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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: **GOLDEN STATE SMOG, INC.** **DANIEL AGUSTIN DELATORRE, PRESIDENT** **DBA GOLDEN STATE SMOG, INC.** **27860 Del Rio Road #C** **Temecula, CA 92590-2618** **Automotive Repair Dealer Registration No. ARD 214593** **Smog Check Station License No. RC 214593** **Lamp Station License No. LS 214593** **Brake Station License No. BS 214593** **and** **DANIEL AGUSTIN DELATORRE** **27860 Del Rio Road #C** **Temecula, CA 92590-2618** **Brake Adjuster License No. BA 631486** **Lamp Adjuster License No. LA 631486** **Smog Check Inspector License No. EO 31910** **Smog Check Repair Technician License No. EI 31910 (formerly Advanced Emission Specialist Technician License No. EA 31910)** Respondents.	Case No. 77/16-07 **A C C U S A T I O N**

Complainant alleges:

PARTIES/LICENSE INFORMATION

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.

Golden State Smog Inc.; Daniel Agustin Delatorre, President

2. On or about February 2, 2001, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 214593 to Golden State Smog, Inc, Daniel Agustin Delatorre, President, dba Golden State Smog, Inc. 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, 2016, unless renewed.

3. On or about February 7, 2001, the Bureau of Automotive Repair issued Smog Check Station License Number RC 214593 to Golden State Smog, Inc, Daniel Agustin Delatorre, President, dba Golden State Smog, Inc. 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, 2016, unless renewed.

4. On or about February 18, 2004, the Bureau of Automotive Repair issued Lamp Station License Number LS 214593 to Golden State Smog, Inc, Daniel Agustin Delatorre, President, dba Golden State Smog, Inc., Daniel Agustin Delatorre, President, dba Golden State Smog, Inc. The Lamp Station License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2016, unless renewed.

5. On or about February 18, 2004, the Bureau of Automotive Repair issued Brake Station License Number BS 214593 to Golden State Smog Inc. 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, 2016, unless renewed.

Daniel Agustin Delatorre

6. On or about November 9, 2009, the Bureau of Automotive Repair issued Brake Adjuster License Number BA 631486 to Daniel Agustin Delatorre (Delatorre). The Brake

Adjuster License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2017, unless renewed.

7. On or about December 9, 2009, the Bureau of Automotive Repair issued Lamp Adjuster License Number LA 631486 to Daniel Agustin Delatorre (Delatorre). The Lamp Adjuster License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2017, unless renewed.

8. In 1996, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License No. EA 31910 to Delatorre and was due to expire on November 30, 2012, but was cancelled on October 22, 2012. Under California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, under Delatorre's' election, as Smog Check Inspector License No. EO 31910 and Smog Check Repair Technician License No. EI 31910, effective October 22, 2012. The Smog Check Inspector License and Smog Check Repair Technician License (collectively technician licenses) were in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2016, unless renewed.[1]

JURISDICTION

9. This Accusation is brought before the Director of the Department 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.

10. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the 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 9884.20 of the Code states:

> All accusations against automotive repair dealers shall be filed within three years after the performance of the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging fraud or

[1] Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29 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 and/or Smog Check Repair Technician (EI) license.

misrepresentation as a ground for disciplinary action, the accusation may be filed within two years after the discovery, by the bureau, of the alleged facts constituting the fraud or misrepresentation.

12. Section 9884.22 of the Code states:

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

. . . .

13. Section 9884.7 of the Code states:

(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.

....

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct which constitutes fraud.

....

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

....

(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.

14. Section 9884.9, subsection (a), of the Code states:

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written

consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs, and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

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

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

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

(signature or initials)

....

15. 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.

16. Section 9889.3 of the Code 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:

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

....

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

....

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

....

17. Section 9889.5 of the Code states:

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

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

(b) Suspending the license.

(c) Revoking the license."

18. Section 9889.7 of the Code states:

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 by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of or action or disciplinary proceedings against such licensee, or to render a decision suspending or revoking such license.

19. Section 9889.8 of the Code states:

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

20. Section 9889.16 of the Code states:

Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in comformity 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.

