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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:

Case No. 77/21-9335

14 **ELEAZAR HERNANDEZ, DBA VICTORY**
15 **SMOG**

ACCUSATION

16 2306 E. McKinley, Unit C
Fresno, CA 93703

17 *Mailing Address:*

18 1534 La Jolla Way
Madera, CA 93638

19 Automotive Repair Dealer Registration No. ARD
294816

20 Smog Check Station License No. RC 294816

Lamp Station License No. LS 294816, Class A

21 Brake Station License No. BS 294816, Class C

22 **ELEAZAR HERNANDEZ**

23 1534 La Jolla Way
Madera, CA 93638

24 Smog Check Inspector License No. EO 636633

25 Smog Check Repair Technician License No. EI
63663

26 Brake Adjuster License No. BA 636633, Class C

Lamp Adjuster License No. LA 636633, Class A

ANTHONY J. SORIANO

2315 Stillman Street
Selma, CA 93662

Smog Check Inspector License No. EO 635350
Smog Check Repair Technician License No. EI
635350
Brake Adjuster License No. BA 635350, Class C

Respondents.

PARTIES

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

VICTORY SMOG

Automotive Repair Dealer Registration

2. On or about July 10, 2019, the Bureau issued Automotive Repair Dealer Registration Number ARD 294816 (registration) to Victory Smog (Respondent Victory Smog) with Eleazar Hernandez (Respondent Hernandez) as the sole owner. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2022, unless renewed.

Smog Check Station License

3. On or about October 24, 2019, the Bureau issued Smog Check Station License Number RC 294816 to Respondent Victory Smog. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2022, unless renewed.

Lamp Station License

4. On or about November 6, 2020, the Bureau issued Lamp Station License Number LS 294816, Class A, to Respondent Victory Smog. The Lamp Station License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2022, unless renewed.

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1 **Brake Station License**

2 5. On or about November 6, 2020, the Bureau issued Brake Station License Number BS
3 294816, Class C, to Respondent Victory Smog. The Brake Station License was in full force and
4 effect at all times relevant to the charges brought herein and will expire on July 31, 2022, unless
5 renewed.

6 **ELEAZAR HERNANDEZ**

7 **Smog Check Inspector License**

8 6. On or about March 17, 2014, the Bureau issued Smog Check Inspector License
9 Number EO 636633 to Respondent Hernandez. The Smog Check Inspector License was in full
10 force and effect at all times relevant to the charges brought herein and will expire on April 20,
11 2022, unless renewed.

12 **Smog Check Repair Technician License**

13 7. On or about March 14, 2014, the Bureau issued Smog Check Repair Technician
14 License Number EI 636633 to Respondent Hernandez. The Smog Check Repair Technician
15 License was in full force and effect at all times relevant to the charges brought herein and will
16 expire on April 30, 2023, unless renewed.

17 **Brake Adjuster License**

18 8. On or about November 19, 2020, the Bureau issued Brake Adjuster License Number
19 BA 636633, Class C, to Respondent Hernandez. The Brake Adjuster License was in full force
20 and effect at all times relevant to the charges brought herein and will expire on April 30, 2024,
21 unless renewed.

22 **Lamp Adjuster License**

23 9. On or about June 1, 2020, the Bureau issued Lamp Adjuster License Number LA
24 636633, Class A, to Respondent Hernandez. The Lamp Adjuster License was in full force and
25 effect at all times relevant to the charges brought herein and will expire on April 30, 2024, unless
26 renewed.

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1 **ANTHONY J. SORIANO**

2 **Smog Check Inspector License**

3 10. On or about March 28, 2013, the Bureau issued Smog Check Inspector License
4 Number EO 635350 to Anthony J. Soriano (Respondent Soriano). The Smog Check Inspector
5 License was in full force and effect at all times relevant to the charges brought herein and will
6 expire on July 31, 2023, unless renewed.

7 **Smog Check Repair Technician License**

8 11. On or about October 6, 2016, the Bureau issued Smog Check Repair Technician
9 License Number EI 635350 to Respondent Soriano. The Smog Check Repair Technician License
10 expired on July 31, 2018, and has not been renewed.

11 **Brake Adjuster License**

12 12. On or about November 2, 2020, the issued Brake Adjuster License Number BA
13 635350, Class C, to Respondent Soriano. The Brake Adjuster License was in full force and effect
14 at all times relevant to the charges brought herein and will expire on July 31, 2024, unless
15 renewed.

16 **JURISDICTION**

17 13. This Accusation is brought before the Director of the Department of Consumer
18 Affairs (Director) for the Bureau under the authority of the following laws. All section references
19 are to the Business and Professions Code (Code) unless otherwise indicated

20 14. Code section 9884.7 provides that the Director may revoke an automotive repair
21 dealer registration.

22 15. Code section 9884.13 states, “The expiration of a valid registration shall not deprive
23 the director or chief of jurisdiction to proceed with any investigation or disciplinary proceeding
24 against an automotive repair dealer or to render a decision invalidating a registration temporarily
25 or permanently.”

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

17. Code section 9889.7 states, “The expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of or action or disciplinary proceedings against such licensee, or to render a decision suspending or revoking such license.”

18. Code section 118, subdivision (b), states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

STATUTORY AND REGULATORY PROVISIONS

19. Code section 9884.7 states, in pertinent part:

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

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

...

(4) Any other conduct that constitutes fraud.

