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

In the Matter of the Accusation Against: **VINCE'S AUTOMOTIVE, Vince Valdivia, Owner** Automotive Repair Dealer Registration No. ARD 92735 Smog Check Station License No. RC 92735 Lamp Station License No. LS 92735 Brake Station License No. BS 92735, and **VINCE D. VALDIVIA** Smog Check Inspector License No. EO 300740 Smog Check Repair Technician License No. EI 300740, Respondent.	Case No. 77/15-30 OAH No. 2015020443

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective 3/7/16.

DATED: February 1, 2016

TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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

In the Matter of the Accusation Against: VINCE'S AUTOMOTIVE, Vince Valdivia, owner Automotive Repair Dealer Registration No. ARD 92735 Smog Check Station License No. RC 92735 Lamp Station License No. LS 92735 Brake Station License No. BS 92735, and VINCE D. VALDIVIA Smog Check Inspector License No. EO 300740 Smog Check Repair Technician License No. EI 300740, Respondent.	Case No. 77/15-30 OAH No. 2015020443

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 13, 2015, in Los Angeles. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Chelsey N. Huso, Certified Law Student,[1] under the supervision of Deputy Attorney General Christine J. Lee, represented Patrick Dorais (complainant).

Louis J. Anapolsky, Esq., represented Vince D. Valdivia, who is the owner of Vince's Automotive (respondent). Mr. Valdivia was present.

[1] Pursuant to the Rules of the State Bar, title 3, rule 3.4, as allowed under California Rules of Court, rule 9.42, a law student certified by the State Bar of California may litigate civil or certain criminal matters in state courts.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in his official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department), State of California.

2. Respondent submitted a Notice of Defense, which requested a hearing to contest the charges asserted in the Accusation.

3. In 1982, the Bureau issued Automotive Repair Dealer Registration Number ARD 92735 to respondent. The Automotive Repair Dealer Registration was valid at all times relevant and will expire on January 31, 2016, unless renewed.

4. On April 26, 1990, the Bureau issued Smog Check Station License Number RC 92735 to respondent. The Smog Check Station License was valid at all times relevant and will expire on January 31, 2016, unless renewed.

5. On August 26, 1998, the Bureau issued Brake Station License Number BS 92735 to respondent. The Brake Station License was valid at all times relevant and will expire on January 31, 2016, unless renewed.

6. On May 19, 2005, the Bureau issued Lamp Station License Number LS 92735 to respondent. The Lamp Station License was valid at all times relevant and will expire on January 31, 2016, unless renewed.

7. In 1996, the Bureau issued Advanced Emission Specialist Technician License Number EA 300740 to Mr. Valdivia. That license was due to expire on November 30, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, at Mr. Valdivia's election, as Smog Check Inspector License Number EO 300740 and Smog Check Repair Technician License Number EI 300740 (smog technician licenses), effective November 30, 2012. Those smog technician licenses will expire on November 30, 2016, unless renewed.[2]

8. In 1998, the Bureau issued Brake Adjuster License Number BA 300740, class C, to Mr. Valdivia. The Brake Adjuster License expired on November 30, 2002, and has not been renewed.

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[2] Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.39, and 3340.30 were amended to implement restructure of the Advanced Emission Specialist Technician and Basic Area Technician licenses to Smog Check Inspector and Smog Check Repair Technician licenses.

9. In 1998, the Bureau issued Lamp Adjuster License Number LA 300740, class A, to Mr. Valdivia. The Lamp Adjuster License expired on November 30, 2002, and has not been renewed.

The Brake and Lamp Inspection Program

10. The purpose of brake and lamp inspections is to assure that a vehicle which has incurred damage to the brake or light systems is safe to operate on the road. Such inspections are normally required when an automobile is in the process of being issued a salvage certificate by the Department of Motor Vehicles, has been involved in an accident or has been damaged by a crime, or the owner needs to confirm that a defect has been corrected in response to a "fix-it" ticket.

11. If a vehicle passes a properly conducted brake or lamp inspection by a licensed brake or lamp adjuster, the owner of the vehicle is issued a certificate of adjustment which is valid for 90 days. Only a properly Bureau-licensed entity or individual may purchase certificate forms from the Bureau. The certificates come in sequentially numbered books of 50. Each books costs $175.00.

