

1 XAVIER BECERRA
Attorney General of California
2 CARL SONNE
Supervising Deputy Attorney General
3 THEODORE S. DRCAR
Deputy Attorney General
4 State Bar No. 174951
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9517
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
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. 77/18-8839

13 **THE EXPRESS TUNE UP CORP.,**
14 **dba SMOG AMIGO**
15 **1902 A Highland Ave.**
16 **National City, CA 91950**

ACCUSATION

17 Automotive Repair Dealer Registration No.
18 ARD 270123
19 Smog Check Station License No. RC 270123
20 Lamp Station License No. LS 270123, Class A
21 Brake Station License No. BS 270123, Class C

22 **and**

23 **JAFAR ALSALEH**
24 **551 Hazeldell Avenue**
25 **San Jacinto, CA 92582**

26 Brake Adjuster License No. BA 639476, Class C
27 Lamp Adjuster License No. LA 639476, Class A
28 Smog Check Inspector License No. EO 639476 \\
Smog Check Repair Technician License No. EI
639476

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about August 31, 2012, the Bureau of Automotive Repair (Bureau) issued
6 Automotive Repair Dealer Registration Number ARD 270123 (registration) to The Express Tune
7 Up Corp., dba Smog Amigo (Respondent Smog Amigo), with Sixto Burciaga Jr. as President.
8 The registration was in full force and effect at all times relevant to the charges brought herein and
9 will expire on August 31, 2020, unless renewed.

10 3. On or about February 1, 2018, the Bureau issued Smog Check Station License
11 Number RC 270123 (smog check station license) to Respondent Smog Amigo. The smog check
12 station license was in full force and effect at all times relevant to the charges brought herein and
13 will expire on August 31, 2020, unless renewed.

14 4. On or about February 1, 2018, the Bureau issued Lamp Station License Number LS
15 270123 (lamp station license) to Respondent Smog Amigo. The lamp station license was in full
16 force and effect at all times relevant to the charges brought herein and will expire on August 31,
17 2020, unless renewed.

18 5. On or about February 1, 2018, the Bureau issued Brake Station License Number BS
19 270123 (brake station license) to Respondent Smog Amigo. The brake station license was in full
20 force and effect at all times relevant to the charges brought herein and will expire on August 31,
21 2020, unless renewed.

22 6. On or about May 2, 2018, the Bureau issued Brake Adjuster License Number BA
23 639476 (brake adjuster license) to Jafar Alsaleh (Respondent Alsaleh). The brake adjuster license
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 July 31, 2021, unless renewed.

26 7. On or about February 20, 2018, the Bureau issued Lamp Adjuster License Number
27 LA 639476 (lamp adjuster license) to Respondent Alsaleh. The lamp adjuster license was in full

28 ///

1 force and effect at all times relevant to the charges brought herein and will expire on July 31,
2 2021, unless renewed.

3 8. On or about July 18, 2016, Smog Check Inspector License No. EO 639476 was
4 issued to Respondent Alsaleh. On or about November 7, 2018, Smog Check Repair Technician
5 License No. EI 639476 was issued to Respondent Alsaleh. The Smog Check Inspector License
6 and Smog Check Repair Technician License (technician licenses) were in full force and effect at
7 all times relevant to the charges brought herein and will expire on July 31, 2020, unless renewed.

8 JURISDICTION

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

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

16 11. Section 477 of the Code provides that "Board" includes "bureau," "commission,"
17 "committee," "department," "division," "examining committee," "program," and "agency."
18 "License" includes certificate, registration or other means to engage in a business or profession
19 regulated by the Code.

20 12. Code section 9884.13 provides that the expiration of a valid registration shall not
21 deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an
22 automotive repair dealer or to render a decision invalidating a registration temporarily or
23 permanently.

24 13. Code section 9884.20 states:

25 All accusations against automotive repair dealers shall be filed within three
26 years after the performance of the act or omission alleged as the ground for
27 disciplinary action, except that with respect to an accusation alleging fraud or
28 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.

1 14. Code section 9884.22, subdivision (a), states:

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

8 15. Code section 9889.1 that the Director may suspend or revoke any license issued under
9 Articles 5 and 6 (commencing with section 9887.1) of the Automotive Repair Act.

