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

11
12 In the Matter of the Accusation Against:

Case No. 77/15-4

13 **SMOG EXPRESS,**
OSCAR E. ALVAREZ, OWNER
14 **6930 Camino Maquiladora Unit B**
San Diego, CA 92154

A C C U S A T I O N

15 **Automotive Repair Dealer Registration No.**
16 **ARD 256847**
17 **Smog Check Station License No. RC 256847**
18 **Lamp Station License No. LS 256847**
Brake Station License No. BS 256847

19 **and**

20 **JORGE ESPINO-BARROS**
710 East San Ysidro Boulevard, #1992
21 **San Ysidro, CA 92173**

22 **Brake Adjuster License No. BA 140801**
Lamp Adjuster License No. LA 140801
23 **Smog Check Inspector License No. EO**
140801
24 **Smog Check Repair Technician License No.**
EI 140801
25 **(formerly Advanced Emission Specialist**
Technician License No. EA 140801)

26 Respondents.

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28 Complainant alleges:

PARTIES

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

4 2. On or about December 4, 2008, the Bureau of Automotive Repair (Bureau) issued
5 Automotive Repair Dealer Registration Number ARD 256847 (registration) to Smog Express,
6 Oscar E. Alvarez, Owner (Respondent Alvarez). The registration was in full force and effect at
7 all times relevant to the charges brought herein and will expire on October 31, 2014, unless
8 renewed.

9 3. On or about January 27, 2009, the Bureau issued Smog Check Station License
10 Number RC 256847 (smog check station license) to Respondent Alvarez. The smog check
11 station license was in full force and effect at all times relevant to the charges brought herein and
12 will expire on October 31, 2014, unless renewed.

13 4. On or about January 27, 2009, the Bureau issued Lamp Station License Number LS
14 256847 (lamp station license) to Respondent Alvarez. The lamp station license was in full force
15 and effect at all times relevant to the charges brought herein and will expire on October 31, 2014,
16 unless renewed.

17 5. On or about January 27, 2009, the Bureau issued Brake Station License Number BS
18 256847 (brake station license) to Respondent Alvarez. The brake station license was in full force
19 and effect at all times relevant to the charges brought herein and will expire on October 31, 2014,
20 unless renewed.

21 6. On September 6, 2013, the Bureau issued Brake Adjuster License Number BA
22 140801 (brake adjuster license) to Jorge Espino-Barros (Respondent Espino-Barros). The brake
23 adjuster license was in full force and effect at all times relevant to the charges brought herein and
24 will expire on December 31, 2016, unless renewed.

25 7. On July 22, 2013, the Bureau issued Lamp Adjuster License Number LA 140801
26 (lamp adjuster license) to Respondent Espino-Barros. The lamp adjuster license was in full force
27 and effect at all times relevant to the charges brought herein and will expire on December 31,
28 2016, unless renewed.

1 13. Section 9884.20 of the Code states:

2 “All accusations against automotive repair dealers shall be filed within three years after the
3 performance of the act or omission alleged as the ground for disciplinary action, except that with
4 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action,
5 the accusation may be filed within two years after the discovery, by the bureau, of the alleged
6 facts constituting the fraud or misrepresentation.”

7 14. Section 9884.22 of the Code states, in pertinent part:

8 “(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny
9 at any time any registration required by this article on any of the grounds for disciplinary action
10 provided in this article. The proceedings under this article shall be conducted in accordance with
11 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
12 Code, and the director shall have all the powers granted therein.

13 “....”

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

17 16. Section 9889.3 of the Code states, in pertinent part:

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

22 (a) Violates any section of the Business and Professions Code which relates
23 to his or her licensed activities.

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25 (c) Violates any of the regulations promulgated by the director pursuant to
26 this chapter.

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

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1 17. Section 9889.5 of the Code states:

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

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

5 “(b) Suspending the license.

6 “(c) Revoking the license.”

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

11 19. Section 9889.8 of the Code states:

12 “All accusations against licensees shall be filed within three years after the act or omission
13 alleged as the ground for disciplinary action, except that with respect to an accusation alleging a
14 violation of subdivision (d) of Section 9889.3, the accusation may be filed within two years after
15 the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation
16 prohibited by that section.”

17 20. Section 9889.9 of the Code states:

18 “When any license has been revoked or suspended following a hearing under the provisions
19 of this article, any additional license issued under Articles 5 and 6 of this chapter in the name of
20 the licensee may be likewise revoked or suspended by the director.”