12. A brake and/or lamp adjuster must pass a written examination administered through the Bureau prior to obtaining a license. The test is about one page long and information about the test can be found on the Bureau's website. However, as automobiles change yearly, the test material does as well. The brake and/or lamp adjuster license must be renewed every four years, by submitting a renewal form, paying a small fee, and passing the requisite examination.

The February 2014 Field Inspection

13. On a date not established, someone affiliated with respondent made a written request for one book of brake inspection certificates and one book of lamp inspection certificates. Because the written request was not signed, as required, Bureau Program Representative I (PR I) Clifford Jensen was assigned to investigate. PR I Jensen determined that while respondent's brake and lamp inspection station licenses were current and active, Mr. Valdivia's brake and lamp adjuster licenses had expired in November 2002 and had not been renewed. As a result, PR I Jensen decided to personally deliver the certificate books so that he could also conduct a periodic field inspection of respondent's facility.

14. On February 11, 2014, PR I Jensen visited respondent's facility and conducted a periodic field inspection, as well as delivered the ordered brake and lamp certificate books. As part of his inspection, PR I Jensen requested to review the last brake and lamp certificate books issued by Mr. Valdivia. Mr. Valdivia provided a lamp certificate booklet containing certificates #LC1733201 through #LC1733250 and a brake certificate booklet containing certificates #BC1762001 through #BC1762050.

15. Upon review of the certificate books, PR I Jensen confirmed that Mr. Valdivia had issued 50 brake and 50 lamp certificates of adjustment using his brake and lamp adjuster licenses that had expired in 2002. Mr. Valdivia acknowledged that his brake and lamp adjuster licenses were expired at the time of those inspections and therefore that he had issued the brake and lamp certificates without current and valid brake and lamp adjuster licenses. PR I Jensen also confirmed that at the time the certificates had been issued, respondent had no other employee with a valid brake and lamp adjuster license.

16. Because respondent had no licensed brake or lamp adjuster in its employment, PR I Jensen sealed the two certificate books so that they could not be used. Mr. Valdivia agreed to not unseal the certificate books or otherwise issue a certificate unless and until he had a properly licensed adjuster in his employment. PR I Jensen also asked Mr. Valdivia to contact him if and when he hired a licensed brake and lamp adjuster.

17. Generally, a vehicle required to undergo a brake inspection will be required to have a lamp inspection as well, and vice versa. Therefore, it is not necessarily the case that 100 vehicles were issued certificates by Mr. Valdivia when he used the two certificate books examined by PR I Jensen. However, it is not known how many other inspections were conducted by Mr. Valdivia after his brake and lamp adjuster licenses expired, as the two certificate books examined by PR I Jensen were from inspections conducted in 2013, 11 years after Mr. Valdivia's licenses expired. It is likely that hundreds of cars were issued brake and/or lamp certificates by Mr. Valdivia when he was unlicensed.

18. Mr. Valdivia testified that he never received a notice from the Bureau concerning the expiration of his adjuster licenses, nor did any other evidence suggest the Bureau would have provided notice. Mr. Valdivia further testified that his daughter, who works part-time at the facility, advised him only a few days before PR I Jensen's visit that his brake and lamp adjuster licenses had expired. Mr. Valdivia's testimony is corroborated by two cancelled checks written on February 8, 2014, made payable to the Bureau, with memorandum notations that the checks were for renewing the adjuster licenses. The checks were negotiated by the Bureau on February 21, 2014. As PR I Jensen's visit was unannounced, no evidence suggests Mr. Valdivia knew a Bureau staff member would be visiting the facility. This evidence supports Mr. Valdivia's testimony that he was unaware that his adjuster licenses had expired until just before PR I Jensen's field inspection on February 11, 2014.

Mitigation, Aggravation and Remediation

19. In aggravation, Mr. Valdivia did not volunteer to PR I Jensen upon the start of the field inspection that his adjuster licenses had expired. Mr. Valdivia allowed PR I Jensen to discover that fact and simply confirmed it when questioned by PR I Jensen.

