

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

TONY K. KIM, Owner, dba EXPRESS LUBE

10717 Carmenita Road

Whittier, CA 90605

Automotive Repair Dealer Registration No. ARD 228180

Smog Check Station License No. RC 228180

and

TONY K. KIM

10717 Carmenita Road

Whittier, CA 90605

Smog Check Inspector License No. EO 152289

Smog Check Repair Technician EI 152289

Respondents.

Case No. 79/19-12148

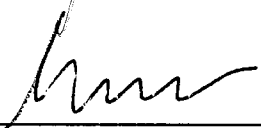
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DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective on June 9, 2020.

DATED: 4/28/2020



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

1 XAVIER BECERRA
Attorney General of California
2 SHAWN P. COOK
Supervising Deputy Attorney General
3 MARIO CUAHUTLE
Deputy Attorney General
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7 *Attorneys for Complainant*

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

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13 In the Matter of the Accusation Against:

Case No. 79/19-12148

14
15 **TONY K. KIM, Owner dba EXPRESS**
16 **LUBE**
17 **10717 Carmenita Road**
Whittier, CA 90605

OAH No. 2019110613

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18 **Automotive Repair Dealer Registration No.**
ARD 228180
19 **Smog Check Station License No. RC 228180**

20 **and**

21 **TONY K. KIM**
22 **10717 Carmenita Road**
23 **Whittier, CA 90605**

24 **Smog Check Inspector License No. EO**
152289

25 **Smog Check Repair Technician License No.**
26 **EI 152289**

27 Respondents.
28

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 **PARTIES**

4 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair
5 (Bureau). He brought this action solely in his official capacity and is represented in this matter by
6 Xavier Becerra, Attorney General of the State of California, by Mario Cuahutle, Deputy Attorney
7 General.

8 2. Respondents Tony K. Kim dba Express Lube and Tony K. Kim are represented in this
9 proceeding by attorney William D. Ferreira Esq., whose address is: 555 California Street, Suite
10 4925, San Francisco, CA 94104.

11 3. In or about 2003, the Bureau of Automotive Repair issued Automotive Repair Dealer
12 Registration Number ARD 228180 to Tony K. Kim dba Express Lube, (Respondent Express
13 Lube). The Automotive Repair Dealer Registration was in full force and effect at all times
14 relevant to the charges brought herein and will expire on June 30, 2020, unless renewed.

15 4. On or about January 25, 2005, the Bureau of Automotive Repair issued Smog Check
16 Station License Number RC 228180 to Respondent Express Lube. The Smog Check Station
17 License was in full force and effect at all times relevant to the charges brought herein and will
18 expire on June 30, 2020, unless renewed.

19 5. On or about January 2, 2014, the Bureau of Automotive Repair issued STAR Station
20 Certification to Respondent Express Lube.

21 6. In or about 2005, the Bureau of Automotive Repair issued Advanced Emission
22 Specialist Technician License Number EA 152289 to Tony K. Kim (Respondent Kim). The
23 Advanced Emission Specialist Technician License was cancelled on December 12, 2013.

24 7. On or about December 12, 2013, the Bureau of Automotive Repair issued Smog
25 Check Inspector License Number EO 152289 to Respondent Kim. The Smog Check Inspector
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on January 31, 2020, unless renewed.

28 ///

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 228180
3 and Smog Check Station License No. RC 228180 issued to Respondent Express Lube, Tony K.
4 Kim are revoked.

5 IT IS HERE FURTHER ORDERED that Smog Check Inspector License No. EO 152289
6 and Smog Check Repair Technician License No. EI 152289 issued to Respondent Tony K. Kim
7 are revoked.

8 However, the revocations are stayed and Respondents are placed on probation for three (3)
9 years on the following terms and conditions.

10 1. **Obey All Laws.** During the period of probation, Respondents shall comply with all
11 federal and state statutes, regulations and rules governing all BAR registrations and licenses held
12 by Respondents.