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

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

For the purposes of administration and enforcement of this chapter, the department, and the director and officers and employees thereof, shall have all the powers and authority granted under Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with 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 Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with 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.

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

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

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

(b) Suspending the license.

(c) Revoking the license."

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

> 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 by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of, or action or disciplinary proceedings against, the licensee, or to render a decision suspending or revoking the license.

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

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

25. Section 44072.8 of the Health and Safety Code states:

"When 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."

STATUTORY PROVISIONS

26. California Code of Regulations, title 16, section 3305, 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:
>
> (1) Vehicle Manufacturers' current standards, specifications and recommended procedures, as published in the manufacturers' vehicle service and repair manuals.
>
> (2) Current standards, specifications, procedures, directives, manuals, bulletins and instructions issued by vehicle and equipment or device manufacturers.
>
> (3) Standards, specifications and recommended procedures found in current industry-standard reference manuals and periodicals published by nationally recognized
>
> repair information providers.
>
> (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.
>
> (b) The specific activities for which an official station is licensed shall be performed only in an area of the station that has been approved by the bureau.

Other work may be performed in the approved area, as desired. The work area shall be within a building and shall be large enough to accommodate the motor vehicle being serviced. The bureau may make an exception to the preceding requirement by approving a work area adjacent to a building for purposes of inspecting and adjusting equipment and devices on buses, trucks, truck tractors, trailers, and semitrailers. The work area shall be kept clean and orderly.

(c) The services of an officially licensed adjuster appropriate to each type and class of station license held shall be available at each official station, except a fleet owner station, not less than 40 hours weekly or not less than half of the hours the station is open for business weekly, whichever is less. Fleet owner stations are required to provide the services of a licensed adjuster only for certification procedures.

27. California Code of Regulations, title 16, section 3316, subdivision (d)(2), states:

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.

28. California Code of Regulations, title 16, section 3321, subdivision (c)(2), states:

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

...

(c) 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) and shall not purchase or otherwise obtain such certificates from any other source. A licensed station shall not sell or otherwise transfer unused certificates of adjustment. Full payment is required at the time certificates are ordered. Certificates are not exchangeable following delivery. Issuance of a brake adjustment certificate shall be in accordance with the following provisions:

...

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

....

29. California Code of Regulations, title 16, section 3353, subsection (a), states:

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

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

....

30. California Code of Regulations, title 16, section 3371, states:

> No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading. Advertisements and advertising signs shall clearly show the following:
>
> ....

31. California Code of Regulations, title 16, section 3373, states:

> No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

COST RECOVERY

32. Section 125.3 of the Code provides, in pertinent part, that the 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST UNDERCOVER RUN – 2002 HONDA

33. On May 9, 2014, a Bureau undercover operator drove a Bureau-documented 2002 Honda to the Golden State Smog Inc.'s (Golden State) facility for an inspection. The undercover operator drove to the facility and spoke with an unidentified Golden State employee. The following introduced malfunctions were placed on the vehicle: the left front brake rotor and left rear brake rotor were measured and found to be under the minimum thickness; the vehicle's lighting system had an open circuit created in the ground wire of the right high beam and the high

mount break light; and the license plate lamps had a faulty marked bulb installed in the license plate housing which made the lights inoperable. Tamper seals were installed on the vehicle's wheel and tire assemblies in order to detect their removal. For the vehicle to pass a brake and lamp inspection, it needed the left front and rear brake rotors replaced; the vehicle's lighting system repaired; and the bulb in the license plate housing replaced.

34. The undercover operator requested a smog inspection and a brake and lamp inspection. The undercover operator did not sign a work order or receive a written estimate before the work began. After the inspections were completed, the undercover operator paid the Golden State employee $145.00. The Golden State employee then gave the undercover operator a copy of invoice #86631, a Vehicle Inspection Report, a copy of Certificate of Adjustment #BC1833041, for the brake inspection, and Certificate of Adjustment #LC1803786, for the lamp inspection. The undercover operator then left the facility and transferred custody of the vehicle to a Bureau representative.

