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7

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:

13 **FELIX AUTOMOTIVE;**
14 **RICARDO FELIX - OWNER**
2230 N. Cabrera Avenue
San Bernardino, CA 92411-1231

Case No. 79/16-46

ACCUSATION

15 Automotive Repair Dealer Registration No. ARD 185011
16 Lamp Station License No. LS 185011, class A
17 Brake Station License No. BS 185011, class C
Smog Check Station License No. RC 185011

18
19 and

21 **OSCAR ROMEO HERNANDEZ**
22 1592 W. Union St.
San Bernardino, CA 92411

23 Lamp Adjuster License Number LA 151663, class A
24 Brake Adjuster License No. BA 151663, class A
Smog Check Inspector License No. EO 151663
25 Smog Check Repair Technician License No. EI 151663
(formerly Advanced Emission Specialist Technician License
26 No. EA 151663)

27 Respondents.
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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 **LICENSE HISTORY**

6 **Automotive Repair Dealer Registration**

7 2. On or about August 8, 1995, the Bureau of Automotive Repair issued Automotive
8 Repair Dealer Registration Number ARD 185011 (registration) to Felix Automotive, Ricardo
9 Felix (Respondent Felix Automotive). The registration was in full force and effect at all times
10 relevant to the charges brought herein and will expire on August 31, 2016, unless renewed.

11 **Lamp Station License**

12 3. On or about June 13, 2006, the Bureau of Automotive Repair issued Lamp Station
13 License Number LS 185011, class A (lamp station license) to Respondent Felix Automotive. The
14 lamp station license was in full force and effect at all times relevant to the charges brought herein
15 and will expire on August 31, 2016, unless renewed.

16 **Brake Station License**

17 4. On or about June 13, 2006, the Bureau of Automotive Repair issued Brake Station
18 License Number BS 185011, class C (brake station license) to Respondent Felix Automotive.
19 The brake station license was in full force and effect at all times relevant to the charges brought
20 herein and will expire on August 31, 2016, unless renewed.

21 **Smog Check Station License**

22 5. On or about September 27, 2005, the Bureau of Automotive Repair issued Smog
23 Check Station License Number RC 185011 (station check station license) to Respondent Felix
24 Automotive. The smog check station license was in full force and effect at all times relevant to
25 the charges brought herein and will expire on August 31, 2016, unless renewed.

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1 11. Business and Professions Code section 9884.13 provides, in pertinent part, that the
2 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a
3 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
4 registration temporarily or permanently.

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

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

12 14. Health and Safety Code section 44002 provides, in pertinent part, that the Director
13 has all the powers and authority granted under the Automotive Repair Act for enforcing the
14 Motor Vehicle Inspection Program.

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

19 **STATUTORY PROVISIONS**

20 16. Business and Professions Code section 9884.7 states, in pertinent part:

21 (a) The director, where the automotive repair dealer cannot show there was a bona fide
22 error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an
23 automotive repair dealer for any of the following acts or omissions related to the conduct of the
24 business of the automotive repair dealer, which are done by the automotive repair dealer or any
25 automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

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5 (4) Any other conduct which constitutes fraud.

6

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

9

10 (9) Having repair work done by someone other than the dealer or his or her employees
11 without the knowledge or consent of the customer unless the dealer can demonstrate that the
12 customer could not reasonably have been notified.

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14 (c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate
15 temporarily or permanently, the registration for all places of business operated in this state by an
16 automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a
17 course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

18 17. Business and Professions Code section 9884.8 states:

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

1 18. Business and Professions Code section 9884.9, subdivision (a), states, in pertinent
2 part:

3 The automotive repair dealer shall give to the customer a written estimated price for labor
4 and parts necessary for a specific job. No work shall be done and no charges shall accrue before
5 authorization to proceed is obtained from the customer. No charge shall be made for work done or
6 parts supplied in excess of the estimated price without the oral or written consent of the customer
7 that shall be obtained at some time after it is determined that the estimated price is insufficient
8 and before the work not estimated is done or the parts not estimated are supplied. Written consent
9 or authorization for an increase in the original estimated price may be provided by electronic mail
10 or facsimile transmission from the customer. The bureau may specify in regulation the procedures
11 to be followed by an automotive repair dealer when an authorization or consent for an increase in
12 the original estimated price is provided by electronic mail or facsimile transmission. If that
13 consent is oral, the dealer shall make a notation on the work order of the date, time, name of
14 person authorizing the additional repairs and telephone number called, if any, together with a
15 specification of the additional parts and labor and the total additional cost . . .

