorporated herein by reference.

6 **ADVISEMENT AND WAIVERS**

7 11. Respondents have carefully read, and understand the charges and allegations in First  
8 Amended Accusation No. 79/13-98. Respondents have also carefully read, and understand the  
9 effects of this Stipulated Settlement and Disciplinary Order.

10 12. Respondents are fully aware of their legal rights in this matter, including the right to a  
11 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
12 their own expense; the right to confront and cross-examine the witnesses against them; the right  
13 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to  
14 compel the attendance of witnesses and the production of documents; the right to reconsideration  
15 and court review of an adverse decision; and all other rights accorded by the California  
16 Administrative Procedure Act and other applicable laws.

17 13. Respondents voluntarily, knowingly, and intelligently waive and give up each and  
18 every right set forth above.

19 **CULPABILITY**

20 14. Respondents admit the truth of each and every charge and allegation in First  
21 Amended Accusation No. 79/13-98.

22 15. Respondent Acosta agrees that his registration, smog check station license, lamp  
23 station license, and brake station license are subject to discipline, and he agrees to be bound by  
24 the Director's Decision as set forth in the Disciplinary Order below.

25 16. Respondent Hernandez agrees that his Lamp Adjuster License, Brake Adjuster  
26 License, Smog Check Inspector License and Smog Check Repair Technician License are subject  
27 to discipline, and he agrees to be bound by the Director's Decision as set forth in the Disciplinary  
28 Order below.

1 CONTINGENCY

2 17. This stipulation shall be subject to approval by the Director of Consumer Affairs or  
3 the Director's designee. Respondents understand and agree that counsel for Complainant and the  
4 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of  
5 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to  
6 or participation by Respondents. By signing the stipulation, Respondents understand and agree  
7 that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the  
8 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision  
9 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except  
10 for this paragraph, it shall be inadmissible in any legal action between the parties, and the  
11 Director shall not be disqualified from further action by having considered this matter.

12 18. The parties understand and agree that Portable Document Format (PDF) and facsimile  
13 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format  
14 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

15 19. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
16 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
17 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
18 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
19 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
20 writing executed by an authorized representative of each of the parties.

21 20. In consideration of the foregoing admissions and stipulations, the parties agree that  
22 the Director may, without further notice or formal proceeding, issue and enter the following  
23 Disciplinary Order:

24 DISCIPLINARY ORDER

25 IT IS HEREBY ORDERED that Lamp Station License No. LS 262101, and Brake Station  
26 License No. BS 262101 issued to Respondent Acosta are revoked.

27 IT IS HEREBY FURTHER ORDERED that Lamp Adjuster License No. LA 142918, and  
28 Brake Station License No. BA 142918 issued to Respondent Hernandez are revoked.

1 IT IS HEREBY FURTHER ORDERED that Automotive Repair Dealer Registration No.  
2 ARD 256890 and Smog Check Station License No. TC 256890 issued to Respondent Acosta are  
3 permanently invalidated and revoked, respectively; and that Smog Check Inspector License No.  
4 142918 and Smog Check Repair Technician License No. 142918 issued to Respondent  
5 Hernandez are revoked. However, the permanent invalidation of Respondent Acosta's  
6 Automotive Repair Dealer Registration (registration), and the revocation of Respondent Acosta's  
7 Smog Check Station License, as well as the revocation of Respondent Hernandez's Smog Check  
8 Inspector, and Smog Check Repair Technician licenses are all stayed, with said registration and  
9 such licenses placed on probation for three (3) years on the following terms and conditions:

10 1. **Actual Suspension.** Respondent Acosta's Automotive Repair Dealer Registration  
11 and Smog Check Test Only Station License, and Respondent Hernandez's Smog Check Inspector  
12 and Smog Check Repair Technician licenses are suspended for fifteen (15) consecutive days,  
13 commencing on the effective date of the decision.

14 2. **Post Sign.** Respondent Acosta shall post a prominent sign on the premises of the  
15 subject business (A Smog), provided by the Bureau, indicating the beginning and ending dates of  
16 the suspension and indicating the reason for the suspension. The sign shall be conspicuously  
17 displayed in a location open to and frequented by customers and shall remain posted during the  
18 entire period of actual suspension.