20. In aggravation, Mr. Valdivia volunteered during the hearing that he had resumed brake and lamp inspections and issued certificates in April or May of 2014, even though he had not received any documentation from the Bureau indicating that his adjuster licenses had been renewed. Mr. Valdivia testified that he believed he could resume licensed adjuster activity again after the Bureau had negotiated the renewal fee checks he sent. However, Mr. Valdivia admitted that he had not taken or passed an examination before resuming that activity. Mr. Valdivia testified that although he had not unsealed the two certificate books delivered to him by PR I Jensen, his facility ordered more certificate books from the Bureau's main office in Sacramento. Mr. Valdivia offered no reasonable explanation why he would not have contacted PR I Jensen and simply asked to unseal the certificate books he had already purchased (for $350.00) or advised PR I Jensen that he now had a licensed adjuster in his employment, i.e., him. Mr. Valdivia continued doing unlicensed inspections until he received the Accusation in January 2015. He no longer does such inspections.

21. In mitigation, respondent has no prior record of disciplinary action by the Bureau after over 30 years of licensed activity. All of Mr. Valdivia's other station and individual Bureau licenses were current and active during the relevant times and there is no evidence suggesting that he has a pattern of allowing Bureau licenses to lapse. In this regard, Mr. Valdivia's failure to renew his adjuster licenses for over 12 years is inexplicable. The Bureau has not renewed the adjuster licenses.

22. Since 2007, respondent's facility has been an approved auto repair shop by the Automobile Club of Southern California (AAA). Obtaining such approval requires meeting AAA's stringent requirements, including regular inspections and maintaining a high level of AAA customer satisfaction. In addition, Mr. Valdivia has obtained various Automotive Service Excellence (ASE) certifications, including as a Master Technician. Mr. Valdivia testified that ASE certification is the gold-standard in the automobile industry.

23. Mr. Valdivia has taken steps to remedy the problems demonstrated in this case. He persuaded an employee, Carlos Escobar, to become a licensed brake and lamp adjuster. Mr. Escobar now conducts all of the facility's brake and lamp inspections and issues certificates. Business computers have also been set to send a calendar pop-up 30 days before a license or certificate is scheduled to expire. Mr. Valdivia has also asked his office manager and shop foreman to remind him and others of any licenses about to expire.

24. Mr. Valdivia testified that his unlicensed activity, before and after PR I Jensen's field inspection, was "a mistake." He testified that because he was so busy handling most of the facility's affairs, the adjuster license renewals "slipped through the cracks." Although he testified that he was confused about his license status when he briefly resumed inspection activity before receiving the Accusation, he admits that was also a mistake. He admitted fault and accepted responsibility for those events.

25. Before becoming involved in the automotive repair industry in 1974, Mr. Valdivia served in the United States Air Force from 1970-1974. He was deployed to Southeast Asia during some of that time. He was honorably discharged. Mr. Valdivia has been commended for his continuing support of American Veterans by the American Legion and Disabled American Veterans. Mr. Valdivia also financially supports his local high school football team, as well as the Boys Town.

Costs

26. Complainant incurred $10,885.00 in legal fees billed by the Department of Justice (DOJ) in prosecuting this matter, as well as $3,054.99 in costs for the Bureau's investigation. The total amount of costs requested by complainant is therefore $13,939.99.

27. It was established that the legal fees billed by the DOJ were reasonable and necessary.

28. It was established that the investigative costs of $620.43 attributed to Bureau PR I Clifford Jensen were reasonable and necessary. However, the Bureau's investigative costs include $2,434.56 from 32 hours of time generated by an unidentified Bureau PR II in the 2013/2014 fiscal year. None of that time reflected in the Bureau's cost certification is described or attributed to any part of the investigation. The record in this case indicates that PR I Jensen performed the entire investigation, although his report was signed by his supervisor Mark Casillas, a PR III. There is no evidence of any PR II being involved in the investigation of this case. Under these circumstances, it cannot be concluded that the time attributed to the unidentified PR II was reasonably related to the investigation of this matter.

29. As a result of extreme financial difficulties experienced in their business and personal lives, Mr. Valdivia and his wife filed for Chapter 13 bankruptcy protection no later than in 2011. Mr. Valdivia and his wife had a repayment plan approved by the bankruptcy court. As a result, the Valdivias now make $6,709.00 monthly payments to the Bankruptcy Trustee. Mr. Valdivia testified that it has been a struggle to make the monthly payments, but so far they are current and they only have 12 more monthly payments. Unfortunately, the Valdivias lost their home as a result of their financial problems.

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LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. As the party bringing administrative charges and seeking discipline against the respective licenses in this case, complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.)