16 19. Business and Professions Code section 9889.3 states, in pertinent part:

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

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

22

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

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

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

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1 20. Business and Professions Code section 9889.16 states:

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

9 21. Business and Professions Code section 9889.22 states:

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

15 22. Business and Professions Code section 9889.9 states that “[w]hen any license has
16 been revoked or suspended following a hearing under the provisions of this article [Article 7
17 (commencing with section 9889.1) of the Automotive Repair Act], any additional license issued
18 under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or
19 suspended by the director.”

20 23. Business and Professions Code section 22, subdivision (a), states:

21 "Board" as used in any provision of this Code, refers to the board in which the
22 administration of the provision is vested, and unless otherwise expressly provided, shall include
23 "bureau," "commission," "committee," "department," "division," "examining committee,"
24 "program," and "agency."

25 24. Business and Professions Code section 477, subdivision (b), states, in pertinent part,
26 that a “license” includes “registration” and “certificate.”

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1 bureau regulations, the certificate shall certify that the entire system meets all of those
2 requirements.”

3 29. California Code of regulations, title 16, section 3321 states, in pertinent part:

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

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

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

18 **COST RECOVERY**

19 30. Business and Professions Code section 125.3 provides, in pertinent part, that a Board
20 may request the administrative law judge to direct a licensee found to have committed a
21 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
22 investigation and enforcement of the case.

23 **FIRST UNDERCOVER OPERATION**

24 31. Prior to this undercover operation, a Bureau representative documented the condition
25 of a Chevrolet owned by the Bureau (hereinafter “Chevrolet”) for a California “Certificate of
26 Adjustment-Brake Adjustment” and a “Certificate of Adjustment-Lamp Adjustment” (brake and
27 lamp certificates). As part of the documentation process, the right front brake rotor that was
28 installed was below the manufacturer's minimum discard thickness specifications and was in need

1 of replacement. Additionally, the left headlamp was deliberately misadjusted, and one rear tail
2 lamp bulb and one license plate lamp bulb were deliberately made to be non-functional.
3 These faults would not allow the vehicle to pass a brake or lamp inspection. Photographs of the
4 vehicle were taken. This documentation was performed at a Bureau Forensic Documentation Lab
5 (documentation lab), where the vehicle remained secured.

6 32. On July 11, 2014, at a pre-arranged location in San Bernardino, California, a Bureau
7 representative received custody of the Chevrolet from another Bureau representative at the
8 documentation lab. This representative then released custody of the Chevrolet to an undercover
9 operator (undercover operator) who was working on behalf of the Bureau at such time. The
10 Bureau representative instructed the undercover operator to drive the Chevrolet to Respondent
11 Felix Automotive, located at 2230 N. Cabrera Ave., in San Bernardino, CA, and request smog,
12 brake, and lamp inspections be performed on the vehicle.

13 33. Thereafter, the undercover operator arrived at Respondent Felix Automotive and
14 parked in a space in front of the building where he was greeted by an employee who was later
15 confirmed to be Respondent Oscar Hernandez. The undercover operator informed Respondent
16 Oscar Hernandez that he needed a Smog Check, and Brake and Lamp inspection on the
17 Chevrolet. The undercover operator then asked what these inspections would cost, to which
18 Respondent Oscar Hernandez stated \$141.00. Respondent Oscar Hernandez then led the
19 undercover operator into the office/customer waiting area and entered the undercover operator's
20 information into Respondent Felix Automotive's computer system and produced a written
21 estimate for \$141.25, which was given to the undercover operator for his signature. The
22 undercover operator signed the estimate as requested and handed it back to Respondent Oscar
23 Hernandez. However, Respondent Oscar Hernandez did not provide the undercover operator
24 with a copy of the estimate.

25 34. While waiting for the services to be performed, Respondent Oscar Hernandez came
26 into the waiting area and informed the undercover operator that one of his license plate bulbs and
27 a tail light bulb were not working and needed to be replaced. The undercover operator gave his
28 permission for these bulbs to be replaced. Respondent Oscar Hernandez subsequently informed

1 the undercover operator that the new total was \$174.00 and to wait a few minutes for the
2 paperwork. Respondent Oscar Hernandez made no comment to the undercover operator regarding
3 a headlamp adjustment or any concerns with the vehicle's brakes.