19 3. **Obey All Laws.** Both Respondents shall comply with all statutes, regulations and  
20 rules governing automotive inspections, estimates and repairs.

21 4. **Reporting.** Both Respondents or their authorized representatives must report in  
22 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the  
23 Bureau, but no more frequently than each quarter, on the methods used and success achieved in  
24 maintaining compliance with the terms and conditions of probation.

25 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report  
26 any financial interest which any partners, officers, or owners of Respondent Acosta's facility may  
27 have in any other business required to be registered pursuant to Section 9884.6 of the Business  
28 and Professions Code.

1           6.    **Random Inspections.** Respondent Acosta and Respondent Hernandez shall provide  
2 Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing  
3 repairs, up to and including the point of completion.

4           7.    **Jurisdiction.** If an accusation is filed against Respondent Acosta and/or Respondent  
5 Hernandez during the terms of their probation, the Director of Consumer Affairs shall have  
6 continuing jurisdiction over this matter until the final decision on the applicable accusation, and  
7 the period of probation as to the Respondent or Respondents named in the accusation shall be  
8 extended until such decision.

9           8.    **Violation of Probation.** Should the Director of Consumer Affairs determine that a  
10 Respondent herein has failed to comply with the terms and conditions of probation, the  
11 Department may, after giving notice and opportunity to be heard temporarily or permanently  
12 revoke said Respondent's licenses.

13           9.    **Continuing Education Courses.** During the period of probation, Respondent  
14 Hernandez shall attend and successfully complete a Bureau certified Licensed Smog Check  
15 inspector training course (Level I), within 180 days of the effective date of the decision. Said  
16 course shall be completed and proof of completion submitted to the Bureau within 180 days of  
17 the effective date of this decision and order. If proof of completion of such course is not  
18 furnished to the Bureau within the 180-day period, Respondent's licenses shall be immediately  
19 suspended until such proof is received.

20           10. **Restrictions.** During the period of probation, Respondent Acosta shall not perform  
21 any form of smog inspection, or emission system diagnosis or repair, until Respondent Acosta has  
22 purchased, installed, and maintained the diagnostic and repair equipment prescribed by BAR  
23 necessary to properly perform such work, and BAR has been given 10 days notice of the  
24 availability of the equipment for inspection by a BAR representative. In addition, neither  
25 Respondent Acosta nor Respondent Hernandez shall apply for any smog-related licenses during  
26 the entire period of probation.

27           11. **Cost Recovery.** Respondent Acosta and Respondent Hernandez shall pay \$7,817.75  
28 each of the Bureau's total costs of investigation and enforcement in this matter in the amount of

1 \$15,635.50. Respondent Acosta's and Respondent Hernandez's payment in full to the Bureau of  
 2 their respective share (\$7,817.75 each, such that both shall be equally responsible to pay 50% of  
 3 the total amount of \$15,635.50), shall be made by both Respondent Acosta and Respondent  
 4 Hernandez separately in twenty four (24) consecutive equal installments, with final payments  
 5 from each Respondent due twelve (12) months before the termination of their respective  
 6 probationary periods. Failure to complete payment of cost recovery within this time frame shall  
 7 constitute a violation of probation which may subject Respondent Acosta's registration to outright  
 8 permanent invalidation, and/or his and/or Respondent Hernandez's licenses to revocation;  
 9 however, the Director or the Director's Bureau of Automotive Repair designee may elect to  
 10 continue probation until such time as reimbursement of the entire cost recovery amount has been  
 11 made to the Bureau.

12 ACCEPTANCE

13 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
 14 stipulation and the effect it will have on my Automotive Repair Dealer Registration, Smog Check  
 15 Station License, Brake Station License, and Lamp Station License. I enter into this Stipulated  
 16 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
 17 bound by the Decision and Order of the Director of Consumer Affairs.