2. A. In an action seeking disciplinary action against a professional license, the governing agency bears the burden of establishing cause for discipline by clear and convincing proof to a reasonable certainty. (*Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.) This is because a professional license represents the licensee's fulfillment of extensive education, training and testing requirements; the licensee has an extremely strong interest in retaining the license that he has expended so much effort in obtaining. (*Id.*)

B. The same cannot be said for a licensee's interest in retaining a non-professional license. Thus, discipline of a non-professional license requires only the preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

C. In this case, respondent's Automotive Repair Dealer Registration, as well as the Brake and Lamp Station Licenses, can be renewed by simply filing a timely application and paying the requisite fees. That fact tends to indicate those are non-professional licenses. The evidence presented in this case did not establish what is required to obtain and maintain a Smog Check Station License or either smog technician licenses. Thus, under these circumstances, the preponderance of the evidence standard will be used in this case.

3. A. While this case involves requested discipline against respondent's various station licenses and Mr. Valdivia's smog technician licenses, it does not involve Mr. Valdivia's expired lamp and brake adjuster licenses.

B. Business and Professions Code section 118, subdivision (b),[3] provides the Bureau with jurisdiction to discipline an expired license during "the period within which the license may be renewed, restored, reissued or reinstated." However, section 9887.1 provides for renewal of brake and lamp adjuster licenses every four years, but "in no case shall a [lamp and brake adjuster] license be renewed where the application is received more than 30 days after the date of expiration."

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[3] All further statutory references are to the Business and Professions Code unless otherwise specified.

C. Since Mr. Valdivia's lamp and brake adjuster licenses expired 13 years ago, he is unable to renew or restore those licenses simply upon application, and the Bureau is unable to seek discipline against them. For that reason, the Accusation does not seek discipline against either license, as Mr. Valdivia no longer retains any rights to them.

Cause for Discipline

4. First Cause for Discipline (Untrue or Misleading Statements). Respondent's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(1), in that respondent, through its owner Mr. Valdivia, issued 50 lamp certificates of adjustment and 50 brake certificates of adjustment without possessing valid lamp and brake adjuster licenses to issue those certificates. (Factual Findings 1-18.)

5. Second Cause for Discipline (Willful False Statements). It was not established that respondent's Automotive Repair Dealer Registration, or Brake and Lamp Station Licenses, are subject to disciplinary action pursuant to section 9884.7, subdivision (a)(6), in conjunction with section 9889.3, subdivision (d), for making willfully false statements. It was not established by a preponderance of the evidence that respondent, through its owner Mr. Valdivia, issued 50 lamp certificates of adjustment and 50 brake certificates of adjustment knowing that he did not possess valid adjuster licenses to issue those certificates. Mr. Valdivia's failure over 12 years to realize his adjuster licenses had expired is frankly inexplicable. Yet, he provided evidence corroborating his competing version of events. Thus, it cannot be concluded that complainant's evidence is more persuasive than respondent's on this point. (Factual Findings 1-18.)

6. Third Cause for Discipline (Required Licensing of Stations and Adjusters). Respondent's Brake and Lamp Station Licenses are subject to disciplinary action pursuant to section 9888.3, in conjunction with section 9889.3, subdivision (a), in that respondent, through its owner Mr. Valdivia, issued 100 lamp and brake certificates of adjustment without possessing valid adjuster licenses. (Factual Findings 1-18.)

7. Fourth Cause for Discipline (Violations of Regulations). Respondent's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(6), in that respondent failed to comply with provisions of California Code of Regulations, title 16, section 3305, subdivisions (a)(4) and (a)(5), when respondent's owner Mr. Valdivia, signed and issued lamp and brake certificates of adjustment without possessing valid adjuster licenses. (Factual Findings 1-18.)

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8. Fifth Cause for Discipline (Failure to Comply with Regulations). Respondent's Brake and Lamp Station licenses are subject to disciplinary action pursuant to section 9889.3, subdivision (c), in that respondent failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivisions (a)(4) and (a)(5), which require brake and lamp inspections be conducted and certificates issued by properly licensed brake and lamp adjusters. (Factual Findings 1-18.)

9. Sixth Cause for Discipline (Dishonesty, Fraud or Deceit). It was not established that respondent's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(4), or that respondent's Smog Check License or Mr. Valdivia's Smog Check Inspector and Smog Check Repair Technician Licenses, are subject to discipline under Health and Safety Code section 44072.2, subdivision (d), for acts of dishonesty, fraud or deceit. As explained above regarding the second cause for discipline, complainant did not meet his burden of establishing by a preponderance of the evidence that Mr. Valdivia knowingly issued 100 certificates of adjustment with expired licenses. (Factual Findings 1-18.)