4 35. While waiting for the paperwork, the undercover operator observed Respondent
5 Oscar Hernandez fill out and sign the Brake and Lamp Certificates. Respondent Oscar
6 Hernandez showed the undercover operator an invoice in the amount of \$174.28. The undercover
7 operator gave Respondent Oscar Hernandez \$180.00 in cash and was given \$6.00 in change. The
8 invoice indicated that \$174.28 was owed, but Respondent Oscar Hernandez informed the
9 undercover operator that he was giving him the extra \$.28 cents back. Respondent Oscar
10 Hernandez then provided the undercover operator with a Smog Check Vehicle Inspection Report
11 (VIR), one (1) Certificate of Adjustment-Brake Adjustment number [REDACTED], one (1)
12 Certificate of Adjustment-Lamp Adjustment number [REDACTED], and a copy of "ESTIMATE :
13 [REDACTED]". The undercover operator then left Felix Automotive, returned to the pre-arranged
14 location, and returned custody of the Chevrolet to the Bureau representative. The Chevrolet was
15 then transported back to the Bureau's forensic lab and secured.

16 36. The Bureau's lab representative re-inspected the Chevrolet and found that the
17 vehicle's left headlamp was still misadjusted and had not been corrected; however, the previously
18 non-functional rear tail lamp bulb and license plate lamp bulb now illuminated properly.
19 Additionally, the lab representative found that all four wheel tamper indicators remained intact,
20 demonstrating that the wheels had not been removed. The lab representative determined that
21 removal of the wheels is necessary to inspect and/or replace the front rotors, rear drums, and other
22 brake components. The lab representative inspected the right front brake rotor and found it was
23 still below the manufacturer's minimum discard thickness.

24 37. In summary, the Chevrolet was not in a condition to pass a properly performed brake
25 and lamp inspection and should have never received a Certificate of Adjustment-Lamp
26 Adjustment or a Certificate of Adjustment-Brake Adjustment.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 38. Respondent Felix Automotive's automotive repair dealer registration is subject to
4 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1),
5 in that it made or authorized statements which he knew or in the exercise of reasonable care
6 should have known to be untrue or misleading, as follows:

7 a. Respondent Felix Automotive certified under penalty of perjury on Lamp Certificate
8 number [REDACTED] that the applicable inspection was performed on the lamp system on the
9 Chevrolet. In fact, Respondent Felix Automotive failed to properly inspect the lamps on the
10 vehicle, as particularly set forth in paragraphs 31 through 37 above.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 39. Respondent Felix Automotive's automotive repair dealer registration is subject to
14 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1),
15 in that it made or authorized statements which he knew or in the exercise of reasonable care
16 should have known to be untrue or misleading, as follows:

17 a. Respondent Felix Automotive certified under penalty of perjury on Brake Certificate
18 Number [REDACTED] that the applicable inspection was performed on the brake system on the
19 Chevrolet. In fact, Respondent Felix Automotive failed to properly inspect the brakes on the
20 vehicle, as particularly set forth in paragraphs 31 through 37 above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 40. Respondent's automotive repair dealer registration is subject to disciplinary action
24 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that Respondent
25 Felix Automotive committed an act which constitutes fraud, as follows: Respondent Felix
26 Automotive charged and obtained payment from the operator for performing the applicable
27 inspection, adjustment, or repair of the lamp system on the Chevrolet as specified by the Bureau

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1 and in accordance with the Vehicle Code, as particularly set forth in paragraphs 31 through 37
2 above.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 41. Respondent's automotive repair dealer registration is subject to disciplinary action
6 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that Respondent
7 Felix Automotive committed an act which constitutes fraud, as follows: Respondent Felix
8 Automotive charged and obtained payment from the operator for performing the applicable
9 inspection, adjustment, or repair of the brake system on the Chevrolet as specified by the Bureau
10 and in accordance with the Vehicle Code, as particularly set forth in paragraphs 31 through 37
11 above.

12 **FIFTH CAUSE FOR DISCIPLINE**

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

14 42. Respondent Felix Automotive's automotive repair dealer registration is subject to
15 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6),
16 in that Respondent Felix Automotive failed to comply with provisions of that Code in the
17 following material respects, as particularly set forth :

18 a. Section 9884.8: Respondent failed to provide the operator with an invoice listing all
19 service work performed on the Chevrolet.

20 b. Section 9889.16: Respondent issued Lamp Certificate number [REDACTED] as to the
21 Chevrolet when the vehicle was not in compliance with Bureau Regulations or the requirements
22 of the Vehicle Code.

23 c. Section 9889.22: Respondent willfully made false statements or entries on Lamp
24 Certificate number [REDACTED], as particularly set forth in paragraphs 31 through 37 above.

25 **SIXTH CAUSE FOR DISCIPLINE**

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

27 43. Respondent Felix Automotive's automotive repair dealer registration is subject to
28 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6),

1 in that Respondent Felix Automotive failed to comply with provisions of that Code in the
2 following material respects, and as particularly set forth in paragraphs 31 through 37 above:

3 a. Section 9884.8: Respondent Felix Automotive failed to provide the operator with an
4 invoice listing all service work performed on the Chevrolet.