21 21. Section 44002 of the Health and Safety Code states:

22 The department shall have the sole and exclusive authority within the state for
23 developing and implementing the motor vehicle inspection program in accordance
 with this chapter.

24 For the purposes of administration and enforcement of this chapter, the
25 department, and the director and officers and employees thereof, shall have all the
26 powers and authority granted under Division 1 (commencing with Section 1) and
27 Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with
28 Section 9880) of Division 3 of the Business and Professions Code and under
 Chapter 33 (commencing with Section 3300) of Title 16 of the California Code of
 Regulations. Inspections and repairs performed pursuant to this chapter, in addition
 to meeting the specific requirements imposed by this chapter, shall also comply with
 all requirements imposed pursuant to Division 1 (commencing with Section 1) and

1 Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with
2 Section 9880) of Division 3 of the Business and Professions Code and Chapter 33
(commencing with Section 3300) of Title 16 of the California Code of Regulations.

3 22. Section 44072.4 of the Health and Safety Code states:

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

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

7 “(b) Suspending the license.

8 “(c) Revoking the license.”

9 23. Section 44072.6 of the Health and Safety Code states:

10 “The expiration or suspension of a license by operation of law or by order or decision of the
11 director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive
12 the director of jurisdiction to proceed with any investigation of, or action or disciplinary
13 proceedings against, the licensee, or to render a decision suspending or revoking the license.”

14 24. Section 44072.7 of the Health and Safety Code states:

15 “All accusations against licensees shall be filed within three years after the act or omission
16 alleged as the ground for disciplinary action, except that with respect to an accusation alleging a
17 violation of subdivision (d) of Section 44072.2, the accusation may be filed within two years after
18 the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation
19 prohibited by that section.”

20 25. California Code of Regulations, title 16, section 3340.28, subdivision (e), states:

21 “Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission
22 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
23 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

24 **STATUTORY PROVISIONS**

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

26 (a) The director, where the automotive repair dealer cannot show there was a
27 bona fide error, may deny, suspend, revoke, or place on probation the registration
28 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

1 automotive repair dealer or any automotive technician, employee, partner, officer,
2 or member of the automotive repair dealer.

3 (1) Making or authorizing in any manner or by any means whatever any
4 statement written or oral which is untrue or misleading, and which is known, or
5 which by the exercise of reasonable care should be known, to be untrue or
6 misleading.

7 (2) Causing or allowing a customer to sign any work order that does not
8 state the repairs requested by the customer or the automobile's odometer reading at
9 the time of repair.

10

11 (4) Any other conduct that constitutes fraud.

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13 (6) Failure in any material respect to comply with the provisions of this or
14 regulations adopted pursuant to it.

15 (7) Any willful departure from or disregard of accepted trade standards for
16 good and workmanlike repair in any material respect, which is prejudicial to
17 another without consent of the owner or his or her duly authorized representative.

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19 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
20 place on probation the registration for all places of business operated in this state
21 by an automotive repair dealer upon a finding that the automotive repair dealer
22 has, or is, engaged in a course of repeated and willful violations of this chapter, or
23 regulations adopted pursuant to it.

24 27. Section 9884.8 of the Code states:

25 All work done by an automotive repair dealer, including all warranty work,
26 shall be recorded on an invoice and shall describe all service work done and parts
27 supplied. Service work and parts shall be listed separately on the invoice, which
28 shall also state separately the subtotal prices for service work and for parts, not
including sales tax, and shall state separately the sales tax, if any, applicable to
each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall
clearly state that fact. If a part of a component system is composed of new and
used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The
invoice shall include a statement indicating whether any crash parts are original
equipment manufacturer crash parts or nonoriginal equipment manufacturer
aftermarket crash parts. One copy of the invoice shall be given to the customer and
one copy shall be retained by the automotive repair dealer.

29 28. Section 9884.9 of the Code states:

30 (a) The automotive repair dealer shall give to the customer a written
31 estimated price for labor and parts necessary for a specific job. No work shall be
32 done and no charges shall accrue before authorization to proceed is obtained from
33 the customer. No charge shall be made for work done or parts supplied in excess
34 of the estimated price without the oral or written consent of the customer that shall

1 be obtained at some time after it is determined that the estimated price is
2 insufficient and before the work not estimated is done or the parts not estimated
3 are supplied. Written consent or authorization for an increase in the original
4 estimated price may be provided by electronic mail or facsimile transmission from
5 the customer. The bureau may specify in regulation the procedures to be followed
6 by an automotive repair dealer if an authorization or consent for an increase in the
7 original estimated price is provided by electronic mail or facsimile transmission. If
8 that consent is oral, the dealer shall make a notation on the work order of the date,
9 time, name of person authorizing the additional repairs and telephone number
10 called, if any, together with a specification of the additional parts and labor and the
11 total additional cost, and shall do either of the following:

12 (1) Make a notation on the invoice of the same facts set forth in the notation
13 on the work order.