Other Discipline

10. Pursuant to section 9884.7, subdivision (c), the Director of the Department (Director) may suspend, revoke or place on probation the registration for all places of business operated in this state by respondent upon a finding that respondent has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer. In this case, such activity was not established.

11. Pursuant to Health and Safety Code section 44072.8, if respondent's Smog Check Station License is revoked or suspended, any additional license issued under Chapter 5 of the Health and Safety Code in the name of respondent may be likewise revoked or suspended by the Director. In this case, cause was not established to discipline respondent's Smog Check Station License.

12. Pursuant to section 9889.9, if the Lamp Station License and/or Brake Station License issued to respondent is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in respondent's name may be likewise revoked or suspended by the Director.

13. Pursuant to Health and Safety Code section 44072.8, if Mr. Valdivia's Smog Check Inspector License and Smog Check Repair Technician License are revoked or suspended, any additional license issued under Chapter 5 of the Health and Safety Code in Mr. Valdivia's name may be likewise revoked or suspended by the Director. In this case, cause was not established to discipline Mr. Valdivia's smog technician licenses.

Disposition

14. The Administrative Law Judge has reviewed and considered the Bureau's *Guidelines For Disciplinary Penalties and Terms of Probation* (Guidelines) [rev. May 1997] in arriving at the disposition for this case, including the various factors to be considered and the recommended discipline for the misconduct established in this case.

15. The Guidelines describe a number of aggravating factors that should be considered in determining discipline. In this case, none of the specified factors exist. Nonetheless, aggravating facts were established; namely, that Mr. Valdivia failed to volunteer his unlicensed status to PR I Jensen upon the start of the field inspection, and Mr. Valdivia engaged in unlicensed activity for a few months after he was told by PR I Jensen that he could not conduct unlicensed inspections.

16. The Guidelines also describe a number of mitigating factors that should be considered in determining discipline. In this case, respondents have no prior record of citations or discipline with the Bureau after over 30 years of licensed activity. There is also significant evidence that respondents have taken specific steps to minimize recurrence of similar problems in the future. While it is likely that hundreds of certificates were issued during a period when Mr. Valdivia had not demonstrated his competence to conduct proper brake and lamp inspections by passing license renewal examinations after his licenses had expired, it was not established that any consumer sustained any injury or damage.

17. The misconduct established in this case is of moderate severity. While it was not established that Mr. Valdivia intentionally or fraudulently issued certificates for many years after his adjuster licenses had expired, his failure to renew his adjuster licenses for so long is inexplicable and borders on extreme neglect. The aggravating facts off-set the mitigating facts. In the final analysis, Mr. Valdivia has over 30 years of licensed activity without any record of discipline, and he is an upstanding member of his local community. That must stand for something. Under these circumstances, Mr. Valdivia is entitled to the benefit of the doubt, and discipline less than revocation is warranted.

18. The Guidelines specify that moderate discipline for respondents' misconduct should constitute three-years' probation under standard terms and a 30 day suspension. Since the misconduct related solely to Mr. Valdivia's unlicensed lamp and brake adjuster activity, only respondent's Brake and Lamp Station Licenses should be suspended. The discipline contained in the order below will protect the public without being unduly burdensome or anti-competitive. (Guidelines, p. 1.) Since no cause for discipline was established against either respondent Vince's Automotive's Smog Check Station License or Mr. Valdivia's smog technician licenses, the Accusation should be dismissed as to those licenses. (Factual Findings 1-25.)

Costs

19. Section 125.3 provides, in pertinent part, that a board or bureau may request an administrative law judge to direct a licentiate found to have committed a violation(s) of that entity's governing licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

20. A reduction of costs can be considered if, in part, a licensee will be financially unable to make later payments. (*Zuckerman vs. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.)

21. In this case, violations of the Automotive Repair Act were established. Thus, the Bureau is entitled to its reasonable costs incurred in investigating and prosecuting this matter. However, reduction of the Bureau's investigative costs to $620.43 is warranted. Moreover, Mr. Valdivia established that he is suffering from extreme financial difficulty, as evidenced by his bankruptcy and his significant monthly payments to the Bankruptcy Trustee. Mr. Valdivia has one more year of such payments. Reducing the total amount of costs in this case to one of his monthly installments to the Bankruptcy Trustee is calculated to approximate an affordable amount for Mr. Valdivia. (Factual Findings 26-29.)