13 2. **Quarterly Reporting.** During the period of probation, Respondents shall report
14 either by personal appearance or in writing as determined by BAR on a schedule set by BAR, but
15 no more frequently than once each calendar quarter, on the methods used and success achieved in
16 maintaining compliance with the terms and conditions of probation.

17 3. **Report Financial Interests.** Respondents shall, within 30 days of the effective date
18 of the decision and within 30 days from the date of any request by BAR during the period of
19 probation, report any financial interest which any Respondents or any partners, officers, or
20 owners of any Respondent's facility may have in any other business required to be registered
21 pursuant to Section 9884.6 of the Business and Professions Code.

22 4. **Access to Examine Vehicles and Records.** Respondents shall provide BAR
23 representatives unrestricted access to examine all vehicles (including parts) undergoing service,
24 inspection, or repairs, up to and including the point of completion. Respondents shall also provide
25 BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

26 5. **Tolling of Probation.** If, during probation, Respondents leave the jurisdiction of
27 California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction
28 of California, Respondents shall notify BAR in writing within 10 days of the dates of departure

1 and return, and of the dates of cessation and resumption of business in California. All provisions
2 of probation other than cost reimbursement requirements, restitution requirements, training
3 requirements, and that Respondents obey all laws, shall be held in abeyance during any period of
4 time of 30 days or more in which Respondents are not residing or engaging in business within the
5 jurisdiction of California. All provisions of probation shall recommence on the effective date of
6 resumption of business in California. Any period of time of 30 days or more in which
7 Respondents are not residing or engaging in business within the jurisdiction of California shall
8 not apply to the reduction of this probationary period or to any period of actual suspension not
9 previously completed. Tolling is not available if business or work relevant to the probationary
10 license or registration is conducted or performed during the tolling period.

11 6. **Violation of Probation.** If Respondents violate or fail to comply with the terms and
12 conditions of probation in any respect, the Director, after giving notice and opportunity to be
13 heard may set aside the stay order and carry out the disciplinary order provided in the decision.
14 Once Respondents are served notice of BAR's intent to set aside the stay, the Director shall
15 maintain jurisdiction, and the period of probation shall be extended until final resolution of the
16 matter.

17 7. **Maintain Valid License.** Respondents shall, at all times while on probation,
18 maintain a current and active registration and/or license(s) with BAR, including any period during
19 which suspension or probation is tolled. If Respondent's registration or licenses are expired at the
20 time the decision becomes effective, the registration or licenses must be renewed by Respondents
21 within 30 days of that date. If Respondent's registration or licenses expire during a term of
22 probation, by operation of law or otherwise, then upon renewal Respondent's registration or
23 licenses shall be subject to any and all terms and conditions of probation not previously satisfied.
24 Failure to maintain a current and active registration and/or license during the period of probation
25 shall also constitute a violation of probation.

26 8. **Cost Recovery.** Respondents shall pay the Bureau of Automotive Repair \$3,600 for
27 the reasonable costs of the investigation and enforcement of case No. 79/19-12148. Respondent
28 shall make such payment as follows: 24 equal monthly payments in the amount of \$150.00

1 beginning on the effective date of the decision. Any agreement for a scheduled payment plan
2 shall require full payment to be completed no later than twelve (12) months before probation
3 terminates. Respondents shall make payment by check or money order payable to the Bureau of
4 Automotive Repair and shall indicate on the check or money order that it is for cost recovery
5 payment for case No. 79/19-12148. Any order for payment of cost recovery shall remain in effect
6 whether or not probation is tolled. Probation shall not terminate until full cost recovery payment
7 has been made. BAR reserves the right to pursue any other lawful measures in collecting on the
8 costs ordered and past due, in addition to taking action based upon the violation of probation.

9 **9. Completion of Probation.** Upon successful completion of probation, Respondent's
10 affected registration and/or licenses will be fully restored or issued without restriction, if
11 Respondents meets all current requirements for registration or licensure and has paid all
12 outstanding fees, monetary penalties, or cost recovery owed to BAR.