18 DATED: 6-25-14 AURELIO ACOSTA  
 19 A SMOG; AURELIO ACOSTA  
 20 Respondent Acosta

21 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
 22 stipulation and the effect it will have on my Lamp Adjuster License, Brake Adjuster License, and  
 23 Smog Check Inspector, and Smog Check Repair Technician licenses. I enter into this Stipulated  
 24 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
 25 bound by the Decision and Order of the Director of Consumer Affairs.

26 DATED: [Signature] 6/25/14  
 27 LUIS EMILIO HERNANDEZ  
 28 Respondent Hernandez

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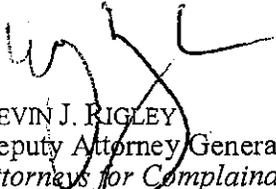
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 7-8-14

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
GREGORY J. SALUTE  
Supervising Deputy Attorney General



KEVIN J. RIGLEY  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**First Amended Accusation No. 79/13-98**

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 KEVIN J. RIGLEY  
Deputy Attorney General  
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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
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10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/13-98

13 **AURELIO ACOSTA – OWNER**  
14 **dba A SMOG**  
18730 8th Street, Suite #A  
14 **Bloomington, CA 92316**

**FIRST AMENDED  
ACCUSATION**

15 **Automotive Repair Dealer Reg. No. ARD 262101**  
16 **Smog Check Test Only Station License No. RC 262101**  
17 **Lamp Station License No. LS 262101, class BL**  
18 **Brake Station License No. BS 262101, class C**

19 **and**

20 **LUIS EMILIO HERNANDEZ**  
14142 Brandt Drive  
20 **Moreno Valley, CA 92553**

21 **Advanced Emission Specialist Technician License**  
22 **No. EA 142918 (to be redesignated upon renewal as**  
23 **EO 142918 and/or EI 142918)**  
24 **Brake Adjuster License No. BA 142918**  
25 **Lamp Adjuster License No. LA 142918**

26 Respondents.

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///

1 Complainant alleges:

2 **PARTIES**

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

5 **LICENSE INFORMATION**

6 **Automotive Repair Dealer Registration No. ARD 262101**

7 2. On or about June 3, 2010, the Director of Consumer Affairs ("Director") issued  
8 Automotive Repair Dealer Registration Number ARD 262101 ("registration") to Aurelio Acosta  
9 ("Respondent Acosta"), doing business as A Smog. Respondent Acosta's registration was in full  
10 force and effect at all times relevant to the charges brought herein and will expire on May 31,  
11 2014, unless renewed.

12 **Smog Check Test Only Station License No. RC 262101**

13 3. On or about June 24, 2010, the Director issued Smog Check Station License Number  
14 RC 262101 to Respondent Acosta. Respondent Acosta's smog check station license was in full  
15 force and effect at all times relevant to the charges brought herein and will expire on May 31,  
16 2014, unless renewed.

17 **Lamp Station License Station License No. LS 262101**

18 4. On or about June 24, 2010, the Director issued Lamp Station License Number LS  
19 262101 to Respondent Acosta. Respondent Acosta's lamp station license was in full force and  
20 effect at all times relevant to the charges brought herein and will expire on May 31, 2014, unless  
21 renewed.

22 **Brake Station License No. BS 262101**

23 5. On or about June 24, 2010, the Director issued Brake Station License Number BS  
24 262101 to Respondent Acosta. Respondent Acosta's brake station license was in full force and  
25 effect at all times relevant to the charges brought herein and will expire on May 31, 2014, unless  
26 renewed.

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1 **Smog Check Technician License No. EA 142918**

2 6. On date uncertain in 2002 the Director issued an Advanced Emissions Specialist  
3 Technician License Number EA 142918 to Luis Emilio Hernandez ("Respondent Hernandez").  
4 Respondent Hernandez' technician license is due to expire on April 30, 2014. Upon timely  
5 renewal thereof, the technician license will be redesignated as EO 142918 and/or EI 142918.<sup>1</sup>

6 **Lamp Adjuster License No. LA 142918**

7 7. On date uncertain in 2006 the Director issued a Lamp Adjuster License Number LA  
8 142918 to Respondent Hernandez. Respondent Hernandez' Lamp Adjuster license was in full  
9 force and effect at all times relevant to the charges brought herein and will expire on April 30,  
10 2014, unless renewed.