35. On May 20, 2014, the Bureau-documented 2002 Honda was re-inspected and the following was found: 1) the tamper seals on the vehicle's wheel and tire assemblies were still present and not broken; 2) both left rotors were found to have the inspector's identification marks and were below the manufacturer's minimum thickness specifications; 3) the vehicle's high mount stop light was inoperative; and 4) the vehicle's right high-beam was inoperative. Based on these findings, the inspector concluded that the vehicle should not have passed inspection and been issued brake and lamp certificates.

FIRST CAUSE FOR DISCIPLINE

(Violation of Estimate Requirements)

36. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

37. Golden State's Registration is subject to disciplinary action under Code section 9884.9, subsection (a), and California Code of Regulations, title 16, section 3353, subdivision (a), in that Golden State failed to obtain specific authorization from the undercover operator and failed to give a written estimate of labor and parts before beginning the inspections.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

38. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

39. Golden State's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), Respondent committed acts constituting fraud, as follows: Respondent obtained payment from the operator for performing the applicable inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's 2002 Honda as specified by the Bureau and in accordance with the Vehicle Code. In fact, Respondent failed to perform the necessary inspections, adjustments, and repairs in compliance with Bureau Regulations or the Vehicle Code.

Golden State misrepresented to the undercover operator that Golden State had inspected the brake and lamp systems on the vehicle and that they were in passable condition; Golden State knew that in fact and in truth these systems had not been properly inspected, adjusted, or repaired; Golden State intended the undercover operator to rely on these misrepresentations; Golden State charged for these services and accepted payment.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Auto Repair Provisions)

40. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

41. Golden State's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Golden State failed to comply with section 9889.16 of that Code in the following material respects: Respondent issued Brake Certificate No. BC1833041 and Lamp Certificate No. LC1803786 as to the Bureau's 2002 Honda when the vehicle was not in compliance with Bureau Regulations or the requirements of the Vehicle Code.

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FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

42. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

43. Golden State's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (c), in that Golden State failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), 3321, subdivision (c)(2), and 3356, subdivisions (a)(2)(A) and (a)(2)(B).

FIFTH CAUSE FOR DISCIPLINE

(Violation of Regulations)

44. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

45. Golden State's registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(6), and Golden State's brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (c), in that Golden State violated the following regulations promulgated by the Director:

a. **Code of Regulations, title 16, section 3305, subdivision (a)(1)**: failure to inspect a brake system and lamp system for the purpose of issuing any certificate of compliance or adjustment in accordance with the Vehicle Manufacturers' current standards, specifications and recommended procedures, as published in the manufacturers' vehicle service and repair manuals.

b. **Section 3316, subdivision (d)(2):** Respondent issued Lamp Certificate No. LC1803786 as to the Bureau's 2002 Honda car when all of the lamps, lighting equipment, or related electrical systems on the vehicle were not in compliance with Bureau regulations.

c. **Section 3321, subdivision (c)(2):** Respondent issued Brake Certificate No. BC1833041 as to the Bureau's 2002 Honda when the brake system on the vehicle had not been completely tested or inspected.

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SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

46. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

47. Golden State's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (d), in that Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured.

SEVENTH CAUSE FOR DISCIPLINE

(Certificate Issued to Nonconforming Vehicle)

48. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

49. Golden State's lamp and brake station licenses are subject to disciplinary action under Code sections 9889.3, subdivisions (a) and (c), and 9889.16 and Title 16, California Code of Regulations, sections 3316, subdivision (d)(2), and 3321, subdivision (c)(2), in that upon an inspection or after an adjustment purportedly made in conformity with the instructions of the Bureau, Golden State issued a brake and lamp certificate 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.

EIGHTH CAUSE FOR DISCIPLINE

(Making Misleading or Untrue Statements)

50. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

51. Golden State's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent certified under penalty of perjury on Brake Certificate No. BC1833041 that the applicable inspection was performed on the brake system on the Bureau's 2002 Honda car. In fact, Respondent failed to inspect the brakes on the vehicle.

b. Respondent certified under penalty of perjury on Brake Certificate No. BC1833041 that the left front brake rotor and rear brake rotor on the Bureau's 2002 Honda were in a satisfactory condition. In fact, the left front brake rotor and the left rear brake rotor had been machined below the manufacturer's discard specifications.

c. Respondent certified under penalty of perjury on Brake Certificate No. BC1833041 that the Bureau's 2002 Honda had a stopping distance of 8 feet from a speed of 20 miles per hour as a result of a road-test. In fact, Respondent never road tested the vehicle.

d. Respondent certified under penalty of perjury on Lamp Certificate No. LC1803786 that the applicable adjustment had been performed on the lighting system on the Bureau's 2002 Honda. In fact, the vehicle's lighting system had an open circuit in the ground wire of the right high beam and the high mount break light, and the license plate lamps had a faulty bulb.