10 16. Code section 9889.3 states, in pertinent part:

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

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

16 ...

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

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

21

22 17. Code section 9889.5 states:

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

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

27 (b) Suspending the license.

28 (c) Revoking the license.

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

///

///

1 19. Code section 9889.8 states:

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

7 20. Code section 9889.9 states:

8 When any license has been revoked or suspended following a hearing under the
9 provisions of this article, any additional license issued under Articles 5 and 6 of this
10 chapter [lamp and brake licenses] in the name of the licensee may be likewise
11 revoked or suspended by the director.

12 21. Health and Safety Code section 44002 states:

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

16 For the purposes of administration and enforcement of this chapter, the
17 department, and the director and officers and employees thereof, shall have all the
18 powers and authority granted under Division 1 (commencing with Section 1) and
19 Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with
20 Section 9880) of Division 3 of the Business and Professions Code and under Chapter
21 33 (commencing with Section 3300) of Title 16 of the California Code of
22 Regulations. Inspections and repairs performed pursuant to this chapter, in addition to
23 meeting the specific requirements imposed by this chapter, shall also comply with all
24 requirements imposed pursuant to Division 1 (commencing with Section 1) and
25 Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with
26 Section 9880) of Division 3 of the Business and Professions Code and Chapter 33
27 (commencing with Section 3300) of Title 16 of the California Code of Regulations.

28 22. Health and Safety Code section 44072.4 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.

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

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

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

6 When a [smog check] license has been revoked or suspended following a
7 hearing under this article, any additional license issued under this chapter in the name
8 of the licensee may be likewise revoked or suspended by the director.

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

9 Upon renewal of an unexpired Basic Area Technician license or an Advanced
10 Emission Specialist Technician license issued prior to the effective date of this
11 regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check
12 Repair Technician, or both.

12 STATUTORY PROVISIONS

13 27. Code section 9884.7 states, in pertinent part:

14 (a) The director, where the automotive repair dealer cannot show there was a
15 bona fide error, may deny, suspend, revoke, or place on probation the registration of
16 an automotive repair dealer for any of the following acts or omissions related to the
17 conduct of the business of the automotive repair dealer, which are done by the
18 automotive repair dealer or any automotive technician, employee, partner, officer, or
19 member of the automotive repair dealer.

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

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

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

23 (4) Any other conduct that constitutes fraud.

24

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

....

(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.

28. Code section 9884.8 states:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which 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. Code section 9884.9 states:

(a) 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)

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

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

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

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

28 30. Code section 9889.16 states:

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

31. Health and Safety Code section 44060, subdivision (g), states, "[t]he fee charged by
licensed smog check stations to consumers for a certificate, waiver, or extension shall be the same
amount that is charged by the department."

32. Health and Safety Code section 44072.2 states, in pertinent part:

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

///

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

3 33. Health and Safety Code section 44072.10, subdivision (a), states, in pertinent part:

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

11 (1) Fraud.

12 (2) Tampering.

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

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

17

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

22

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

25

26 REGULATORY PROVISIONS

27 34. California Code of Regulations, title 16, (CCR) section 3305, subdivision (a),
28 provides as follows:

(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.

1 (3) Standards, specifications and recommended procedures found in current
2 industry-standard reference manuals and periodicals published by nationally
3 recognized repair information providers.

4 (4) The bureau's Handbook for Brake Adjusters and Stations, May 2015,
5 which is hereby incorporated by reference.

6 (5) The bureau's Handbook for Lamp Adjusters and Stations, May 2015,
7 which is hereby incorporated by reference.

8 35. CCR section 3316 states, in pertinent part:

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

11

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

19

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

24 36. CCR section 3321 states, in pertinent part:

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

27

28 (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.

. . . .

1 37. CCR section 3353, states, in pertinent part:

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

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

7 38. CCR section 3356, states, in pertinent part:

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

11

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

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

16

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

18 39. CCR section 3395.4 states:

19 In reaching a decision on a disciplinary action under the Administrative Procedure
20 Act (Government Code Section 11400 et seq.), including formal hearings conducted
21 by the Office of Administrative Hearing, the Bureau of Automotive Repair shall
22 consider the disciplinary guidelines entitled "Guidelines for Disciplinary Penalties
23 and Terms of Probation" [May, 1997] which are hereby incorporated by reference.
24 The "Guidelines for Disciplinary Penalties and Terms of Probation" are advisory.
25 Deviation from these guidelines and orders, including the standard terms of
26 probation, is appropriate where the Bureau of Automotive Repair in its sole discretion
27 determines that the facts of the particular case warrant such deviation - for example:
28 the presence of mitigating factors; the age of the case; evidentiary problems.