11 **Brake Adjuster License No. BA 142918**

12 8. On date uncertain in 2006 the Director issued a Brake Adjuster License Number BA  
13 142918 to Respondent Hernandez. Respondent Hernandez' Brake Adjuster license was in full  
14 force and effect at all times relevant to the charges brought herein and will expire on April 30,  
15 2014, unless renewed.

16 **JURISDICTION**

17 9. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that the  
18 Director may revoke an automotive repair dealer registration.

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

23 11. Bus. & Prof. Code section 9889.1 provides, in pertinent part, that the Director may  
24 suspend or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of  
25 the Automotive Repair Act.

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



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16. Bus. & Prof. Code section 9887.1 states, in pertinent part:

The director shall have the authority to issue licenses for official lamp and brake adjusting stations and shall license lamp and brake adjusters. The licenses shall be issued in accordance with this chapter and regulations adopted by the director pursuant thereto...Licenses may be renewed upon application and payment of the renewal fees if the application for renewal is made within the 30-day period prior to the date of expiration. Persons whose licenses have expired shall immediately cease the activity requiring a license...

17. Bus. & Prof. Code section 9888.3 states:

No person shall operate an "official" lamp or brake adjusting station unless a license therefor has been issued by the director. No person shall issue, or cause or permit to be issued, any certificate purporting to be an official lamp adjustment certificate unless he or she is a licensed lamp adjuster or an official brake adjustment certificate unless he or she is a licensed brake adjuster.

18. Bus. & Prof. Code section 9889.3 states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or director thereof:

- (a) Violates any section of the Business and Professions Code that relates to his or her licensed activities.
- (c) Violates any of the regulations promulgated by the director pursuant to this chapter.
- (h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

19. Bus. & Prof. Code section 9889.16 states:

Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in conformity with the instructions of the bureau, determines that the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle Code, he shall, when requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form prescribed by the director, which certificate shall contain the date of issuance, the make and registration number of the vehicle, the name of the owner of the vehicle, and the official license of the station.

20. Bus. & Prof. Code section 9889.22 states:

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

1 21. Bus. & Prof. Code section 9889.9 states that [w]hen any license has been  
2 revoked or suspended following a hearing under the provisions of this article [Article  
3 7 (commencing with section 9889.1) of the Automotive Repair Act], any additional  
4 license issued under Articles 5 and 6 of this chapter in the name of the licensee may  
5 be likewise revoked or suspended by the director.

6 22. Bus. & Prof. Code section 22, states:

7 "Board," as used in any provision of this code, refers to the board in which  
8 the administration of the provision is vested, and unless otherwise expressly provided,  
9 shall include "bureau," "commission," "committee," "department," "division,"  
10 "examining committee," "program," and "agency."

11 23. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a  
12 "License" includes "registration" and "certificate."

#### 13 COST RECOVERY

14 24. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may  
15 request the administrative law judge to direct a licentiate found to have committed a  
16 violation or violations of the licensing act to pay a sum not to exceed the reasonable  
17 costs of the investigation and enforcement of the case.

#### 18 UNDERCOVER OPERATION 1 – NOVEMBER 29, 2011

19 25. On or about November 29, 2011, a Bureau undercover operator ("operator") drove  
20 a Bureau documented vehicle ("undercover vehicle") to Respondent Acosta's facility and  
21 requested smog, brake and lamp inspections. The undercover vehicle was documented as having  
22 no defects that would cause it to fail. This operation was also recorded, via video surveillance, by  
23 Bureau representatives. The operator completed and signed an unnumbered work order and was  
24 provided with a copy. Respondent Hernandez then performed the smog, brake and lamp  
25 inspections. Respondent Hernandez then issued electronic Certificate of Complaint No.  
26 [REDACTED] for the smog inspection, [REDACTED] for the brake inspection and [REDACTED] for  
27 the lamp inspection, certifying that he had tested and inspected the undercover vehicle and that it  
28 was in compliance with applicable laws and regulations. The operator paid Respondent  
Hernandez \$100.00, and was provided with a copy of an unnumbered invoice, a Vehicle  
Inspection Report, a brake certificate and a lamp certificate. The undercover vehicle and all the  
documentation received from the Respondent Acosta's facility were inspected and reviewed by  
Bureau representatives. It was found that the Respondent Hernandez had improperly checked