5 b. Section 9889.16: Respondent Felix Automotive issued Brake Certificate Number [REDACTED]
6 [REDACTED] for the Chevrolet when the vehicle was not in compliance with Bureau Regulations or
7 the requirements of the Vehicle Code.

8 c. Section 9889.22: Respondent willfully made false statements or entries on Brake
9 Certificate Number [REDACTED], as particularly set forth in paragraphs 31 through 37 above.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 **(Violations of Regulations)**

12 44. Respondent Felix Automotive's automotive repair dealer registration is subject to
13 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6),
14 in that Respondent Felix Automotive failed to comply with provisions of California Code of
15 Regulations, title 16, in the following material respects, and as particularly set forth in paragraphs
16 31 through 37 above:

17 a. Section 3305, subdivision (a): Respondent Felix Automotive failed to perform the
18 inspection of the lamp system on the Chevrolet in accordance with the specifications, instructions,
19 and directives issued by the Bureau and the vehicle manufacturer.

20 b. Section 3316, subdivision (d)(2): Respondent Felix Automotive issued Lamp
21 Certificate Number [REDACTED] as to the Chevrolet when the lamp system on the vehicle had
22 not been tested or inspected, as particularly set forth in paragraphs 31 through 37 above.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(Violations of Regulations)**

25 45. Respondent Felix Automotive's automotive repair dealer registration is subject to
26 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6),
27 in that Respondent Felix Automotive failed to comply with provisions of California Code of
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1 Regulations, title 16, in the following material respects, as particularly set forth in paragraphs 31
2 through 37 above:

3 a. Section 3305, subdivision (a): Respondent Felix Automotive failed to perform the
4 inspection of the brake system on the Chevrolet in accordance with the specifications,
5 instructions, and directives issued by the Bureau and the vehicle manufacturer.

6 b. Section 3321, subdivision (c)(2): Respondent Felix Automotive issued Brake
7 Certificate Number [REDACTED] as to the Chevrolet when the brake system on the vehicle had
8 not been tested or inspected, as particularly set forth in paragraphs 31 through 37 above.

9 **NINTH CAUSE FOR DISCIPLINE**

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

11 46. Respondent Felix Automotive's official lamp station license is subject to disciplinary
12 action pursuant to Business and Professions Code sections 9889.3, subdivision (a), and 9889.3,
13 subdivision (h), in that Respondent Felix Automotive violated the provisions of Business and
14 Professions Code sections 9884.8, 9889.16, and 9889.22 relating to Respondent's Felix
15 Automotive's licensed activities, as particularly set forth in paragraphs 31 through 37 above.

16 **TENTH CAUSE FOR DISCIPLINE**

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

18 47. Respondent Felix Automotive's official brake station license is subject to disciplinary
19 action pursuant to Business and Professions Code sections 9889.3, subdivision (a), and 9889.3,
20 subdivision (h), in that Respondent Felix Automotive violated the provisions of Business and
21 Professions Code sections 9884.8, 9889.16, and 9889.22 relating to Respondent's Felix
22 Automotive's licensed activities, as particularly set forth in paragraphs 31 through 37 above.

23 **ELEVENTH CAUSE FOR DISCIPLINE**

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

25 48. Respondent Felix Automotive's official lamp station license is subject to disciplinary
26 action pursuant to Business and Professions Code section 9889.3, subdivision (c), in that
27 Respondent failed to comply with the provisions of California Code of Regulations, title 16,
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1 sections 3305, subdivision (a), and 3316, subdivision (D)(2), as particularly set forth in
2 paragraphs 31 through 37 above.

3 **TWELFTH CAUSE FOR DISCIPLINE**

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

5 49. Respondent Felix Automotive's official brake station license is subject to disciplinary
6 action pursuant to Business and Professions Code section 9889.3, subdivision (c), in that
7 Respondent failed to comply with the provisions of California Code of Regulations, title 16,
8 sections 3305, subdivision (a), and 3321, subdivision (C)(2), as particularly set forth in
9 paragraphs 31 through 37 above.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

12 50. Respondent Felix Automotive's official lamp station license is subject to disciplinary
13 action pursuant to Business and Professions Code section 9889.3, subdivision (d), in that
14 Respondent Felix Automotive committed an act involving dishonesty, fraud, or deceit whereby
15 another was injured, as particularly set forth in paragraphs 31 through 37 above.

16 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

18 51. Respondent Felix Automotive's official brake station license is subject to disciplinary
19 action pursuant to Business and Professions Code section 9889.3, subdivision (d), in that
20 Respondent Felix Automotive committed an act involving dishonesty, fraud, or deceit whereby
21 another was injured, as particularly set forth in paragraphs 31 through 37 above.