13 **10. License Surrender.** Following the effective date of a decision that orders a stay of
14 invalidation or revocation, if Respondents cease business operations or is otherwise unable to
15 satisfy the terms and conditions of probation, Respondents may request that the stay be vacated.
16 Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right
17 to evaluate the Respondent's request and to exercise discretion whether to grant the request or
18 take any other action deemed appropriate or reasonable under the circumstances. Upon formal
19 granting of the request, the Director will vacate the stay order and carry out the disciplinary order
20 provided in the decision. Respondents may not petition the Director for reinstatement of the
21 surrendered registration and/or license, or apply for a new registration or license under the
22 jurisdiction of BAR at any time before the date of the originally scheduled completion of
23 probation. If Respondents apply to BAR for a registration or license at any time after that date,
24 Respondents must meet all current requirements for registration or licensure and pay all
25 outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

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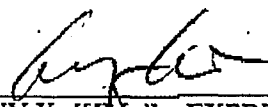
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ACCEPTANCE

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2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, William D. Ferreira Esq. I understand the stipulation and the effect
4 it will have on my Automotive Repair Dealer Registration and Smog Check Station License. I
5 enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
6 intelligently, and agree to be bound by the Decision and Order of the Director of Consumer
7 Affairs.

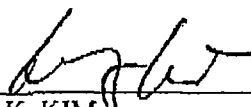
8
9 DATED: 4-22-20



TONY K. KIM dba EXPRESS LUBE
Respondent

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12 discussed it with my attorney, William D. Ferreira Esq. I understand the stipulation and the effect
13 it will have on my Smog Check Inspector License and Smog Check Repair Technician License. I
14 enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
15 intelligently, and agree to be bound by the Decision and Order of the Director of Consumer
16 Affairs.

17
18 DATED: 4-22-20



TONY K. KIM
Respondent

20 I have read and fully discussed with Respondents Tony K. Kim dba Express Lube and Tony
21 K. Kim the terms and conditions and other matters contained in the above Stipulated Settlement
22 and Disciplinary Order. I approve its form and content.

23 DATED: 4-22-20



WILLIAM D. FERREIRA ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

DATED: April 22, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
SHAWN P. COOK
Supervising Deputy Attorney General

/s/Mario Cuahutle
MARIO CUAHUTLE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/19-12148

1 XAVIER BECERRA
Attorney General of California
2 SHAWN P. COOK
Supervising Deputy Attorney General
3 MARIO CUAHUTLE
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15 **10717 Carmenita Road**
Whittier, CA 90605

ACCUSATION

16 **Automotive Repair Dealer Registration No.**
17 **ARD 228180**
Smog Check Station License No. RC 228180

18 **and**

19 **TONY K. KIM**
20 **10717 Carmenita Road**
Whittier, CA 90605

21 **Smog Check Inspector License No. EO**
22 **152289**
23 **Smog Check Repair Technician License No.**
EI 152289

24 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 2. In or about 2003, the Bureau of Automotive Repair issued Automotive Repair Dealer
6 Registration Number ARD 228180 to Tony K. Kim dba Express Lube, (Respondent Express
7 Lube). The Automotive Repair Dealer Registration was in full force and effect at all times
8 relevant to the charges brought herein and will expire on June 30, 2020, unless renewed.

9 3. On or about January 25, 2005, the Bureau of Automotive Repair issued Smog Check
10 Station License Number RC 228180 to Respondent Express Lube. The Smog Check Station
11 License was in full force and effect at all times relevant to the charges brought herein and will
12 expire on June 30, 2020, unless renewed.

13 4. On or about January 2, 2014, the Bureau of Automotive Repair issued STAR Station
14 Certification to Respondent Express Lube.

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16 Specialist Technician License Number EA 152289 to Tony K. Kim (Respondent Kim). The
17 Advanced Emission Specialist Technician License was cancelled on January 31, 2014.