COST RECOVERY

40. Section 125.3 of the Code provides that the Director 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE FOR DISCIPLINE

(Willful Departure from or Disregard of Accepted Trade Standards)

(Respondent Smog Amigo)

48. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 41-43.

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

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Bus. & Prof. Code)

(Respondent Smog Amigo)

50. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 41-43.

51. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9889.16 of that Code in the following material respects: Respondent issued brake and lamp certificates to the Bureau's Toyota when the vehicle was not in compliance with Bureau Regulations or the requirements of the Vehicle Code.

FIFTH CAUSE FOR DISCIPLINE

(Certificate Issued to Non-Conforming Vehicle)

(Respondent Smog Amigo)

52. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 41-43.

53. Respondent Smog Amigo's lamp station license and brake station license are subject to disciplinary action under Code section 9889.16 and CCR sections 3321, subdivision (c) (2) and 3316, subdivision (d)(2), and CCR section 3305, subdivision (a), in that upon an inspection or

1 after an adjustment purportedly made in conformity with the instructions of the Bureau,
2 Respondent Smog Amigo issued brake and lamp certificates of adjustment purporting that the
3 vehicle conformed with the requirements of the Vehicle Code and Bureau regulations, when in
4 fact and in truth the vehicle did not conform with these requirements or meet current standards.

5 **SIXTH CAUSE FOR DISCIPLINE**

6 **(Invoice Violations)**

7 **(Respondent Smog Amigo)**

8 54. Complainant re-alleges and incorporates by reference the allegations set forth above
9 in paragraphs 41-43.

10 55. Respondent Smog Amigo's registration is subject to disciplinary action under Code
11 sections 9884.7, subdivision (a)(3), and 9884.8, in that Respondent Smog Amigo failed to comply
12 with invoice requirements for specification of parts and labor. The violations include the
13 following:

- 14 a. **CCR section 3353**: Failure to document authorization from the customer.
15 b. **CCR section 3353, subdivision (a)**: Failure to give the customer an estimate
16 containing the estimated price for parts and labor for a specific job prior to obtaining
17 authorization.

18 **SEVENTH CAUSE FOR DISCIPLINE**

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

20 **(Respondent Smog Amigo)**

21 56. Complainant re-alleges and incorporates by reference the allegations set forth above
22 in paragraphs 41-43.

23 57. Respondent Smog Amigo's Smog Check Station License is subject to disciplinary
24 action under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10,
25 subdivisions (a) and (c), and its lamp station license and brake station license are subject to
26 disciplinary action under Code section 9889.3, subdivisions (a) and (d), in that Respondent Smog
27 Amigo committed dishonest, fraudulent, or deceitful acts whereby another is injured, by issuing
28 certificates of adjustment for a vehicle without performing bona fide inspections of them, thereby

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

3 **EIGHTH CAUSE FOR DISCIPLINE**

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

5 **(Respondent Alsaleh)**

6 58. Complainant re-alleges and incorporates by reference the allegations set forth above
7 in paragraphs 41-43.

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

15 **NINTH CAUSE FOR DISCIPLINE**

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

17 **(Respondent Alsaleh)**

18 60. Complainant re-alleges and incorporates by reference the allegations set forth above
19 in paragraphs 41-43.