22 **FIFTEENTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with the Code)**

24 52. Respondent Oscar Hernandez's lamp adjuster license is subject to disciplinary action
25 pursuant to Business and Professions Code sections 9889.3, subdivision (a), and 9889.3,
26 subdivision (h), in that he violated the provisions of Business and Professions Code sections
27 9889.16 and 9889.22 relating to his licensed activities, as particularly set forth in paragraphs 31
28 through 37 above.

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SIXTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

53. Respondent Oscar Hernandez's brake adjuster license is subject to disciplinary action pursuant to Business and Professions Code sections 9889.3, subdivision (a), and 9889.3, subdivision (h), in that he violated the provisions of Business and Professions Code sections 9889.16 and 9889.22 relating to his licensed activities, as particularly set forth in paragraphs 31 through 37 above.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

54. Respondent Oscar Hernandez's lamp adjuster license is subject to disciplinary action pursuant to Business and Professions Code section 9889.3, subdivision (c), in that he failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), and 3321, subdivision (c)(2), as particularly set forth in paragraphs 31 through 37 above.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

55. Respondent Oscar Hernandez's brake adjuster license is subject to disciplinary action pursuant to Business and Professions Code section 9889.3, subdivision (c), in that he failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), and 3321, subdivision (c)(2), as particularly set forth in paragraphs 31 through 37 above.

SECOND UNDERCOVER OPERATION

56. A Bureau lab representative (lab representative) documented the condition of the Bureau's Honda (Honda) for a California "Certificate of Adjustment-Brake Adjustment", "Certificate of Adjustment-Lamp Adjustment" (brake and lamp certificates), and a Smog Check inspection. As part of the documentation process, the right front brake rotor was deliberately machined to below the manufacturer's minimum discard thickness specifications and was in need of replacement. The right rear brake drum was purposely machined beyond the manufacturer's maximum diameter specifications. Additionally, the left and right headlamps were intentionally

1 misadjusted, and one rear backup lamp bulb was deliberately made to be non-functional. These
2 faults would prevent the vehicle from passing a brake and lamp inspection.

3 57. Thereafter, a Bureau representative received custody of the Honda and released
4 custody of the vehicle to a Bureau undercover operator (undercover operator) and instructed him
5 to drive the Honda to Respondent Felix Automotive located at 2230 N Cabrera Ave., in San
6 Bernardino and request smog, brake, and lamp inspections be performed on the vehicle. The
7 undercover operator drove to Respondent Felix Automotive, where he spoke with Respondent
8 Oscar Hernandez. Respondent Oscar Hernandez asked the undercover operator if he was there
9 for a Smog Check. The undercover operator said that he was, and further informed Respondent
10 Oscar Hernandez that he also needed a brake and lamp inspection. Respondent Oscar Hernandez
11 asked the undercover operator for the vehicle's key, entered the vehicle, and then proceeded to
12 drive the Honda into the test bay. Respondent Oscar Hernandez exited the vehicle, approached
13 the undercover operator and asked for the vehicle DMV paperwork, which the undercover
14 operator provided. Respondent Oscar Hernandez then asked the undercover operator to follow
15 him into the office area of the facility, where the undercover operator was greeted by another
16 male employee of Respondent Felix Automotive who was wearing a shirt that had a nametag
17 indicating his name was Richard (hereinafter referred to as "Richard"). The undercover operator
18 provided Richard with an assumed name and a fictitious address and telephone number. Richard
19 subsequently print out two (2) copies of a document titled "ESTIMATE : [REDACTED]" and asked the
20 undercover operator to sign both copies, which he did. Richard then informed the undercover
21 operator that the cost for the services requested would be \$141.00 and asked how he would be
22 paying. The undercover operator then paid Richard \$141.00 in cash.

23 58. Richard returned the DMV registration document to the undercover operator, along
24 with a copy of "ESTIMATE: [REDACTED]". The undercover operator then exited the office area and
25 waited in an area near Respondent Felix Automotive's testing bay. From the undercover operator's
26 position, he was able to see the vehicle's entire left side. The undercover operator observed
27 Respondent Oscar Hernandez drive the Honda approximately one car length further into the test
28 bay and onto a vehicle hoist, at which point the undercover operator still had an unobstructed