18 6. On or about December 12, 2013, the Bureau of Automotive Repair issued Smog
19 Check Inspector License Number EO 152289 to Respondent Kim. The Smog Check Inspector
20 License was in full force and effect at all times relevant to the charges brought herein and will
21 expire on January 31, 2020, unless renewed.

22 7. On or about December 12, 2013, the Bureau of Automotive Repair issued Smog
23 Check Repair Technician License Number EI 152289 to Respondent Kim. The Smog Check
24 Repair Technician License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on January 31, 2020, unless renewed.

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1 **JURISDICTION**

2 8. This Accusation is brought before the Director of the Department of Consumer
3 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

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

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

10 11. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
11 part, that the Director has all the powers and authority granted under the Automotive Repair Act
12 for enforcing the Motor Vehicle Inspection Program.

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

17 **STATUTORY PROVISIONS**

18 13. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

28

(4) Any other conduct that constitutes fraud.

. . . .

(6) Failure in any material respect to comply with the provisions of this chapter

1 or regulations adopted pursuant to it.

2

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

8 14. Bus. & Prof. Code section 9889.3 states, in pertinent part:

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

12

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

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

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

22 16. Section 44012 of the Health and Safety Code states:

23 “The test at the smog check stations shall be performed in accordance with procedures
24 prescribed by the department and may require loaded mode dynamometer testing in enhanced
25 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other
26 appropriate test procedures as determined by the department in consultation with the state board.
27 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
28 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
no earlier than January 1, 2013. However, the department, in consultation with the state board,
may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
idle testing for vehicles with onboard diagnostic systems that the department and the state board

1 determine exhibit operational problems. The department shall ensure, as appropriate to the test
2 method, the following:

3 “(a) Emission control systems required by state and federal law are reducing excess
4 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of
5 Section 44013.

6 “(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
7 the vehicle's emission control system.

8 “(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
9 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded
10 mode are tested in accordance with procedures prescribed by the department. In determining how
11 loaded mode and evaporative emissions testing shall be conducted, the department shall ensure
12 that the emission reduction targets for the enhanced program are met.

13 “(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and
14 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic
15 compound emissions, in accordance with procedures prescribed by the department.

16 “(e) For diesel-powered vehicles, a visual inspection is made of emission control devices
17 and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the
18 department, that may include, but are not limited to, onboard diagnostic testing. The test may
19 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon
20 the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

21 “(f) A visual or functional check is made of emission control devices specified by the
22 department, including the catalytic converter in those instances in which the department
23 determines it to be necessary to meet the findings of Section 44001. The visual or functional
24 check shall be performed in accordance with procedures prescribed by the department.

25 “(g) A determination as to whether the motor vehicle complies with the emission standards
26 for that vehicle's class and model-year as prescribed by the department.

27 “(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and
28 a tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would

1 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or
2 would have passed a tailpipe test.

3 “(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle
4 that would be unsafe to test, or that cannot physically be inspected, as specified by the department
5 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the
6 vehicle from compliance with all applicable requirements of this chapter.”

7 17. Health & Saf. Code section 44072.2 states, in pertinent part:

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

10 (a) Violates any section of this chapter [the Motor Vehicle Inspection Program
11 (Health and Saf. Code § 44000, et seq.)] and the regulations adopted pursuant to it,
which related to the licensed activities.

12

13 (c) Violates any of the regulations adopted by the director pursuant to this
14 chapter.

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

16 18. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
17 expiration or suspension of a license by operation of law, or by order or decision of the Director
18 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
19 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary
20 proceedings against the licensee, or to render a decision suspending or revoking the license.
21

22 19. Health & Saf. Code section 44072.8 states that when a license has been revoked or
23 suspended following a hearing under this article, any additional license issued under this chapter
24 in the name of the licensee may be likewise revoked or suspended by the director.