14 (2) Upon completion of the repairs, obtain the customer's signature or initials
15 to an acknowledgment of notice and consent, if there is an oral consent of the
16 customer to additional repairs, in the following language:

17 I acknowledge notice and oral approval of an increase in the original
18 estimated price.

19 _____
20 (signature or initials)

21 Nothing in this section shall be construed as requiring an automotive repair
22 dealer to give a written estimated price if the dealer does not agree to perform the
23 requested repair.

24 (b) The automotive repair dealer shall include with the written estimated
25 price a statement of any automotive repair service that, if required to be done, will
26 be done by someone other than the dealer or his or her employees. No service shall
27 be done by other than the dealer or his or her employees without the consent of the
28 customer, unless the customer cannot reasonably be notified. The dealer shall be
responsible, in any case, for any service in the same manner as if the dealer or his
or her employees had done the service.

(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when
doing auto body or collision repairs, shall provide an itemized written estimate for
all parts and labor to the customer. The estimate shall describe labor and parts
separately and shall identify each part, indicating whether the replacement part is
new, used, rebuilt, or reconditioned. Each crash part shall be identified on the
written estimate and the written estimate shall indicate whether the crash part is an
original equipment manufacturer crash part or a nonoriginal equipment
manufacturer aftermarket crash part.

(d) A customer may designate another person to authorize work or parts
supplied in excess of the estimated price, if the designation is made in writing at
the time that the initial authorization to proceed is signed by the customer. The
bureau may specify in regulation the form and content of a designation and the
procedures to be followed by the automotive repair dealer in recording the
designation. For the purposes of this section, a designee shall not be the
automotive repair dealer providing repair services or an insurer involved in a claim
that includes the motor vehicle being repaired, or an employee or agent or a person
acting on behalf of the dealer or insurer.

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1 29. Section 9889.16 of the Code states:

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

9 30. Section 44060, subdivision (g), of the Health and Safety Code states:

10 “(g) The fee charged by licensed smog check stations to consumers for a certificate, waiver,
11 or extension shall be the same amount that is charged by the department.”

12 31. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

16 “... ”

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

18 “... ”

19 32. Section 44072.8 of the Health and Safety Code states:

20 “When a license has been revoked or suspended following a hearing under this article, any
21 additional license issued under this chapter in the name of the licensee may be likewise revoked
22 or suspended by the director.”

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

24 (a) Notwithstanding Sections 44072 and 44072.4, the director, or the
25 director's designee, pending a hearing conducted pursuant to subdivision (e), may temporarily suspend any smog check station or technician's license issued under
26 this chapter, for a period not to exceed 60 days, if the department determines that the licensee's conduct would endanger the public health, safety, or welfare before
27 the matter could be heard pursuant to subdivision (e), based upon reasonable
evidence of any of the following:

28 (1) Fraud.

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(2) Tampering.

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

(4) A pattern or regular practice of violating this chapter or any regulation, standard, or procedure of the department implementing this chapter.

....

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

....

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

....

REGULATORY PROVISIONS

34. California Code of Regulations, title 16, (CCR) section 3316, states, in pertinent part:

The operation of official lamp adjusting stations shall be subject to the following provisions:

....

(d) Effective April 1, 1999, licensed stations shall purchase certificates of adjustment from the bureau for a fee of three dollars and fifty cents (\$3.50) each and shall not purchase or otherwise obtain such certificates from any other source. Full payment is required at the time certificates are ordered. Certificates are not exchangeable following delivery. A licensed station shall not sell or otherwise transfer unused certificates of adjustment. Issuance of a lamp adjustment certificate shall be in accordance with the following provisions:

....

(2) Where all of the lamps, lighting equipment, and related electrical systems on a vehicle have been inspected and found to be in compliance with all requirements of the Vehicle Code and bureau regulations, the certificate shall certify that the entire system meets all of those requirements.

....

35. CCR, section 3321, states, in pertinent part:

The operation of official brake adjusting stations shall be subject to the following provisions:

....

