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

12 In the Matter of the Accusation Against:

Case No. *79/13-98*

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

**ACCUSATION**

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

19 **and**

20 **LUIS EMILIO HERNANDEZ**  
21 **14142 Brandt Drive**  
22 **Moreno Valley, CA 92553**

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

28 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 **LICENSE INFORMATION**

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

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

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

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

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

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

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

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

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

26 6. On date uncertain in 2002 the Director issued an Advanced Emissions Specialist  
27 Technician License Number EA 142918 ("technician license") to Luis Emilio Hernandez  
28 ("Respondent Hernandez"). Respondent Hernandez' technician license is due to expire on April 30,

1 2014. Upon timely renewal thereof, the technician license will be redesignated as EO 142918 and/or  
2 EI 142918.<sup>1</sup>

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

4 7. On date uncertain in 2006 the Director issued a Lamp Adjuster License Number LA  
5 142918 to Respondent Hernandez. Respondent Hernandez' Lamp Adjuster license was in full force  
6 and effect at all times relevant to the charges brought herein and will expire on April 30, 2014, unless  
7 renewed.

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

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

13 **JURISDICTION**

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

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

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

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



1 16. Bus. & Prof. Code section 9888.3 states:

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

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

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

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

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

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

13 18. Bus. & Prof. Code section 9889.16 states:

14 Whenever a licensed adjuster in a licensed station upon an inspection or after  
15 an adjustment, made in conformity with the instructions of the bureau, determines that  
16 the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle  
17 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.

18 19. Bus. & Prof. Code section 9889.22 states:

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

22 20. Bus. & Prof. Code section 9889.9 states that [w]hen any license has been  
23 revoked or suspended following a hearing under the provisions of this article [Article  
24 7 (commencing with section 9889.1) of the Automotive Repair Act], any additional  
25 license issued under Articles 5 and 6 of this chapter in the name of the licensee may  
be likewise revoked or suspended by the director.

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1 21. Bus. & Prof. Code section 22, states:

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

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

8 **COST RECOVERY**

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

13 **UNDERCOVER OPERATION 1 – NOVEMBER 29, 2011**

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

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

9 **SECOND CAUSE FOR DISCIPLINE**

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

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

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

17 **THIRD CAUSE FOR DISCIPLINE**

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

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

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

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

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

9 **SIXTH CAUSE FOR DISCIPLINE**

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

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

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

17 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

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

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

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

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

11 **VIDEO SURVEILLANCE - NOVEMBER 29, 2011**

12 34. On November 29, 2011, Bureau Representatives conducted a video surveillance of  
13 Respondent's facility to record vehicles receiving smog tests and smog, lamp and brake  
14 certifications.

15 35. On or about February 28, 2012, Bureau Representatives visited Respondent Acosta's  
16 facility and received the brake and lamp certificate books related to the undercover runs and  
17 surveillance operation of November 29, 2011.

18 36. In March of 2012, Bureau Representatives reviewed the surveillance video and  
19 compared it to the lamp and brake certificates issued by the Respondents on November 29, 2011.  
20 Bureau representative identified nine (9) different vehicles set forth in Table 1 below that were not  
21 seen in the brake and lamp inspection bay or were in the brake and lamp bay for two (2) minutes  
22 or less during the video surveillance on November 29, 2011. It is not possible to perform a brake  
23 and/or lamp inspection in two minutes.

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Table 1

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

**NINTH CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

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

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

4 **TENTH CAUSE FOR DISCIPLINE**

5 **(Fraud)**

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

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 **(Violation of Regulations)**

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

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

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

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

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

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

11 **PRAYER**

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

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

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

18 3. Revoking or suspending Smog Check Test and Repair Station License Number RC  
19 262101, issued to Aurelio Acosta, doing business as A Smog;

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

22 5. Revoking, suspending, or placing on probation Brake Station License Number BS  
23 262101, issued to Aurelio Acosta, doing business as A Smog;

24 6. Revoking, suspending, or placing on probation Lamp Station License Number LS  
25 262101, issued to Aurelio Acosta, doing business as A Smog;

26 7. Revoking, suspending, or placing on probation Brake Adjuster License Number  
27 BA 142918, issued to Luis Emilio Hernandez;

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- 1           8.       Revoking, suspending, or placing on probation Lamp Adjuster License Number LA
- 2 142918, issued to Luis Emilio Hernandez;
- 3           9.       Ordering Aurelio Acosta, doing business as A Smog and Luis Emilio Hernandez,
- 4 licensed Brake and Lamp Adjuster, to pay the Director of Consumer Affairs the reasonable costs
- 5 of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 6           10.      Taking such other and further action as deemed necessary and proper.

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9 DATED: June 13, 2013

*[Handwritten signature]*  
\_\_\_\_\_  
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

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