25 **REGULATORY PROVISIONS**

26 20. California Code of Regulations, title 16, section 3340.24, states:

27 (a) Any disciplinary or reinstatement proceeding under this article involving
28 licensed stations, licensed technicians, or fleet owners licensed pursuant to section
44020 of the Health and Safety Code shall be conducted in accordance with chapter 5

(commencing with section 11500) of division 3, Title 2 of the Government Code.

(b) The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee knowingly and willfully resists, delays, or obstructs any employee of the bureau or any employee of the quality assurance contractor of the bureau in carrying out the lawful performance of his or her duties.

(c) The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

(d) The bureau may suspend or revoke the license of or pursue other legal action against a licensee that fails to complete retraining when required by the department, pursuant to section 44045.6 of the Health and Safety Code.

21. California Code of Regulations, title 16, section 3340.30, states:

A smog check technician shall comply with the following requirements at all times while licensed.

(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

(b) A licensed technician shall maintain on file with the bureau a correct mailing address pursuant to section 3303.3 of Article 1 of this Chapter.

(c) A licensed technician shall notify the bureau in writing within two weeks of any change of employment.

(d) A licensed technician whose license has expired shall immediately cease to inspect, test, or repair failed vehicles.

22. California Code of Regulations, title 16, section 3340.42, states:

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle are not included in this table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured

1 emissions are less than or equal to the applicable emission standards specified in the applicable table.

2 (2) A two-speed idle mode test shall be the test method used to inspect 1976 -
3 1999 model-year vehicles, except diesel-powered, registered in all program areas of
4 the state, except in those areas of the state where the enhanced program has been
5 implemented. The two-speed idle mode test shall measure hydrocarbon, carbon
6 monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as

7 contained in the bureau's specifications referenced in subsection (a) of Section
8 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection
9 shall be measured and compared to the emission standards set forth in this section and
10 as shown in TABLE III. A vehicle passes the two-speed idle mode test if all of its
11 measured emissions are less than or equal to the applicable emissions standards
12 specified in Table III.

13 (3) An OBD-focused test, shall be the test method used to inspect gasoline-
14 powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998
15 model-year and newer. The OBD test failure criteria are specified in section
16 3340.42.2.

17 (b) In addition to subsection (a), all vehicles subject to the smog check program
18 shall receive the following:

19 (1) A visual inspection of emission control components and systems to verify
20 the vehicle's emission control systems are properly installed.

21 (2) A functional inspection of emission control systems as specified in the
22 Smog Check Manual, referenced by section 3340.45, which may include an OBD
23 test, to verify their proper operation.

24 (c) The bureau may require any combination of the inspection methods in
25 sections (a) and (b) under any of the following circumstances:

26 (1) Vehicles that the department randomly selects pursuant to Health and Safety
27 Code section 44014.7 as a means of identifying potential operational problems with
28 vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically
incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter
standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon
monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions
standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for gross
polluters during an initial inspection will be considered gross polluters and the
provisions pertaining to gross polluting vehicles will apply, including, but not limited
to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a certificate of

1 compliance until the vehicle's emissions are reduced to or below the applicable
2 emissions standards for the vehicle included in the tables described in subsection (a),
as applicable. However, the provisions described in section 44017 of the Health and
Safety Code may apply.

3 (4) This subsection applies in all program areas statewide to vehicles requiring
4 inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

5 COST RECOVERY

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

9 FACTUAL ALLEGATIONS

10 JULY 31, 2019 BUREAU OPERATION: 1995 TOYOTA

11 24. On July 31, 2019, a Bureau Operator ("Operator") took the Bureau's 1995 Toyota
12 ("vehicle") to Respondent Express Lube's facility. Upon arrival, the Operator requested a smog
13 inspection. The vehicle had a non-functional exhaust gas recirculation ("EGR") system. That
14 same day, the vehicle was inspected and tested by Respondent Kim and issued Certificate of
15 Compliance No. QU830151.

16 25. On August 6, 2019, the Bureau inspected the vehicle and found that the EGR system
17 was still non-functional.