1 (c) Effective April 1, 1999, licensed stations shall purchase certificates of
2 adjustment from the bureau for a fee of three dollars and fifty cents (\$3.50) and
3 shall not purchase or otherwise obtain such certificates from any other source. A
4 licensed station shall not sell or otherwise transfer unused certificates of
5 adjustment. Full payment is required at the time certificates are ordered.
6 Certificates are not exchangeable following delivery. Issuance of a brake
7 adjustment certificate shall be in accordance with the following provisions:

8

9 (2) Where the entire brake system on any vehicle has been inspected or
10 tested and found to be in compliance with all requirements of the Vehicle Code
11 and bureau regulations, and the vehicle has been road-tested, the certificate shall
12 certify that the entire system meets all such requirements.

13

14 36. CCR section 3353, states, in pertinent part:

15 "No work for compensation shall be commenced and no charges shall accrue without
16 specific authorization from the customer in accordance with the following requirements:

17 "(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
18 estimated price for labor and parts for a specific job.

19 "..."

20 37. CCR section 3356, states, in pertinent part:

21 (a) All invoices for service and repair work performed, and parts supplied, as
22 provided for in Section 9884.8 of the Business and Professions Code, shall comply
23 with the following:

24

25 (2) The invoice shall separately list, describe and identify all of the
26 following:

27 (A) All service and repair work performed, including all diagnostic and
28 warranty work, and the price for each described service and repair.

. . . .

(C) The subtotal price for all service and repair work performed.

. . . .

38. CCR section 3395.4 states:

In reaching a decision on a disciplinary action under the Administrative
Procedure Act (Government Code Section 11400 et seq.), including formal
hearings conducted by the Office of Administrative Hearing, the Bureau of
Automotive Repair shall consider the disciplinary guidelines entitled 'Guidelines
for Disciplinary Penalties and Terms of Probation' [May, 1997] which are hereby

1 incorporated by reference. The 'Guidelines for Disciplinary Penalties and Terms
2 of Probation' are advisory. Deviation from these guidelines and orders, including
3 the standard terms of probation, is appropriate where the Bureau of Automotive
4 Repair in its sole discretion determines that the facts of the particular case warrant
5 such deviation -for example: the presence of mitigating factors; the age of the
6 case; evidentiary problems.

4 COST RECOVERY

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

11 FIRST UNDERCOVER RUN – 1997 FORD

12 40. On August 19, 2013, a Bureau undercover operator drove a Bureau-documented 1997
13 Ford to Respondent Alvarez's facility for inspection. The undercover operator drove to the
14 facility and spoke with an employee of Respondent Alvarez. The undercover operator requested
15 a smog inspection and a brake and lamp inspection. The undercover operator did not sign a work
16 order or receive a written estimate before the work began. After the inspections were completed,
17 the undercover operator paid \$100.00. The undercover operator was given a Vehicle Inspection
18 Report for the smog inspection, a copy of the Certificate of Adjustment # [REDACTED] for the
19 brake inspection and Certificate of Adjustment # [REDACTED] for the lamp inspection. The
20 undercover operator was also given estimate # [REDACTED] in the amount of \$60.00 for the brake and
21 lamp inspections only. The undercover operator was given a second copy of estimate # [REDACTED], the
22 actual invoice for the work, in which the amount of \$60.00 had been scratched out and replaced
23 with a hand written amount of \$100.00. The undercover operator then left the facility and
24 transferred custody of the vehicle to a Bureau representative.

25 FIRST CAUSE FOR DISCIPLINE

26 (Violation of Estimate Requirements)

27 41. Complainant re-alleges and incorporates by reference the allegations set forth above
28 in paragraph 40.

1 malfunctions were placed on the vehicle: installation of a right front brake rotor that was below
2 the minimum discard dimension; disablement of the back-up lamps (reverse lights); and
3 misposition of the left front headlamp. For the vehicle to pass a brake and lamp inspection, it
4 needed the front right brake rotor replaced; the back-up lamps operational; and the left front
5 headlamp adjusted correctly. The undercover operator drove to Respondent Alvarez's facility
6 and spoke with employee Manuel Flores (Flores). The undercover operator requested a smog
7 inspection and a brake and lamp inspection. Flores provided an estimate indicating a price of
8 \$100.00. After the inspections were completed, the undercover operator paid Flores \$100.00.
9 Flores gave the undercover operator a Vehicle Inspection Report for the smog inspection, a
10 Certificate of Adjustment # [REDACTED] for the brake inspection, a Certificate of Adjustment
11 # [REDACTED] for the lamp inspection, and an invoice. Respondent Espino-Barros performed the
12 brake and lamp inspections. The undercover operator then left the facility and transferred
13 custody of the vehicle to a Bureau representative.