NINTH CAUSE FOR DISCIPLINE

(Creating False or Misleading Records)

52. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

53. Golden State's lamp and brake station licenses are subject to disciplinary action under Code section 9889.3, subsection (c), and Title 16, California Code of Regulations, sections 3373, in that upon the completion of Golden State's inspection of an undercover vehicle, a Golden State employee issued a false and misleading invoice, Vehicle Inspection Report, Certificate of Adjustment- Brake Adjustment, and a Certificate of Lamp Adjustment-Lamp Adjustment.

TENTH CAUSE FOR DISCIPLINE

(Certificate Issued to Nonconforming Vehicle)

54. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

55. Delatorre's brake adjuster and lamp adjuster licenses are subject to disciplinary action under Code sections 9889.3, subsections (a) and (c), and 9889.16, and title 16, California Code of Regulations, 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 a brake and lamp certificate 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.

ELEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

56. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

57. Delatorre's brake adjuster and lamp adjuster licenses are subject to disciplinary action under Code section 9889.3, subdivisions (a) and (d), in that he committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing certificates of adjustments for a vehicle without performing bona fide inspections of the brake and lamp systems on them, thereby depriving the People of the State of California of the protection afforded by the Automotive Repair Act.

TWELFTH CAUSE FOR DISCIPLINE

(Certificate Issued to Nonconforming Vehicle)

58. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

59. Delatorre's brake adjuster and lamp adjuster licenses are subject to disciplinary action under Code sections 9889.3, subsections (a) and (c), 9889.16, and Title 16, California Code of Regulations, 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 a brake and lamp certificate 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.

THIRTEENTH CAUSE FOR DISCIPLINE

(Creating False or Misleading Records)

60. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 33 through 35.

61. Delatorre's brake adjuster and lamp adjuster licenses are subject to disciplinary action under Code section 9889.3, subsection (c), and title 16, California Code of Regulations, sections 3373, in that upon the completion of his inspection of an undercover vehicle, Delatorre issued a false and misleading invoice, Vehicle Inspection Report, Certificate of Adjustment- Brake Adjustment, and a Certificate of Lamp Adjustment-Lamp Adjustment.

SECOND UNDERCOVER RUN – 2008 TOYOTA

62. On July 23, 2014, a Bureau undercover operator drove a Bureau-documented 2008 Toyota to the Golden State Smog Inc.'s (Golden State) facility for an inspection. The undercover operator drove to the facility and spoke with an unidentified Golden State employee. The following introduced malfunctions were placed on the vehicle: the right front brake rotor was intentionally machined beyond minimum thickness specification; the right rear brake drum was intentionally machined beyond maximum diameter specification; the vehicle's left front headlight was adjusted up and the right front headlight was adjusted down using the headlight adjustment screws; and a defective light bulb was installed in the left rear taillight assembly. Tamper seals were installed on the vehicle's wheel and tire assemblies and on the headlight adjustment screws in order to detect their removal. For the vehicle to pass a brake and lamp inspection, it needed the right front brake rotor and right rear brake drum replaced; the vehicle's headlamps required adjustment; and the bulb in the left rear taillight needed to be replaced.

63. The undercover operator requested a smog and a brake and lamp inspection. After the inspections were completed, the undercover operator paid the Golden State employee $145.00. The Golden State employee then gave the undercover operator a copy of invoice #87687, a Vehicle Inspection Report, a copy of Certificate of Adjustment #BC1888967, for the brake inspection, and Certificate of Adjustment #LC1858611, for the lamp inspection. The undercover operator then left the facility and transferred custody of the vehicle to a Bureau representative.