18 FIRST CAUSE FOR DISCIPLINE

19 (Untrue or Misleading Statements)

20 26. Respondent Express Lube's registration is subject to disciplinary action pursuant to
21 Bus. & Prof. Code section 9884.7, subdivision (a)(1), Respondent made or authorized statements
22 which it knew or in the exercise of reasonable care should have known to be untrue or
23 misleading, as follows:

24 a. Respondent Express Lube's technician, Respondent Kim, certified under penalty of
25 perjury on the Vehicle Inspection Report that the Bureau's vehicle had passed the inspection and
26 was in compliance with applicable laws and regulations. In fact, the EGR system was non-
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1 functional and as such, the vehicle would not pass the inspection required by Health & Saf. Code
2 section 44012.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 27. Respondent Express Lube's registration is subject to disciplinary action pursuant to
6 Bus. & Prof. Code section 9884.7, subdivision (a)(4), Respondent committed acts constituting
7 fraud, as follows:

8 a. Respondent issued an electronic smog certificate of compliance for the Bureau's
9 vehicle without ensuring that a bona fide inspection was performed of the emission control
10 devices and systems on the vehicle, thereby depriving the People of the State of California of the
11 protection afforded by the Motor Vehicle Inspection Program.

12 b. Respondent obtained payment from the Operator for performing the applicable
13 inspection systems on the Bureau's vehicle as specified by the Bureau and in accordance with the
14 Vehicle Code. In fact, Respondent failed to perform the necessary inspections compliance with
15 Bureau Regulations or the Vehicle Code.

16 **THIRD CAUSE FOR DISCIPLINE**

17 28. Respondent Express Lube's smog check station license is subject to disciplinary
18 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
19 to comply with the following sections of that Code:

20 a. **Section 44012, subdivision (a)**: Respondent failed to ensure that the visual
21 inspection of the emission control devices and system on the Bureau's vehicle was performed in
22 accordance with procedures prescribed by the department.

23 b. **Section 44015**: Respondent issued an electronic smog certificate of compliance for
24 the Bureau's vehicle without properly testing and inspecting the vehicle to determine if it was in
25 compliance with Health & Saf. Code section 44012.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 32. Respondent Kim's technician license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
6 provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's
8 vehicle in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of
9 Regulations, title 16, section 3340.42.

10 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
11 Bureau's vehicle in accordance with the Bureau's specifications.

12 **EIGHTH CAUSE FOR DISCIPLINE**

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

14 33. Respondent Kim's technician license is subject to disciplinary action pursuant to
15 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
16 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
17 compliance for the Bureau's vehicle without performing a bona fide inspection of the emission
18 control devices and systems on the vehicle, thereby depriving the People of the State of California
19 of the protection afforded by the Motor Vehicle Inspection Program.

20 **DISCIPLINE CONSIDERATIONS**

21 34. To determine the degree of discipline, if any, to be imposed on Respondents,
22 Complainant alleges as follows:

23 **Respondent Express Lube**

24 a. On or about April 5, 2018, the Bureau issued Citation No. C2018-1011 against
25 Respondent Express Lube for violations of Health & Saf. Code section 44012. On or about
26 February 27, 2018, Respondent Express Lube issued a certificate of compliance to a Bureau
27 vehicle with a missing or modified Positive Crankcase Ventilation System. The Bureau assessed
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1 civil penalties against Respondent Express Lube for the violation. On May 29, 2018, payment
2 was received.

3 b. On or about August 8, 2018, the Bureau issued Citation No. C2018-1748 against
4 Respondent Express Lube for violations of Health & Saf. Code section 44012. On or about June
5 21, 2018, Respondent Express Lube issued a certificate of compliance to a Bureau vehicle with a
6 missing or modified catalyst. The Bureau assessed civil penalties against Respondent Express
7 Lube for the violation. On July 5, 2019, payment was received.