14 48. A Bureau representative later reinspected the vehicle. For the brake system, the
15 wheels had not been removed as needed to properly inspect or replace the front rotors or rear
16 drums and the defective right front brake rotor was still on the vehicle. In light of the condition
17 of the right front brake rotor, a certificate of adjustment should not have been issued.

18 49. For the lighting system, the left headlamp had not been adjusted and the back-up
19 lights were still inoperative and did not illuminate while the vehicle was backing in reverse. In
20 light of the condition of the left front headlamp and the back-up lamps, a certificate of adjustment
21 should not have been issued.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Untrue or Misleading Statements)**

24 50. Complainant re-alleges and incorporates by reference the allegations set forth above
25 in paragraphs 47-49.

26 51. Respondent Alvarez's registration is subject to disciplinary action under Code section
27 9884.7, subdivision (a) (1), in that Respondent Alvarez made or authorized statements which
28

1 Respondent Alvarez knew or in the exercise of reasonable care should have known to be untrue
2 or misleading. The untrue or misleading statements include the following:

3 a. Respondent Alvarez represented that the brake and lamp systems on the vehicle
4 had been inspected and that they were in passable condition, when in fact and in truth they had
5 not been properly inspected.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 52. Complainant re-alleges and incorporates by reference the allegations set forth above
9 in paragraphs 47-49.

10 53. Respondent Alvarez's registration is subject to disciplinary action under Code section
11 9884.7, subdivision (a) (4), in that Respondent Alvarez committed acts which constitute fraud.

12 The fraud includes the following:

13 a. Respondent Alvarez misrepresented to the undercover operator that the brake
14 and lamp systems on the vehicle had been inspected and that they were in passable condition;
15 Respondent Alvarez knew that in fact and in truth these systems had not been properly inspected;
16 Respondent Alvarez intended the undercover operator to rely on these misrepresentations;
17 Respondent Alvarez charged for these services and accepted payment.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Willful Departure from or Disregard of Accepted Trade Standards)**

20 54. Complainant re-alleges and incorporates by reference the allegations set forth above
21 in paragraphs 47-49.

22 55. Respondent Alvarez's registration is subject to disciplinary action under Code section
23 9884.7, subdivision (a) (7), in that Respondent Alvarez willfully departed from or disregarded
24 accepted trade standards for good and workmanlike repair in a material respect which was
25 prejudicial to another without consent of the owner or his or her duly authorized representative.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Certificate Issued to Non-Conforming Vehicle)**

3 56. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in paragraphs 47-49.

5 57. Respondent Alvarez's lamp station license and brake station license are subject to
6 disciplinary action under Code section 9889.16 and CCR sections 3321, subdivision (c) (2) and
7 3316, subdivision (d) (2) in that upon an inspection or after an adjustment purportedly made in
8 conformity with the instructions of the Bureau, Respondent Alvarez issued brake and lamp
9 certificates of adjustment to a vehicle that purportedly conformed with the requirements of the
10 Vehicle Code and Bureau regulations, when in fact and in truth the vehicle did not conform with
11 these requirements.

12 **EIGHTH CAUSE FOR DISCIPLINE**

13 **(Invoice Violations)**

14 58. Complainant re-alleges and incorporates by reference the allegations set forth above
15 in paragraphs 47-49.

16 59. Respondent Alvarez's registration is subject to disciplinary action under Code section
17 9884.8, in that Respondent Alvarez failed to comply with invoice requirements for the subtotal of
18 parts and labor. The violations include the following:

19 a. **CCR section 3356, subdivision (a) (2) (C)**: Failure to separately list the
20 subtotal price for all service and repair work performed.

21 **NINTH CAUSE FOR DISCIPLINE**

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

23 60. Complainant re-alleges and incorporates by reference the allegations set forth above
24 in paragraphs 47-49.

25 61. Respondent Alvarez's registration is subject to disciplinary action under Code section
26 9884.7, subdivision (a) (4), the smog check station license is subject to disciplinary action under
27 Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d),
28 and the lamp station license and brake station license are subject to disciplinary action under

1 Code section 9889.3, subdivisions (a) and (d), in that Respondent Alvarez committed dishonest,
2 fraudulent, or deceitful acts whereby another is injured by issuing certificates of adjustment for a
3 vehicle without performing bona fide inspections of them, thereby depriving the People of the
4 State of California of the protection afforded by the Automotive Repair Act.