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

28 ///

SECOND UNDERCOVER RUN – 2000 HONDA

1
2 62. On or about October 16, 2018, a Bureau undercover operator drove a Bureau-
3 documented 2000 Honda to Respondent Smog Amigo's facility for inspection. Prior to arrival at
4 Respondent's repair shop, the Honda's left rear brake drum and right front brake rotor had been
5 machined beyond discard specifications and needed replacement. In addition, the Honda's rear
6 license plate light was disabled, the headlights were misadjusted and the vehicle's license plates
7 had been removed. In addition, the vehicle's rear license plate lights were removed and the
8 headlights were intentionally misadjusted. The undercover operator drove to Respondent Smog
9 Amigo's facility and spoke with an employee. The undercover operator requested a smog
10 inspection, and a brake and lamp inspection. The employee provided an estimate which the
11 undercover operator signed and was given a copy. The employee advised the undercover
12 operator that the license plate bulb was out and needed to be replaced and that the cost would be
13 \$10.00. The operator authorized the license plate bulb replacement. After the inspections were
14 completed, the undercover operator paid \$131.99. The employee gave the undercover operator a
15 Vehicle Inspection Report for the smog inspection, Certificate of Adjustment #BA 2928127 for
16 the brake inspection, and Certificate of Adjustment #LA 2890377 for the lamp inspection, and an
17 invoice. Respondent Alsaleh performed the brake and lamp inspections. The undercover
18 operator then left the facility and transferred custody of the vehicle to a Bureau representative.

19 63. A Bureau representative later re-inspected the brake system of the Honda and found
20 that all four wheel tamper indicators were intact. The right front brake rotor and left rear brake
21 drum were still below specifications and needed replacement. In light of the condition of the
22 vehicle, a certificate of compliance for the brakes should not have been issued.

23 64. The Bureau representative re-inspected the lighting system of the Honda, and found
24 that the right vertical headlight adjuster screw was intact, but the tamper indicators on the left
25 vertical headlight adjuster screws and license plate bulb were broken. Both headlights were still
26 misadjusted. The license plate light was working. In light of the condition of the vehicle, a
27 certificate of compliance for the lamps should not have been issued.

28 ///

1 **TWELFTH CAUSE FOR DISCIPLINE**

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

3 **(Respondent Smog Amigo)**

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

6 70. Respondent Smog Amigo's registration is subject to disciplinary action under Code
7 section 9884.7, subdivision (a) (7), and in that Respondent Smog Amigo willfully departed from
8 or disregarded accepted trade standards for good and workmanlike repair in a material respect
9 which was prejudicial to another without consent of the owner or his or her duly authorized
10 representative.

11 **THIRTEENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with the Bus. & Prof. Code)**

13 **(Respondent Smog Amigo)**

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

16 72. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
17 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9889.16
18 of that Code in the following material respects: Respondent issued brake and lamp certificates to
19 the Bureau's Honda when the vehicle was not in compliance with Bureau Regulations or the
20 requirements of the Vehicle Code.

21 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

23 **(Respondent Smog Amigo)**

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

26 74. Respondent Smog Amigo's lamp station license and brake station license are subject
27 to disciplinary action under Code section 9889.16 and CCR sections 3321, subdivision (c) (2) and
28 3316, subdivision (d)(2), and CCR section 3305, subdivision (a), in that upon an inspection or

1 after an adjustment purportedly made in conformity with the instructions of the Bureau,
2 Respondent Smog Amigo issued brake and lamp certificates of adjustment purporting that the
3 vehicle conformed with the requirements of the Vehicle Code and Bureau regulations, when in
4 fact and in truth the vehicle did not conform with these requirements or meet current standards.

5 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

7 **(Respondent Smog Amigo)**

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

10 76. Respondent Smog Amigo's Smog Check Station License is subject to disciplinary
11 action under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10,
12 subdivisions (a) and (c), and its lamp station license and brake station license are subject to
13 disciplinary action under Code section 9889.3, subdivisions (a) and (d), in that Respondent Smog
14 Amigo committed dishonest, fraudulent, or deceitful acts whereby another is injured, by issuing
15 certificates of adjustment for a vehicle without performing bona fide inspections of them, thereby
16 depriving the People of the State of California of the protection afforded by the Automotive
17 Repair Act.

18 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

20 **(Respondent Alsaleh)**

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

23 78. Respondent Alsaleh's lamp adjuster license and brake adjuster license are subject to
24 disciplinary action under Code section 9889.16 and CCR sections 3316, subdivision (d)(2), and
25 3321, subdivision (c)(2), in that upon an inspection or after an adjustment purportedly made in
26 conformity with the instructions of the Bureau, he issued brake and lamp certificates of
27 adjustment to a vehicle that purportedly conformed with the requirements of the Vehicle Code

28 ///

1 and Bureau regulations, when in fact and in truth the vehicle did not conform with these
2 requirements.