1 boxes on the brake certificate that did not apply to the undercover vehicle and did not record the  
2 vehicle mileage on the signed work order.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 26. Respondent Acosta's registration is subject to discipline under Code section  
6 9884.7(a)(1), in that on or about November 29, 2011, Respondent Hernandez made statements  
7 which he knew or which by exercise of reasonable care should have known to be untrue or  
8 misleading by stating on Brake Certificate number [REDACTED] that the undercover vehicle was  
9 equipped with and passed the inspection for "Warning Device/System" and an "Emergency  
10 Stopping System", when, in fact, this vehicle is not equipped with either of these systems.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with the Business and Professions Code)**

13 27. Respondent Acosta's registration is subject to discipline pursuant to Bus. & Prof. Code  
14 section 9884.7, subdivision (a)(6), in that Respondent Hernandez, regarding the Bureau's  
15 undercover vehicle, failed to comply with provisions of that Code in the following material  
16 respects:

17 a. **Section 9884.7 subdivision (a)(2):** Respondent Hernandez failed to record the  
18 undercover vehicle's odometer reading on the signed estimate copy given to the Bureau operator.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations)**

21 28. Respondent Acosta's registration is subject to discipline pursuant to Bus. & Prof.  
22 Code section 9884.7, subdivision (a)(6), in that, regarding the Bureau's undercover vehicle,  
23 Respondent Hernandez failed to comply with provisions of California Code of Regulations, title  
24 16, in the following material respects:

25 a. **Section 3373:** Respondent Hernandez inserted information into Brake Certificate  
26 number [REDACTED] that caused that document to be false and misleading by checking the boxes  
27 for "Warning Device/System" and "Emergency Stopping System", when in fact the undercover  
28 vehicle was not equipped with either of these systems.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 29. Respondent Hernandez' Brake Adjuster License is subject to discipline pursuant to  
4 Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that, regarding the Bureau's undercover  
5 vehicle, Respondent failed to comply with provisions of California Code of Regulations, title 16,  
6 in the following material respects:

7 a. **Section 3373:** Respondent Hernandez inserted information into Brake Certificate  
8 number [REDACTED] that caused that document to be false and misleading by checking the boxes  
9 for "Warning Device/System" and "Emergency Stopping System", when in fact the vehicle was  
10 not equipped with either of these systems.

11 **UNDERCOVER OPERATION 2 – NOVEMBER 29, 2011**

12 30. On or about November 29, 2011, a Bureau undercover operator ("operator") drove  
13 a Bureau documented undercover vehicle to Respondent Acosta's facility and requested smog,  
14 brake and lamp inspections. The undercover vehicle was documented as having no defects that  
15 would cause it to fail. This operation was also recorded, via video surveillance, by Bureau  
16 representatives. The operator completed and signed an unnumbered work order but was not  
17 provided with a copy. Respondent Hernandez then performed the smog, brake and lamp  
18 inspections. Respondent Hernandez then issued electronic Certificate of Complaint No.  
19 [REDACTED] for the smog inspection, [REDACTED] for the brake inspection and [REDACTED] for the  
20 lamp inspection, certifying that he had tested and inspected the vehicle and that it was in  
21 compliance with applicable laws and regulations. The operator paid Respondent Hernandez  
22 \$100.00, and was provided with a copy of an unnumbered estimate and invoice, a Vehicle  
23 Inspection Report, a brake certificate and a lamp certificate. The vehicle and all the documentation  
24 received from the Respondent Acosta's facility were inspected and reviewed by Bureau  
25 representatives. It was found that the Respondent Hernandez had improperly checked boxes on the  
26 brake certificate that did not apply to the undercover vehicle.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 31. Respondent Acosta's registration is subject to discipline under Code section  
4 9884.7(a)(1), in that on or about November 29, 2011, Respondent Hernandez made statements  
5 which he knew or which by exercise of reasonable care should have known to be untrue or  
6 misleading by stating on Brake Certificate number [REDACTED] that the undercover vehicle was  
7 equipped with and passed the inspection for "Warning Device/System" and an "Emergency  
8 Stopping System", when, in fact, this vehicle is not equipped with either of these systems.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with the Business and Professions Code)**