64. On August 6, 2014, the Bureau-documented 2008 Toyota was re-inspected and the following was found: 1) the tamper seals on all of the vehicle's wheel and tire assemblies and on

the headlight adjustment screws were still present and not broken; 2) the right front brake rotor was out of specification; 3) the right rear brake drum was out of specification; and 4) the vehicle's left front headlight and the right front headlight were out of adjustment. Based on these findings, the inspector concluded that the vehicle should not have passed inspection and been issued brake and lamp certificates.

FOURTEENTH CAUSE FOR DISCIPLINE

(Fraud)

65. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 62 through 64.

66. Golden State's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), Respondent committed acts constituting fraud, as follows: Respondent obtained payment from the operator for performing the applicable inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's 2008 Toyota as specified by the Bureau and in accordance with the Vehicle Code. In fact, Respondent failed to perform the necessary inspections, adjustments, and repairs in compliance with Bureau Regulations or the Vehicle Code.

Golden State misrepresented to the undercover operator that Golden State had inspected the brake and lamp systems on the vehicle and that they were in passable condition; Golden State knew that in fact and in truth these systems had not been properly inspected, adjusted, or repaired; Golden State intended the undercover operator to rely on these misrepresentations; Golden State charged for these services and accepted payment.

FIFTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Auto Repair Provisions)

67. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 62 through 64.

68. Golden State's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Golden State failed to comply with section 9889.16 of the Code in the following material respects: Respondent issued Brake Certificate No. BC1888967 and

Lamp Certificate No. LC1858611 as to the Bureau's 2008 Toyota when the vehicle was not in compliance with Bureau Regulations or the requirements of the Vehicle Code.

SIXTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

69. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 62 through 64.

70. Golden State's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (c), in that Golden State failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), 3321, subdivision (c)(2), and 3356, subdivisions (a)(2)(A) and (a)(2)(B).

SEVENTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

71. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 62 through 64.

72. Golden State's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (d), in that Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Certificate Issued to Nonconforming Vehicle)

73. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 62 through 64.

74. Golden State's lamp and brake station licenses are subject to disciplinary action under Code sections 9889.3, subsections (a) and (c), and 9889.16, and title 16, California Code of Regulations, sections 3316, subdivision (d)(2), and 3321, subdivision (c)(2), in that upon an inspection or after an adjustment purportedly made in conformity with the instructions of the Bureau, Golden State issued a brake and lamp certificate 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.

NINETEENTH CAUSE FOR DISCIPLINE

(Making Misleading or Untrue Statements)

75. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 62 through 64.

76. Golden State's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent certified under penalty of perjury on Brake Certificate No. BC1888967 that the applicable inspection was performed on the brake system on the Bureau's 2008 Toyota. In fact, Respondent failed to inspect the brakes on the vehicle.

b. Respondent certified under penalty of perjury on Brake Certificate No. BC1888967 that the right front brake rotor and right rear brake drum on the Bureau's 2008 Toyota were in a satisfactory condition. In fact, the right front brake rotor had been machined beyond minimum thickness specification and the right rear brake drum had been machined beyond maximum diameter specification.

c. Respondent certified under penalty of perjury on Brake Certificate No. BC1888967 that the Bureau's 2008 Toyota had a stopping distance of 8 feet from a speed of 20 miles per hour as a result of a road-test. In fact, Respondent never road tested the vehicle.

d. Respondent certified under penalty of perjury on Lamp Certificate No. LC1858611 that the applicable adjustment had been performed on the lighting system on the Bureau's 2008 Toyota. In fact, the vehicle's left front headlight was improperly adjusted up and the right front headlight was improperly adjusted down, in the same positions as before the inspection. A defective light bulb, which was installed in the left rear taillight assembly prior to the inspection, was changed for a new one, but never reflected on the work order.

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TWENTIETH CAUSE FOR DISCIPLINE

(Creating False or Misleading Records)

77. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 62 through 64.

78. Golden State's Lamp and Brake Station licenses are subject to disciplinary action under Code section 9889.3, subsection (c), and title 16, California Code of Regulations, section 3373, in that upon the completion of Golden State's inspection of an undercover vehicle, a Golden State employee issued a false and misleading invoice, Vehicle Inspection Report, Certificate of Adjustment- Brake Adjustment, and a Certificate of Lamp Adjustment-Lamp Adjustment.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Certificate Issued to Nonconforming Vehicle)

79. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 62 through 64.