ORDER

1. Automotive Repair Dealer Registration Number ARD 92735, issued to respondent Vince's Automotive, Vince Valdivia owner, is placed on probation for a period of three years, under the terms and conditions listed below.

2. The Accusation is dismissed as to the Smog Check Station License Number RC 92735, issued to respondent Vince's Automotive, Vince Valdivia owner.

3. Lamp Station License Number LS 92735, issued to respondent Vince's Automotive, Vince Valdivia owner, is placed on probation for a period of three years, under the terms and conditions listed below.

4. Brake Station License Number BS 92735, issued to respondent Vince's Automotive, Vince Valdivia owner, is placed on probation for a period of three years, under the terms and conditions listed below.

5. The Accusation is dismissed as to Smog Check Inspector License Number E0 300740 and Smog Check Repair Technician License Number EI 300740, issued to respondent Vince D. Valdivia.

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6. During the period of probation for the above specified licenses and licensing rights, respondents shall:

A. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

B. Report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

C. Within 30 days of the effective date of this action, respondents shall report any financial interest he may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

D. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

E. If an accusation is filed against respondents during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

F. Should the Director of Consumer Affairs determine that respondents have failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard permanently invalidate the registration and revoke the two involved licenses.

7. Lamp Station License Number LS 92735, and Brake Station License Number BS 92735, issued to respondent Vince's Automotive, Vince Valdivia owner, shall be suspended for 30 days, beginning from the effective date of this decision. These suspensions shall run concurrently. During the period of suspension, respondent shall post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

8. Any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in respondents' name shall be subject to the same discipline imposed above.

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9. Respondents are ordered to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case in the amount of $6,709.00. No costs payments are due until one year from the effective date of this decision. Thereafter, respondents can either elect to pay one lump-sum payment to the Director, or may make monthly or quarterly installments as agreed to by the Department. In any event, the full amount of costs shall be paid by no later than six months before the expiration of the probationary period.

DATED: October 26, 2015

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ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: **VINCE'S AUTOMOTIVE; VINCE VALDIVIA** 18401 Vanowen Street # S Reseda, CA 91335 **Automotive Repair Dealer Registration No. ARD 92735** **Smog Check Station License No. RC 92735** **Lamp Station License No. LS 92735** **Brake Station License No. BS92735** and **VINCE D. VALDIVIA** 18401 Vanowen Street Unit S Reseda, CA 91335 **Smog Check Inspector License No. EO 300740** **Smog Check Repair Technician License No. EI 300740** Respondent.	Case No. 77/15-30 **ACCUSATION**

Complainant alleges:

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PARTIES

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

Automotive Repair Dealer Registration ARD 92735

2 In 1982, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 92735 to Vince's Automotive; Vince Valdivia (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

Smog Check Station License RC 92735

3. On or about April 26, 1990, the Bureau of Automotive Repair issued Smog Check Station License Number RC 92735 to Vince's Automotive; Vince Valdivia (Respondent). The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

Lamp Station License LS 92735

4. On or about May 19, 2005, the Bureau of Automotive Repair issued Lamp Station License Number LS 92735 to Vince's Automotive; Vince Valdivia (Respondent). The Lamp Station License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

Brake Station License BS 92735

5. On or about August 26, 1998, the Bureau of Automotive Repair issued Brake Station License Number BS 92735 ("Brake Station License") to Respondent Vince's Automotive; Vince Valdivia. The Brake Station License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2015, unless renewed.

Advanced Emission Specialist Technician License EA 300740

6. In 1996, the Director issued Advanced Emission Specialist Technician License Number EA 300740 to Vince D. Valdivia. Valdivia's advanced emission specialist technician license was due to expire on November 30, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Valdivia's

election, as Smog Check Inspector License Number EO 300740 and Smog Check Repair Technician License Number EI 300740 ("technician licenses"), effective November 30, 2012. Respondent's technician licenses will expire on November 30, 2014, unless renewed.[1]

Brake Adjuster License BA 300740, class C

7. In 1998, the Bureau of Automotive Repair issued Brake Adjuster License Number BA 300740, class C ("Brake Adjuster License") to Respondent Vince D. Valdivia. The Brake Adjuster License was in full force and effect at all times relevant to the charges brought herein. The license expired on November 30, 2002, and has not been renewed.