5 **TENTH CAUSE FOR DISCIPLINE**

6 **(Certificate Issued to Non-Conforming Vehicle)**

7 62. Complainant re-alleges and incorporates by reference the allegations set forth above
8 in paragraphs 47-49.

9 63. Respondent Espino-Barros's lamp adjuster license and brake adjuster license are
10 subject to disciplinary action under Code section 9889.16 and CCR sections 3321, subdivision (c)
11 (2) and 3316, subdivision (d) (2) in that upon an inspection or after an adjustment purportedly
12 made in conformity with the instructions of the Bureau, he issued brake and lamp certificates of
13 adjustment to a vehicle that purportedly conformed with the requirements of the Vehicle Code
14 and Bureau regulations, when in fact and in truth the vehicle did not conform with these
15 requirements.

16 **ELEVENTH CAUSE FOR DISCIPLINE**

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

18 64. Complainant re-alleges and incorporates by reference the allegations set forth above
19 in paragraphs 47-49.

20 65. Respondent Espino-Barros's smog technician licenses are subject to disciplinary
21 action under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2,
22 subdivision (d), and his lamp adjuster license and brake adjuster license are subject to
23 disciplinary action under Code section 9889.3, subdivisions (a) and (d), in that he committed
24 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing certificates of
25 adjustments for a vehicle without performing bona fide inspections of the brake and lamp systems
26 on them, thereby depriving the People of the State of California of the protection afforded by the
27 Automotive Repair Act.

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1 **THIRD UNDERCOVER RUN – 1998 TOYOTA**

2 66. On September 26, 2013, a Bureau undercover operator drove a Bureau-documented
3 1998 Toyota to Respondent Alvarez’s facility for inspection. The following introduced
4 malfunctions were placed on the vehicle: installation of a right front brake rotor that was
5 machined below the minimum thickness specifications; disablement of the back-up lamps
6 (reverse lights); and misposition of the left front headlamp. For the vehicle to pass a brake and
7 lamp inspection, it needed the front right brake rotor replaced; the back-up lamps operational; and
8 the left front headlamp adjusted correctly. The undercover operator drove to Respondent
9 Alvarez’s facility and spoke with employee Manuel Flores (Flores). The undercover operator
10 requested a smog inspection and a brake and lamp inspection. Flores provided an estimate
11 indicating a price of \$100.00. After the inspections were completed, the undercover operator paid
12 Flores \$100.00. Flores gave the undercover operator a Vehicle Inspection Report for the smog
13 inspection, a Certificate of Adjustment # [REDACTED] for the brake inspection, a Certificate of
14 Adjustment # [REDACTED] for the lamp inspection, and an invoice. Respondent Espino-Barros
15 performed the brake and lamp inspections. The undercover operator then left the facility and
16 transferred custody of the vehicle to a Bureau representative.

17 67. A Bureau representative later reinspected the vehicle. For the brake system, the
18 wheels had not been removed as needed to properly inspect or replace the front rotors or rear
19 drums and the defective right front brake rotor was still on the vehicle. In light of the condition
20 of the right front brake rotor, a certificate of adjustment should not have been issued.

21 68. For the lighting system, the left headlamp had not been adjusted and the back-up
22 lights were still inoperative and did not illuminate while the vehicle was backing in reverse. In
23 light of the condition of the left front headlamp and the back-up lamps, a certificate of adjustment
24 should not have been issued.

25 **TWELFTH CAUSE FOR DISCIPLINE**

26 **(Untrue or Misleading Statements)**

27 69. Complainant re-alleges and incorporates by reference the allegations set forth above
28 in paragraphs 66-68.

1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Certificate Issued to Non-Conforming Vehicle)**

3 75. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in paragraphs 66-68.

5 76. Respondent Alvarez's lamp station license and brake station license are subject to
6 disciplinary action under Code section 9889.16 and CCR sections 3321, subdivision (c) (2) and
7 3316, subdivision (d) (2) in that upon an inspection or after an adjustment purportedly made in
8 conformity with the instructions of the Bureau, Respondent Alvarez issued brake and lamp
9 certificates of adjustment to a vehicle that purportedly conformed with the requirements of the
10 Vehicle Code and Bureau regulations, when in fact and in truth the vehicle did not conform with
11 these requirements.