11 32. Respondent Acosta's Registration is subject to discipline pursuant to Bus. & Prof.  
12 Code section 9884.7, subdivision (a)(6), in that Respondent Hernandez, regarding the Bureau's  
13 undercover vehicle, failed to comply with provisions of that Code in the following material  
14 respects:

15 a. **Section 9884.7 subdivision (a)(3):** Respondent Hernandez failed to  
16 provide the Bureau operator with a copy of the signed work order.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations)**

19 33. Respondent Acosta's Registration is subject to discipline pursuant to Bus. & Prof.  
20 Code section 9884.7, subdivision (a)(6), in that, regarding the Bureau's undercover vehicle,  
21 Respondent Hernandez failed to comply with provisions of California Code of Regulations, title  
22 16, in the following material respects:

23 a. **Section 3373:** Respondent Hernandez inserted information into Brake Certificate  
24 number [REDACTED] that caused that document to be false and misleading by checking the boxes  
25 for "Warning Device/System" and "Emergency Stopping System", when in fact the vehicle was  
26 not equipped with either of these systems.

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28 ///



Table 1

Certificate number, lamp	Certificate number, Brake	Vehicle year and make	Vehicle Identification Number	Details of inspection
LC1337594	BC1358824	1995 Honda Civic	JHMEH9691SS014715	Vehicle not seen in the brake and lamp bay
LC1337599	BC1358829	1999 Mitsubishi Montero	JA4MRR4XH001345	Vehicle in brake & lamp bay for 1 minute (1113-1114)
LC1337600	BC1358830	1993 Chevrolet G20 Van	1GBEG25K2PF321234	Vehicle not seen in the brake and lamp bay
LC1355003	BC1358833	2001 Ford F150	2FTZF07311CA45271	Vehicle not seen in the brake and lamp bay
LC1355004	BC1358834	2008 Chevrolet Cobalt	1G1AL58F987344858	Vehicle in brake & lamp bay for 1 minute (1229-1230)
LC1355005	BC1358835	2001 Ford F150 Crew	1FTRW07L11KC13504	Vehicle not seen in the brake and lamp bay
LC1355006	BC1358836	2007 Toyota Corolla	1NXBR30EX7Z922477	Vehicle not seen in the brake and lamp bay
LC1355008	BC1358838	2007 Nissan Maxima	1N4BA41E97C809423	Vehicle in brake & lamp bay for 2 minutes (1415-1417)
LC1355009	BC1358839	2002 Honda Civic	1HGEM22572L064148	Vehicle not seen in the brake and lamp bay

**NINTH CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

38. Respondent Acosta's Automotive Repair Dealer Registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent Acosta made or authorized statements which he knew, or in the exercise of reasonable care should have known to

1 be untrue or misleading, as follows: Respondent Acosta issued the Lamp and Brake Certificates of  
2 Adjustment identified in Table 1 of paragraphs 34-36 above without performing a complete brake  
3 and lamp inspection on those vehicles.

4 **TENTH CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 39. Respondent Acosta has subjected his registration to discipline under Code section  
7 9884.7, subdivision (a)(4), in that on or about November 29, 2011, Respondent Hernandez  
8 committed acts which constitute fraud by issuing Brake and Lamp Certificates of Adjustment for  
9 the vehicles set forth in Table 1 of paragraphs 34-36 above, without performing bona fide  
10 inspections of the brake and lamp systems on those vehicles thereby depriving the People of the  
11 State of California of the protection afforded by the Business and Professions Code and the  
12 Vehicle Code of the State of California.