8 c. On or about February 20, 2019, the Bureau issued Citation No. C2019-814 against
9 Respondent Express Lube for violations of Health & Saf. Code section 44012. On or about
10 January 24, 2019, Respondent Express Lube issued a certificate of compliance to a Bureau
11 vehicle with a missing or modified Exhaust Gas Recirculation (EGR) System Component. On or
12 about April 26, 2019, a formal appeal request was received and the appeal is pending.

13 **Respondent Kim**

14 d. On or about April 5, 2018, the Bureau issued Citation No. M2018-1012 against
15 Respondent Kim for violations of Health & Saf. Code section 44012. On or about February 27,
16 2018, Respondent Kim issued a certificate of compliance to a Bureau vehicle with a missing or
17 modified Positive Crankcase Ventilation System. Respondent Kim was directed to complete an
18 8-hour training course and to submit proof of completion. On June 20, 2018, Respondent Kim
19 completed the training.

20 e. On or about August 8, 2018, the Bureau issued Citation No. M2018-1749 against
21 Respondent Kim for violations of Health & Saf. Code section 44012. On or about June 21, 2018,
22 Respondent Kim issued a certificate of compliance to a Bureau vehicle with a missing or
23 modified catalyst. Respondent Kim was directed to complete a 28-hour training course, to submit
24 proof of completion and to pay a \$500 penalty amount. On July 5, 2019, payment was received.
25 On August 26, 2019, Respondent Kim completed the training.

26 f. On or about February 20, 2019, the Bureau issued Citation No. M2019-815 against
27 Respondent Kim for violations of Health & Saf. Code section 44012. On or about January 24,
28 2019, Respondent Kim issued a certificate of compliance to a Bureau vehicle with a missing or

1 modified Exhaust Gas Recirculation (EGR) System Component. On or about April 26, 2019, a
2 formal appeal request was received and the appeal is pending.

3 **OTHER MATTERS**

4 35. Pursuant to Code section 9884.7, subdivision (c), the director may suspend, revoke,
5 or place on probation the registrations for all places of business operated in this state by Tony K.
6 Kim, upon a finding that he has, or is, engaged in a course of repeated and willful violation of the
7 laws and regulations pertaining to an automotive repair dealer.

8 36. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License
9 Number RC 228180, issued to Tony K. Kim, is revoked or suspended, any additional license
10 issued under this Chapter 5 of Part 5 of Div 26 of the Health and Safety Code in the name of said
11 licensee may be likewise revoked or suspended by the director.

12 37. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
13 License No. EO 152289, issued to Tony K. Kim, is revoked or suspended, any additional license
14 issued under this Chapter 5 of Part 5 of Div 26 of the Health and Safety Code in the name of said
15 licensee may be likewise revoked or suspended by the director.

16 38. Pursuant to Health and Safety Code section 44072.8, if Smog Check Repair
17 Technician License No. EI 152289, issued to Tony K. Kim, is revoked or suspended, any
18 additional license issued under this Chapter 5 of Part 5 of Div 26 of the Health and Safety Code in
19 the name of said licensee may be likewise revoked or suspended by the director.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 228180, issued to Tony K. Kim dba Express Lube;

25 2. Revoking or suspending any other automotive repair dealer registration issued to
26 Tony K. Kim;

27 3. Revoking or suspending Smog Check Station License Number RC 228180, issued to
28 Tony K. Kim;

1 4. Revoking or suspending any additional license issued under Chapter 5, Part 5,
2 Division 26 of the Health and Safety Code in the name of Tony K. Kim;

3 5. Revoking or suspending Smog Check Inspector License Number EO 152289, issued
4 to Tony K. Kim;


5 6. Revoking or suspending Smog Check Repair Technician License Number EI 152289,
6 issued to Tony K. Kim;

7 7. Ordering Tony K. Kim dba Express Lube and Tony K. Kim to pay the Bureau the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 125.3; and,

10 8. Taking such other and further action as deemed necessary and proper.

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DATED: October 18, 2019


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

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