3 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

5 **(Respondent Alsaleh)**

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

8 80. Respondent Alsaleh's smog technician licenses are subject to disciplinary action
9 under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivisions (a)
10 and (c), and his lamp adjuster and brake adjuster licenses are subject to disciplinary action under
11 Code section 9889.3, subdivisions (a) and (d), in that he committed dishonest, fraudulent, or
12 deceitful acts whereby another is injured by issuing certificates of adjustments for a vehicle
13 without performing bona fide inspections of the brake and lamp systems on them, thereby
14 depriving the People of the State of California of the protection afforded by the Automotive
15 Repair Act.

16 **OTHER MATTERS**

17 81. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke or
18 place on probation the registrations for all places of business operated in this state by Respondent
19 The Express Tune Up Corp., dba Smog Amigo, upon a finding that it has engaged in a course of
20 repeated and willful violations of the laws and regulations pertaining to an automotive repair
21 dealer.

22 82. Under Code section 9889.9, if a license is revoked or suspended following a hearing
23 under Article 7 of the Automotive Repair Act, any additional license issued under Articles 5 and
24 6 in the name of Respondent The Express Tune Up Corp., including Lamp Station License
25 Number LS 270123 and Brake Station License Number BS 270123, may also be revoked or
26 suspended.

27 83. Under Health & Safety Code section 44072.8, if Smog Check Station License
28 Number RC 270123 is revoked or suspended, the Director may likewise revoke or suspend any

1 additional license, issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code,
2 to Respondent The Express Tune Up Corp.

3 84. Under Code section 9889.9, if a license is revoked or suspended following a hearing
4 under Article 7 of the Automotive Repair Act, any additional license issued under Articles 5 and
5 6 in the name of Respondent Alsaleh, including Lamp Adjuster License Number LA 639476 and
6 Brake Adjuster License Number BA 639476, may also be revoked or suspended.

7 85. Under Health and Safety Code section 44072.8, if Respondent Alsaleh's technician
8 license(s) is/are revoked or suspended, any additional license issued under Chapter 5 of Part 5 of
9 Division 26 of the Health and Safety Code in the name of Respondent Alsaleh may also be
10 revoked or suspended by the Director.

11 **PRAYER**

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

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15 270123, issued to The Express Tune Up Corp., dba Smog Amigo;

16 2. Revoking or suspending Smog Check Station License Number RC 270123, issued to
17 The Express Tune Up Corp., dba Smog Amigo;

18 3. Revoking or suspending Lamp Station License Number LS 270123, issued to The
19 Express Tune Up Corp., dba Smog Amigo;

20 4. Revoking or suspending Brake Station License Number BS 270123, issued to The
21 Express Tune Up Corp., dba Smog Amigo;

22 5. Revoking or suspending Brake Adjuster License Number BA 639476, issued to Jafar
23 Alsaleh;

24 6. Revoking or suspending Lamp Adjuster License Number LA 639476, issued to Jafar
25 Alsaleh;

26 7. Revoking or suspending Smog Check Inspector License No. EO 639476 and Smog
27 Check Repair Technician License No. EI 639476, issued to Jafar Alsaleh;

28 ///

1 8. Revoking or suspending the registrations for all places of business operated in this
2 state by The Express Tune Up Corp.;

3 9. Revoking or suspending any additional license issued under Articles 5 and 6 of
4 Chapter 20.3 of the Code in the name of The Express Tune Up Corp. and Jafar Alsaleh;

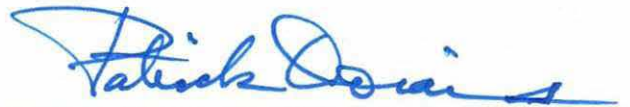
5 10. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
6 Division 26 of the Health and Safety Code in the name of The Express Tune Up Corp. and Jafar
7 Alsaleh;

8 11. Ordering The Express Tune Up Corp., dba Smog Amigo and Jafar Alsaleh to pay,
9 jointly and severally, to the Bureau of Automotive Repair, the reasonable costs of the
10 investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3;

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

15 DATED:

October 22, 2019



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

20 SD2019700813
21 72001297_3.docx