12 **SIXTEENTH CAUSE FOR DISCIPLINE**

13 **(Invoice Violations)**

14 77. Complainant re-alleges and incorporates by reference the allegations set forth above
15 in paragraphs 66-68.

16 78. Respondent Alvarez's registration is subject to disciplinary action under Code section
17 9884.8, in that Respondent Alvarez failed to comply with invoice requirements for the subtotal of
18 parts and labor. The violations include the following:

19 a. **CCR section 3356, subdivision (a) (2) (C)**: Failure to separately list the
20 subtotal price for all service and repair work performed.

21 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

23 79. Complainant re-alleges and incorporates by reference the allegations set forth above
24 in paragraphs 66-68.

25 80. Respondent Alvarez's registration is subject to disciplinary action under Code section
26 9884.7, subdivision (a) (4), the smog check station license is subject to disciplinary action under
27 Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d),
28 and the lamp station license and brake station licenses are subject to disciplinary action under

1 Code section 9889.3, subdivisions (a) and (d), in that Respondent Alvarez committed dishonest,
2 fraudulent, or deceitful acts whereby another is injured by issuing certificates of adjustment for a
3 vehicle without performing bona fide inspections of them, thereby depriving the People of the
4 State of California of the protection afforded by the Automotive Repair Act.

5 **EIGHTEENTH CAUSE FOR DISCIPLINE**

6 **(Certificate Issued to Non-Conforming Vehicle)**

7 81. Complainant re-alleges and incorporates by reference the allegations set forth above
8 in paragraphs 66-68.

9 82. Respondent Espino-Barros's lamp adjuster license and brake adjuster license are
10 subject to disciplinary action under Code section 9889.16 and CCR sections 3321, subdivision (c)
11 (2) and 3316, subdivision (d) (2) in that upon an inspection or after an adjustment purportedly
12 made in conformity with the instructions of the Bureau, he issued brake and lamp certificates of
13 adjustment to a vehicle that purportedly conformed with the requirements of the Vehicle Code
14 and Bureau regulations, when in fact and in truth the vehicle did not conform with these
15 requirements.

16 **NINETEENTH CAUSE FOR DISCIPLINE**

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

18 83. Complainant re-alleges and incorporates by reference the allegations set forth above
19 in paragraphs 66-68.

20 84. Respondent Espino-Barros's smog technician licenses are subject to disciplinary
21 action under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2,
22 subdivision (d), and his lamp adjuster license and brake adjuster license are subject to
23 disciplinary action under Code section 9889.3, subdivisions (a) and (d), in that he committed
24 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing certificates of
25 adjustments for a vehicle without performing bona fide inspections of the brake and lamp systems
26 on them, thereby depriving the People of the State of California of the protection afforded by the
27 Automotive Repair Act.

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1 **FOURTH UNDERCOVER RUN – 1998 CHEVROLET**

2 85. On October 15, 2013, a Bureau undercover operator drove a Bureau-documented
3 1998 Chevrolet to Respondent Alvarez’s facility for inspection. The following introduced
4 malfunctions were placed on the vehicle: installation of a right front brake rotor that was
5 machined below the minimum thickness specifications; disablement of the back-up lamps
6 (reverse lights); and misposition of the right front headlamp. For the vehicle to pass a brake and
7 lamp inspection, it needed the front right brake rotor replaced; the back-up lamps operational; and
8 the right front headlamp adjusted correctly. The undercover operator drove to Respondent
9 Alvarez’s facility and spoke with an employee of Respondent Alvarez. The undercover operator
10 requested a smog inspection and a brake and lamp inspection. The undercover operator did not
11 sign a work order or receive a written estimate before the work began. After the inspections were
12 completed, the undercover operator paid \$100.00. The undercover operator was given a Vehicle
13 Inspection Report for the smog inspection, a Certificate of Adjustment # [REDACTED] for the brake
14 inspection, a Certificate of Adjustment # [REDACTED] for the lamp inspection, and an invoice.
15 Respondent Espino-Barros performed the brake and lamp inspections. The undercover operator
16 then left the facility and transferred custody of the vehicle to a Bureau representative.

17 86. A Bureau representative later reinspected the vehicle. For the brake system, the
18 wheels had not been removed as needed to properly inspect or replace the front rotors or rear
19 drums and the defective right front brake rotor was still on the vehicle. In light of the condition
20 of the right front brake rotor, a certificate of adjustment should not have been issued.