1 view of the Honda's left side. The undercover operator then observed as Respondent Oscar
2 Hernandez raise the vehicle in to the air, and he could hear an air tool sound from the area where
3 Respondent Oscar Hernandez was standing, near the right side of the Honda. The undercover
4 operator was able to determine that at least one of the wheels on the right side of the Honda had
5 been removed. However, the wheels on the left side were not removed. Shortly thereafter, the
6 wheel or wheels that had been removed on the right side of the Honda were re-installed, and the
7 vehicle was then lowered. Respondent Oscar Hernandez then turned on the vehicle lights and
8 walked over to the rear of the Honda near the license plate area and opened the trunk lid.
9 Respondent Oscar Hernandez then closed the trunk lid and turned off the lights. At this point,
10 Respondent Oscar Hernandez walked over to where the undercover operator was standing and
11 informed him that he had completed the inspection and that he (Respondent Oscar Hernandez)
12 had replaced a burned-out bulb. Respondent Oscar Hernandez never road tested the vehicle.

13 59. The undercover operator then followed Respondent Oscar Hernandez back into the
14 office area, where he observed Respondent Oscar Hernandez write information into two (2)
15 separate booklets and sign both Certificates of Adjustment from the two (2) separate booklets in
16 his (the undercover operator's) presence. Respondent Oscar Hernandez then printed two (2)
17 copies of "INVOICE : [REDACTED]" and asked the undercover operator to sign both documents.
18 Respondent Oscar Hernandez then gave the undercover operator a copy of the invoice, Certificate
19 of Adjustment-Brake Adjustment number [REDACTED], Certificate of Adjustment-Lamp
20 Adjustment number [REDACTED], and the Smog Check Vehicle Inspection Report (VIR).
21 Respondent Oscar Hernandez then backed the Honda out of the test bay area and parked it in
22 Respondent Felix Automotive's driveway, at which point the undercover operator departed the
23 premises and drove the Honda back to a designated location, where he released custody of the
24 Honda to the same Bureau representative from whom he had received the vehicle. The
25 undercover operator also handed the Bureau representative all of the documents he had just
26 received from Respondent Felix Automotive. The Honda was then transported back to the
27 Bureau's forensic lab and secured.

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1 in that it made or authorized statements which he knew or in the exercise of reasonable care
2 should have known to be untrue or misleading, as follows:

3 a. Respondent Felix Automotive certified under penalty of perjury on Brake Certificate
4 Number [REDACTED] that the applicable inspection was performed on the brake system on the
5 Honda. In fact, Respondent Felix Automotive failed to properly inspect the brakes on the vehicle,
6 as particularly set forth in paragraphs 56 through 61 above.

7 **TWENTY FIRST CAUSE FOR DISCIPLINE**

8 **(Fraud)**

9 64. Respondent Felix Automotive's automotive repair dealer registration is subject to
10 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4),
11 in that Respondent Felix Automotive committed an act which constitutes fraud, as follows:
12 Respondent Felix Automotive charged and obtained payment from the operator for performing
13 the applicable inspection, adjustment, or repair of the lamp system on the Honda as specified by
14 the Bureau and in accordance with the Vehicle Code, as particularly set forth in paragraphs 56
15 through 61 above.

16 **TWENTY SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 65. Respondent Felix Automotive's automotive repair dealer registration is subject to
19 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4),
20 in that Respondent Felix Automotive committed an act which constitutes fraud, as follows:
21 Respondent Felix Automotive charged and obtained payment from the operator for performing
22 the applicable inspection, adjustment, or repair of the brake system on the Honda as specified by
23 the Bureau and in accordance with the Vehicle Code, as particularly set forth in paragraphs 56
24 through 61 above.

25 **TWENTY THIRD CAUSE FOR DISCIPLINE**

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

27 66. Respondent Felix Automotive's automotive repair dealer registration is subject to
28 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6),

1 in that Respondent Felix Automotive failed to comply with provisions of that Code in the
2 following material respects, and as particularly set forth 56 through 61 above:

3 a. Section 9884.8: Respondent failed to provide the operator with an invoice listing all
4 service work performed on the Honda.

5 b. Section 9889.16: Respondent issued Lamp Certificate number [REDACTED] as to the
6 Honda when the vehicle was not in compliance with Bureau Regulations or the requirements of
7 the Vehicle Code.

8 c. Section 9889.22: Respondent willfully made false statements or entries on Lamp
9 Certificate number [REDACTED], as particularly set forth in paragraphs 56 through 61 above.

10
11 **TWENTY FOURTH CAUSE FOR DISCIPLINE**

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

13 67. Respondent Felix Automotive's automotive repair dealer registration is subject to
14 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6),
15 in that Respondent Felix Automotive failed to comply with provisions of that Code in the
16 following material respects, and as particularly set forth 56 through 61 above:

17 a. Section 9884.8: Respondent Felix Automotive failed to provide the operator with an
18 invoice listing all service work performed on the Honda.