Lamp Adjuster License LA 631193, class A

8. In 1998, the Bureau of Automotive Repair issued Lamp Adjuster License Number LA 300740, class A ("Lamp Adjuster License") to Respondent Vince D. Valdivia. The Lamp Adjuster License was in full force and effect at all times relevant to the charges brought herein. The license expired on November 30, 2002, and has not been renewed.

JURISDICTION

9. This Accusation is brought before the Director of Consumer Affairs ("Director") for the Bureau of Automotive Repair, under the authority of the following laws. All section references are to the Business and Professions Code, unless otherwise indicated (Code).

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

11. Section 477 of the Code states, in pertinent part:

> (a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."
> (b) "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

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[1] Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.39, and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

12. Section 9884.7 of the Code provides that the Director may revoke an automotive repair dealer registration.

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

14. Section 9889.1 of the Code provides, in pertinent part, that the Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the Automotive Repair Act.

15. Section 9889.7 of the Code provides, in pertinent part, that the expiration or suspension of a license by operation of law or by order or decision of the Director or a court of law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any disciplinary proceedings.

16. Section 9889.9 of the Code states, "When any license has been revoked or suspended following a hearing under the provisions of this article, any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director."

STATUTORY PROVISIONS

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

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
> (2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.
>
> . . . .

(4) Any other conduct that constitutes fraud.

. . . .

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to it.

. . . .

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation 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 suspend, revoke, or place on probation 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.

18. Section 9888.3 of the Code 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 brake adjuster.

19. Section 9889.3 of the Code states, in pertinent part, that "[t]he director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee or any partner, officer, or director thereof:

(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.

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

. . . .

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

20. Section 9889.22 of the Code states, "The willful making of any false statement or entry

with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code."

21. Section 9889.16 of the Code 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."

REGULATORY PROVISIONS

22. 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.

23. Health and Safety Code section 44072.2 states:

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Safety Code,§ 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> . . . .
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.
>
> . . . .
>
> (h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

24. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with a disciplinary action.

25. Health and Safety Code section 44072.8 states that "[w]hen a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director."

26. California Code of Regulations, title 16, section 3305, subdivision (a) states:

> (a) All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable:
>
> ...
>
> (4) The bureau's Handbook for Brake Adjusters and Stations, February 2003, which is hereby incorporated by reference.
>
> (5) The bureau's Handbook for Lamp Adjusters and Stations, February 2003, which is hereby incorporated by reference.

27. California Code of Regulations, title 16, section 3308 states:

> An official station shall stop performing the functions for which it has been licensed when it no longer has the services of a licensed adjuster, or when its station license has expired or has been surrendered, suspended, or revoked. The station must dispose of materials related to its formerly licensed activity according to these provisions.
>
> (a) An official station that no longer has the services of a licensed adjuster shall immediately remove or cover the official station sign in accordance with subsection (b) of this section. If the station does not employ a licensed adjuster within 60 days, the station shall surrender its official station license to the bureau and shall return to the bureau all unused certificates of adjustments bought by the station to carry out the function for which it is no longer licensed.
>
> (b) An official station that is no longer authorized to perform the function for which it has been licensed shall remove or cover the sign pertaining to the licensed function. A station that has a multipurpose sign shall cover those portions of the sign that pertain to the functions for which it is no longer licensed.
>
> (c) When an official station license has expired or has been surrendered, suspended, or revoked, the station shall return to the bureau all unused certificates purchased by the station to carry out the function for which it is no longer licensed.

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COST RECOVERY

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

FIELD VISIT: FEBRUARY 11, 2014

29. On or about February 11, 2014, the Bureau made a field visit to Vince's Automotive to perform a periodic station inspection and to issue brake and lamp certificate books #LC1765051 and #BC1794351, which were recently purchased by Vince's Automotive. The Bureau requested to review the last brake and lamp certificate books issued by Vince Valdivia to verify compliance. Respondent Vince D. Valdivia provided a lamp certificate booklet containing certificates #LC1733201 through #LC1733205 and a brake certificate booklet containing certificates #BC1762001 through #BC1762005. Upon review of the certificate books, the Bureau confirmed that Respondent Vince D. Valdivia owner of Vince's Automotive issued brake and lamp certificates of adjustment using his brake and lamp adjuster license numbers that had expired in 2002. Respondent Vince D. Valdivia acknowledged that his brake and lamp adjuster's licenses were expired and that he had issued brake and lamp certificates of adjustment without current and valid brake and lamp adjuster licenses.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

30. Respondent Vince's Automotive's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(1), in that Vince D. Valdivia, Owner, issued lamp certificates #LC1733201 through #LC1733205 and brake certificates #BC1762001 through #BC1762005 without possessing valid adjuster licenses to issue the certificates of adjustment.