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 **(Violation of Regulations)**

15 40. Respondent Acosta's Registration is subject to discipline pursuant to Bus. & Prof.  
16 Code section 9884.7, subdivision (a)(6), in that, regarding the vehicles described in Table 1 of  
17 paragraphs 34-36 above, Respondent Hernandez failed to comply with provisions of California  
18 Code of Regulations, title 16, in the following material respects:

19 a. **Section 3305:** Respondent Hernandez failed to perform the brake and lamp  
20 inspections and adjustments on the vehicles identified in Table 1 of paragraphs 34-36 above, to the  
21 standards described in this section of the California Code of Regulations in that those vehicles  
22 were not present in the brake and lamp bay or were not in the brake and lamp bay long enough to  
23 perform a brake and lamp inspection.

24 b. **Section 3316 subsection (d)(2):** Respondent Hernandez failed to inspect the  
25 entire lamp system on the vehicles identified in Table 1 of paragraphs 34-36 above in that those  
26 vehicles were not present in the brake and lamp bay or were not in the brake and lamp bay long  
27 enough to perform a brake and lamp inspection.

28 ///







1 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise revoked or  
2 suspended by the Director.

3 52. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA142918,  
4 issued to Respondent Luis Emilio Hernandez is revoked or suspended, any additional license  
5 issued under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be  
6 likewise revoked or suspended by the Director.

7 53. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA142918,  
8 issued to Respondent Luis Emilio Hernandez is revoked or suspended, any additional license  
9 issued under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be  
10 likewise revoked or suspended by the Director.

11 54. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist  
12 Technician License Number EA 142918 (to be redesignated upon renewal as EO 142918 and/or  
13 EI 142918) issued to Respondent Luis Emilio Hernandez is revoked or suspended, any additional  
14 license issued under the same chapter in the name of said licensee may be likewise revoked or  
15 suspended by the Director.

16 **PRAYER**

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

19 1. Revoking, suspending, or placing on probation Automotive Repair Dealer  
20 Registration No. ARD 262101, issued to Aurelio Acosta, doing business as A Smog;

21 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
22 registration issued to Aurelio Acosta;

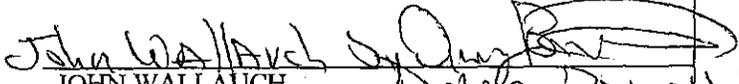
23 3. Revoking or suspending Smog Check Test and Repair Station License Number RC  
24 262101, issued to Aurelio Acosta, doing business as A Smog;

25 4. Revoking or suspending any additional license issued under chapter 5, of the  
26 Health and Safety Code in the name of Aurelio Acosta;

27 5. Revoking, suspending, or placing on probation Brake Station License Number BS  
28 262101, issued to Aurelio Acosta, doing business as A Smog;

- 1           6.     Revoking, suspending, or placing on probation Lamp Station License Number LS  
2 262101, issued to Aurelio Acosta, doing business as A Smog;
- 3           7.     Revoking, suspending, or placing on probation Brake Adjuster License Number  
4 BA 142918, issued to Luis Emilio Hernandez;
- 5           8.     Revoking, suspending, or placing on probation Lamp Adjuster License Number LA  
6 142918, issued to Luis Emilio Hernandez;
- 7           9.     Revoking or suspending Advanced Emission Specialist Technician License Number  
8 EA 142918 (to be redesignated upon renewal as EO 142918 and/or EI 142918) issued to  
9 Respondent Luis Emilio Hernandez;
- 10          10.    Ordering Aurelio Acosta, doing business as A Smog and Luis Emilio Hernandez,  
11 licensed Brake and Lamp Adjuster, to pay the Director of Consumer Affairs the reasonable costs  
12 of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 13          11.    Taking such other and further action as deemed necessary and proper.

14  
15  
16 DATED: June 14, 2013

  
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*  
*DWA BALATTI*