21 87. For the lighting system, the right headlamp had not been adjusted and the back-up
22 lights were still inoperative and did not illuminate while the vehicle was backing in reverse. In
23 light of the condition of the right front headlamp and the back-up lamps, a certificate of
24 adjustment should not have been issued.

25 **TWENTIETH CAUSE FOR DISCIPLINE**

26 **(Violation of Estimate Requirements)**

27 88. Complainant re-alleges and incorporates by reference the allegations set forth above
28 in paragraphs 85-87.

1 89. Respondent Alvarez's registration is subject to disciplinary action under Code section
2 9884.9 and CCR section 3353, subdivision (a), in that Respondent Alvarez failed to obtain
3 specific authorization from the undercover operator and failed to give a written estimate of labor
4 and parts before beginning the inspections.

5 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

6 **(Untrue or Misleading Statements)**

7 90. Complainant re-alleges and incorporates by reference the allegations set forth above
8 in paragraphs 85-87.

9 91. Respondent Alvarez's registration is subject to disciplinary action under Code section
10 9884.7, subdivision (a) (1), in that Respondent Alvarez made or authorized statements which
11 Respondent Alvarez knew or in the exercise of reasonable care should have known to be untrue
12 or misleading. The untrue or misleading statements include the following:

13 a. Respondent Alvarez represented that the brake and lamp systems on the vehicle
14 had been inspected and that they were in passable condition, when in fact and in truth they had
15 not been properly inspected.

16 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 92. Complainant re-alleges and incorporates by reference the allegations set forth above
19 in paragraphs 85-87.

20 93. Respondent Alvarez's registration is subject to disciplinary action under Code section
21 9884.7, subdivision (a) (4), in that Respondent Alvarez committed acts which constitute fraud.
22 The fraud includes the following:

23 a. Respondent Alvarez misrepresented to the undercover operator that the brake
24 and lamp systems on the vehicle had been inspected and that they were in passable condition;
25 Respondent Alvarez knew that in fact and in truth these systems had not been properly inspected;
26 Respondent Alvarez intended the undercover operator to rely on these misrepresentations;
27 Respondent Alvarez charged for these services and accepted payment.

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TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

100. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 85-87.

101. Respondent Alvarez's registration is subject to disciplinary action under Code section 9884.7, subdivision (a) (4), the smog check station license is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d), and the lamp station license and brake station licenses are subject to disciplinary action under Code section 9889.3, subdivisions (a) and (d), in that Respondent Alvarez committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing certificates of adjustment for a vehicle without performing bona fide inspections of them, thereby depriving the People of the State of California of the protection afforded by the Automotive Repair Act.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Certificate Issued to Non-Conforming Vehicle)

102. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 85-87.

103. Respondent Espino-Barros's lamp adjuster license and brake adjuster license are subject to disciplinary action under Code section 9889.16 and CCR sections 3321, subdivision (c) (2) and 3316, subdivision (d) (2) in that upon an inspection or after an adjustment purportedly made in conformity with the instructions of the Bureau, he issued brake and lamp certificates of adjustment to a vehicle that purportedly conformed with the requirements of the Vehicle Code and Bureau regulations, when in fact and in truth the vehicle did not conform with these requirements.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

104. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 85-87.

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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 256847, issued to Smog Express, Oscar E. Alvarez, Owner;
2. Revoking or suspending Smog Check Station License Number RC 256847, issued to Smog Express, Oscar E. Alvarez, Owner;
3. Revoking or suspending Lamp Station License Number LS 256847, issued to Smog Express, Oscar E. Alvarez, Owner;
4. Revoking or suspending Brake Station License Number BS 256847, issued to Smog Express, Oscar E. Alvarez, Owner;
5. Revoking or suspending Brake Adjuster License Number BA 140801. issued to Jorge Espino-Barros;
6. Revoking or suspending Lamp Adjuster License Number LA 140801, issued to Jorge Espino-Barros;
7. Revoking or suspending Smog Check Inspector License No. EO 140801 and Smog Check Repair Technician License No. EI 140801, issued to Jorge Espino-Barros;
8. Revoking or suspending the registrations for all places of business operated in this state by Oscar E. Alvarez;
9. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Code in the name of Oscar E. Alvarez;
10. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jorge Espino-Barros;
11. Ordering Oscar E. Alvarez and Jorge Espino-Barros to pay, jointly and severally, to 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;

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

DATED: 7-14-14

Patrick Dorais by Doug Balata
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
Assist. Chief
Doug BALATA

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