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SECOND CAUSE FOR DISCIPLINE

(Willful False Statements)

31. Respondent Vince's Automotive's Automotive Repair Dealer Registration, Brake and Lamp Station License are subject to disciplinary action pursuant to section 9884.7(a)(6), in conjunction with section 9889.3, subdivision (d), in that Vince D. Valdivia, Owner, knowingly issued lamp certificates #LC1733201 through #LC1733205 and brake certificates #BC1762001 through #BC1762005 without possessing valid adjuster licenses to issue the certificates of adjustment.

THIRD CAUSE FOR DISCIPLINE

(Required licensing of stations and adjusters)

32. Respondent Vince's Automotive's Brake and Lamp Station License are subject to disciplinary action pursuant to section 9888.3, in conjunction with section 9889.3, subdivision (a), in that Vince D. Valdivia, Owner, issued lamp certificates #LC1733201 through #LC1733205 and brake certificates #BC1762001 through #BC1762005 without possessing valid adjuster licenses to issue the certificates of adjustment.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

33. Respondent Vince's Automotive's Automotive Repair Dealer Registration is subject to discipline under Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. Section 3305, subdivision (a)(4) and (a)(5): Vince D. Valdivia, Owner, signed and issued lamp and brake certificates of adjustment without possessing valid adjuster licenses.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

34. Respondent Vince's Automotive's brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a)(4) and (5) as set forth in paragraph 33 above.

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

35. Respondent Vince's Automotive's Automotive Repair Dealer Registration is subject to discipline pursuant to Code section 9884.7(a)(4). Respondent Vince's Smog Check License and Vince Valdivia's Smog Check Inspector License and Smog Check Repair Technician License are subject to discipline pursuant to Health and Safety Code section 44072.2(d) in that Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured in that Respondent did not possess current and valid adjuster licenses to issue the lamp and brake the certificates of adjustment, as set forth in paragraph 29 above, thereby depriving the People of the State of California of the protection afforded by the Bureau's regulations.

OTHER MATTERS

36. Pursuant to section 9884.7, subdivision (c), the Director may suspend, revoke or place on probation the registration for all places of business operated in this state by Respondent Vince's Automotive; Vince Valdivia upon a finding that Respondent Vince's Automotive; Vince Valdivia has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

37. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License Number RC 92735 issued to Respondent Vince's Automotive; Vince Valdivia is revoked or suspended, any additional license issued under Chapter 5 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

38. Pursuant to section 9889.9, if lamp Station License Number LS 92735, issued to Respondent Vince's Automotive; Vince Valdivia is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the Director.

39. Pursuant to section 9889.9, if Brake Station License Number BS 92735, issued to Respondent Vince's Automotive; Vince Valdivia is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the Director.

40. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector License Number EO 300740 and Smog Check Repair Technician License Number EI 300740 (formerly Advanced Emission Specialist Technician License Number EA 300740) issued to Respondent Vince D. Valdivia is revoked or suspended, any additional license issued under Chapter 5 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 92735, issued to Respondent Vince's Automotive; Vince Valdivia;

2. Revoking or suspending Smog Check Station License Number RC 92735, issued to Respondent Vince's Automotive; Vince Valdivia;

3. Revoking or suspending Lamp Station License Number LS 92735, issued to Respondent Vince's Automotive; Vince Valdivia;

4. Revoking or suspending Brake Station License Number BS 92735, issued to Respondent Vince's Automotive; Vince Valdivia;

5. Revoking or suspending Smog Check Inspector License Number EO 300740 and Smog Check Repair Technician License Number EI 300740 (formerly Advanced Emission Specialist Technician License Number EA 300740) issued to Respondent Vince D. Valdivia;

6. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Respondent Vince's Automotive; Vince Valdivia;

7. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Vince D. Valdivia;

8. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Vince D. Valdivia;

9. Ordering Respondent Vince's Automotive; Vince Valdivia to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: January 7, 2015

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

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