19 b. Section 9889.16: Respondent Felix Automotive issued Brake Certificate Number [REDACTED]
20 [REDACTED] as to the Honda when the vehicle was not in compliance with Bureau Regulations or the
21 requirements of the Vehicle Code.

22 c. Section 9889.22: Respondent willfully made false statements or entries on Brake
23 Certificate Number [REDACTED], as particularly set forth in paragraphs 56 through 61 above.

24 **TWENTY FIFTH CAUSE FOR DISCIPLINE**

25 **(Violations of Regulations)**

26 68. Respondent Felix Automotive's automotive repair dealer registration is subject to
27 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6),
28 in that Respondent Felix Automotive failed to comply with provisions of California Code of

1 Regulations, title 16, in the following material respects, and as particularly set forth in paragraphs
2 56 through 61 above:

3 a. Section 3305, subdivision (a): Respondent Felix Automotive failed to perform the
4 inspection of the lamp system on the Honda in accordance with the specifications, instructions,
5 and directives issued by the Bureau and the vehicle manufacturer.

6 b. Section 3316, subdivision (d)(2): Respondent Felix Automotive issued Lamp
7 Certificate Number [REDACTED] as to the Honda when the lamp system on the vehicle had not
8 been tested or inspected, as particularly set forth in paragraphs 56 through 61 above.

9 **TWENTY SIXTH CAUSE FOR DISCIPLINE**

10 **(Violations of Regulations)**

11 69. Respondent Felix Automotive's automotive repair dealer registration is subject to
12 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6),
13 in that Respondent Felix Automotive failed to comply with provisions of California Code of
14 Regulations, title 16, in the following material respects, and as particularly set forth in paragraphs
15 56 through 61 above:

16 a. Section 3305, subdivision (a): Respondent Felix Automotive failed to perform the
17 inspection of the brake system on the Honda in accordance with the specifications, instructions,
18 and directives issued by the Bureau and the vehicle manufacturer.

19 b. Section 3321, subdivision (c)(2): Respondent Felix Automotive issued Brake
20 Certificate Number [REDACTED] as to the Honda when the brake system on the vehicle had not
21 been tested or inspected, as particularly set forth in paragraphs 56 through 61 above.

22 **TWENTY SEVENTH CAUSE FOR DISCIPLINE**

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

24 70. Respondent Felix Automotive's official lamp station license is subject to disciplinary
25 action pursuant to Business and Professions Code sections 9889.3, subdivision (a), and 9889.3,
26 subdivision (h), in that Respondent Felix Automotive violated the provisions of Business and
27 Professions Code sections 9884.8, 9889.16, and 9889.22 relating to Respondent's Felix
28 Automotive's licensed activities, as particularly set forth in paragraphs 56 through 61 above.

1 **TWENTY EIGHTH CAUSE FOR DISCIPLINE**

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

3 71. Respondent Felix Automotive's official brake station license is subject to disciplinary
4 action pursuant to Business and Professions Code sections 9889.3, subdivision (a), and 9889.3,
5 subdivision (h), in that Respondent Felix Automotive violated the provisions of Business and
6 Professions Code sections 9884.8, 9889.16, and 9889.22 relating to Respondent's Felix
7 Automotive's licensed activities, as particularly set forth in paragraphs 56 through 61 above.

8 **TWENTY NINTH CAUSE FOR DISCIPLINE**

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

10 72. Respondent Felix Automotive's official lamp station license is subject to disciplinary
11 action pursuant to Business and Professions Code section 9889.3, subdivision (c), in that
12 Respondent failed to comply with the provisions of California Code of Regulations, title 16,
13 sections 3305, subdivision (a), and 3316, subdivision (D)(2), as particularly set forth in
14 paragraphs 56 through 61 above.

15 **THIRTIETH CAUSE FOR DISCIPLINE**

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

17 73. Respondent Felix Automotive's official brake station license is subject to disciplinary
18 action pursuant to Business and Professions Code section 9889.3, subdivision (c), in that
19 Respondent failed to comply with the provisions of California Code of Regulations, title 16,
20 sections 3305, subdivision (a), and 3321, subdivision (C)(2), as particularly set forth in
21 paragraphs 56 through 61 above.

22 **THIRTY FIRST CAUSE FOR DISCIPLINE**

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

24 74. Respondent Felix Automotive's official lamp station license is subject to disciplinary
25 action pursuant to Business and Professions Code section 9889.3, subdivision (d), in that
26 Respondent Felix Automotive committed an act involving dishonesty, fraud, or deceit whereby
27 another was injured, as particularly set forth in paragraphs 56 through 61 above.