80. Delatorre's brake adjuster and lamp adjuster licenses are subject to disciplinary action under Code sections 9889.3, subsections (a) and (c), and 9889.16, and title 16, California Code of Regulations, 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 a brake and lamp certificate 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-SECOND CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

81. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 62 through 64.

82. Delatorre's brake adjuster and lamp adjuster licenses are subject to disciplinary action under Code section 9889.3, subdivisions (a) and (d), in that he committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing certificates of adjustments for a vehicle without performing bona fide inspections of the brake and lamp systems on them, thereby

depriving the People of the State of California of the protection afforded by the Automotive Repair Act.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Certificate Issued to Nonconforming Vehicle)

83. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 62 through 64.

84. Delatorre's brake adjuster and lamp adjuster licenses are subject to disciplinary action under Code sections 9889.3, subsections (a) and (c), and 9889.16, and title 16, California Code of Regulations, 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 a brake and lamp certificate 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-FOURTH CAUSE FOR DISCIPLINE

(Creating False or Misleading Records)

85. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 62 through 64.

86. Delatorre's brake adjuster and lamp adjuster licenses are subject to disciplinary action under Code section 9889.3, subsections (a) and (c), and title 16, California Code of Regulations, sections 3373, in that upon the completion of his inspection of an undercover vehicle, Delatorre issued a false and misleading invoice, Vehicle Inspection Report, Certificate of Adjustment-Brake Adjustment, and a Certificate of Lamp Adjustment-Lamp Adjustment.

OTHER MATTERS

87. Pursuant to Bus. & Prof. Code 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 Daniel Agustin Delatorre, President of Golden State Smog Inc., upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

88. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test & Repair Station License Number RC 214593, issued to Respondent Daniel Agustin Delatorre, President of Golden State Smog Inc., is revoked or suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the Director.

89. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Station License Number LS 214593, issued to Respondent Daniel Agustin Delatorre, President of Golden State Smog Inc., is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said licensee may be likewise revoked or suspended by the Director.

90. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Station License Number BS 214593, issued to Respondent Daniel Agustin Delatorre, President of Golden State Smog Inc., is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said licensee may be likewise revoked or suspended by the Director.

91. Pursuant to Health & Saf. Code section 44072.8, if Smog Repair Technician License Number EI 31910 (formerly Advanced Emission Specialist Technician License No. EA 31910), issued to Respondent Daniel Agustin Delatorre, is revoked or suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the Director.

92. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License Number EO 31910, issued to Respondent Daniel Agustin Delatorre, is revoked or suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the Director.

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93. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Adjuster License Number

BA 631486, issued to Respondent Daniel Agustin Delatorre, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said licensee may be likewise revoked or suspended by the Director.

94. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Adjuster License Number LA 631486, issued to Respondent Daniel Agustin Delatorre, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. 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 214593, issued : issued to Golden State Smog, Inc, Daniel Agustin Delatorre, President, dba Golden State Smog, Inc.;

2. Revoking or suspending Smog Check Station License Number RC 214593, : issued to Golden State Smog, Inc, Daniel Agustin Delatorre, President, dba Golden State Smog, Inc.;

3. Revoking or suspending Lamp Station License Number LS 214593, issued to Golden State Smog, Inc, Daniel Agustin Delatorre, President, dba Golden State Smog, Inc.;

4. Revoking or suspending Brake Station License Number BS 214593, issued to Daniel Agustin Delatorre, dba Golden State Smog Inc.;

5. Revoking or suspending Brake Adjuster License Number BA 631486, issued to Daniel Agustin Delatorre;

6. Revoking or suspending Lamp Adjuster License Number LA 631486, issued to Daniel Agustin Delatorre;

7. Revoking or suspending Smog Check Inspector License No. EO 31910 and Smog Check Repair Technician License No. EI 31910, issued to Daniel Agustin Delatorre;

10. 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 Daniel Agustin Delatorre;

8. Ordering Golden State Smog Inc. and Daniel Agustin Delatorre 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;

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

DATED: August 17, 2015

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

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