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THIRTY SECOND CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

75. Respondent Felix Automotive’s official brake station license is subject to disciplinary action pursuant to Business and Professions Code section 9889.3, subdivision (d), in that Respondent Felix Automotive committed an act involving dishonesty, fraud, or deceit whereby another was injured, as particularly set forth in paragraphs 56 through 61 above.

THIRTY THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

76. Respondent Oscar Hernandez’s lamp adjuster license is subject to disciplinary action pursuant to Business and Professions Code sections 9889.3, subdivision (a), and 9889.3, subdivision (h), in that he violated the provisions of Business and Professions Code sections 9889.16 and 9889.22 relating to his licensed activities, as particularly set forth in paragraphs 56 through 61 above.

THIRTY FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

77. Respondent Oscar Hernandez’s brake adjuster license is subject to disciplinary action pursuant to Business and Professions Code sections 9889.3, subdivision (a), and 9889.3, subdivision (h), in that he violated the provisions of Business and Professions Code sections 9889.16 and 9889.22 relating to his licensed activities, as particularly set forth in paragraphs 56 through 61 above.

THIRTY FIFTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

78. Respondent Oscar Hernandez’s lamp adjuster license is subject to disciplinary action pursuant to Business and Professions Code section 9889.3, subdivision (c), in that he failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), and 3321, subdivision (c)(2), as particularly set forth in paragraphs 56 through 61 above.

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1 **THIRTY SIXTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 79. Respondent Oscar Hernandez's brake adjuster license is subject to disciplinary action
4 pursuant to Business and Professions Code section 9889.3, subdivision (c), in that he failed to
5 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
6 (a), and 3321, subdivision (c)(2), as particularly set forth in paragraphs 56 through 61 above.

7 **OTHER MATTERS**

8 80. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the
9 Director may refuse to validate, or may invalidate temporarily or permanently, the registrations
10 for all places of business operated in this state by Respondent Ricardo Felix, owner of
11 Respondent Felix Automotive, upon a finding that said Respondent has, or is, engaged in a course
12 of repeated and willful violations of the laws and regulations pertaining to an automotive repair
13 dealer.

14 81. Pursuant to Business and Professions Code section 9889.9, if Official Lamp Station
15 License Number LS 185011, issued to Ricardo Felix, owner of Respondent Felix Automotive, is
16 revoked or suspended, any additional license issued under this chapter in the name of said
17 licensee may be likewise revoked or suspended by the Director.

18 82. Pursuant to Business and Professions Code section 9889.9, if Official Brake Station
19 License Number BS 185011, issued to Ricardo Felix, owner of Respondent Felix Automotive, is
20 revoked or suspended, any additional license issued under this chapter in the name of said
21 licensee may be likewise revoked or suspended by the Director.

22 83. Pursuant to Business and Professions Code section 9889.9, if Lamp Adjuster License
23 Number LA 151663, issued to Respondent Oscar Hernandez, is revoked or suspended, any
24 additional license issued under this chapter in the name of said licensee may be likewise revoked
25 or suspended by the Director.

26 84. Pursuant to Business and Professions Code section 9889.9, if Brake Adjuster License
27 Number BA 151663, issued to Respondent Oscar Hernandez, is revoked or suspended, any
28

1 additional license issued under this chapter in the name of said licensee may be likewise revoked
2 or suspended by the Director.

3 **PRAYER**

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

- 6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
7 185011, issued to Felix Automotive, Ricardo Felix – Owner;
- 8 2. Revoking or suspending Lamp Station License Number LS 185011, issued to Felix
9 Automotive, Ricardo Felix - Owner;
- 10 3. Revoking or suspending Brake Station License Number BS 185011, issued to Felix
11 Automotive, Ricardo Felix - Owner;
- 12 4. Revoking or suspending Smog Check Station License No. RC 185011, issued to Felix
13 Automotive, Ricardo Felix - Owner;
- 14 5. Revoking or suspending Lamp Adjuster License Number LA 151663, issued to Oscar
15 Romeo Hernandez;
- 16 6. Revoking or suspending Brake Adjuster License Number BA 151663, issued to Oscar
17 Romeo Hernandez;
- 18 7. Revoking or suspending Smog Check Inspector License Number EO 151663 and
19 Smog Check Repair Technician License Number EI 151663 issued to Oscar Romeo Hernandez;
- 20 8. Ordering Ricardo Felix and Oscar Romeo Hernandez to pay the Bureau of
21 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
22 pursuant to Business and Professions Code section 125.3;
- 23 9. Taking such other and further action as deemed necessary and proper.

24
25 DATED: December 18, 2015 Patrick Dorais

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

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