• • •

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

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is,

engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

20. Code section 9887.1 states:

The director shall have the authority to issue licenses for official lamp and brake adjusting stations and shall license lamp and brake adjusters. The licenses shall be issued in accordance with this chapter and regulations adopted by the director pursuant thereto. The director shall establish by regulation the terms of adjusters' licenses as are necessary for the practical administration of the provisions relating to adjusters, but those terms shall not be for less than one nor more than four years. Licenses may be renewed upon application and payment of the renewal fees if the application for renewal is made within the 30-day period prior to the date of expiration. Persons whose licenses have expired shall immediately cease the activity requiring a license....

21. Code section 9889.1 states:

Any license issued pursuant to Articles 5 and 6, may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 9889.2. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

22. Code section 9888.3 states:

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

23. Code section 9889.3 states, in pertinent part:

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

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

...

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

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

...

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

1 24. Code section 9889.9 states, “When any license has been revoked or suspended
2 following a hearing under the provisions of this article, any additional license issued under
3 Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended
4 by the director.”

5 25. Code section 9889.16 states,

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

10 26. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
11 "commission," "committee," "department," "division," "examining committee," "program," and
12 "agency." "License" includes certificate, registration or other means to engage in a business or
13 profession regulated by the Code.

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

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

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

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

22 ...

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

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

26 29. Health and Safety Code section 44072.6 states, “The expiration or suspension of a
27 license by operation of law or by order or decision of the director or a court of law, or the
28 voluntary surrender of a license by a licensee shall not deprive the director of jurisdiction to

1 proceed with any investigation of, or action or disciplinary proceedings against, the licensee, or to
2 render a decision suspending or revoking the license.”

3 30. Health and Safety Code section 44072.8 states, “When a license has been revoked or
4 suspended following a hearing under this article, any additional license issued under this chapter
5 in the name of the licensee may be likewise revoked or suspended by the director.”

6 **COST RECOVERY**

7 31. Code section 125.3 provides, in pertinent part, that the Bureau may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement
10 of the case, with failure of the licentiate to comply subjecting the license to not being renewed or
11 reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a
12 stipulated settlement.

13 **UNDERCOVER OPERATION NO. 1**

14 32. On or about July 21, 2021, a Bureau undercover operator (operator) took a Bureau-
15 documented 2015 Chevrolet to Respondent Hernandez’ facility and requested brake and lamp
16 inspections. Respondent Victory Smog’s employee told the operator it would cost \$80.00. The
17 operator signed an estimate, but did not receive a copy of the signed document.

18 33. Later that day, the operator returned to the facility to retrieve the 2015 Chevrolet. The
19 operator was provided with an un-numbered estimate dated July 21, 2021, in the amount of
20 \$80.00, an un-numbered invoice dated July 21, 2021, in the amount of \$80.00, Certificate of
21 Compliance- Brake Adjustment number BA 3579506, and Certificate of Compliance-Lamp
22 Adjustment number LA 3535455.

23 34. On or about July 27, 2021, a Bureau representative inspected the 2015 Chevrolet
24 using the un-numbered invoice dated July 21, 2021, and the brake and lamp certificates of
25 compliance Respondent’s facility gave the operator for comparison. The Bureau representative
26 determined that the brake certificate should not have been issued for the vehicle because the right
27 front brake rotor and the left rear brake rotor were undersized, and did not meet the
28 manufacturer’s minimum thickness tolerance.

1 35. Undercover Operation No. 1 revealed that Respondent Victory Smog and Respondent
2 Soriano failed to properly perform a California brake inspection on the 2015 Chevrolet, resulting
3 in the issuance of a fraudulent Certificate of Compliance - Brake Adjustment BA 3579506.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 36. Respondent Victory Smog's registration is subject to disciplinary action pursuant to
7 Code section 9884.7, subdivision (a)(1), in that regarding the Bureau's 2015 Chevrolet, it made or
8 authorized statements which it knew or in the exercise of reasonable care should have known to
9 be untrue or misleading. Specifically, on or about July 21, 2021, Respondent Victory Smog
10 issued Certificate of Compliance – Brake Adjustment, No. BA 3579506 to the operator, certifying
11 that the vehicle was in compliance with Bureau Regulations or the requirements of the Vehicle
12 Code, as set forth in paragraph 33, above. In fact, a brake certificate should not have been issued
13 for the vehicle because the right front brake rotor and the left rear brake rotor were undersized, as
14 set forth in paragraph 34, above.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 37. Respondent Victory Smog's registration is subject to disciplinary action pursuant to
18 Code section 9884.7, subdivision (a)(4), in that on or about July 21, 2021, it committed acts that
19 constitute fraud. Specifically, Respondent Victory Smog obtained payment from the operator for
20 performing the applicable inspections, adjustments, or repairs of the brake system on the Bureau's
21 2015 Chevrolet as specified by the Bureau and in accordance with the Vehicle Code when, in
22 fact, he had not, as set forth in paragraph 36, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Failure to Provide Customer with Copy of Signed Document)**

25 38. Respondent Victory Smog's registration is subject to disciplinary action pursuant to
26 Code section 9884.7, subdivision (a)(3), in that on or about July 21, 2021, Respondent Victory
27 Smog failed to ensure that the operator was provided with a copy of the estimate as soon as the
28 operator signed the document, as set forth in paragraph 32, above.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 39. Respondent Victory Smog's registration is subject to disciplinary action pursuant to
4 Code section 9884.7, subdivision (a)(5), in that Respondent committed an act constituting gross
5 negligence in that Respondent's technician, Respondent Soriano, failed to properly perform, the
6 brake inspection on the Bureau's 2015 Chevrolet, leaving the vehicle in unsafe condition, as set
7 forth in paragraph in paragraph 34, above.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Violations of Motor Vehicle Inspection Program)**

10 40. Respondent Victory Smog's registration is subject to disciplinary action pursuant to
11 Code section 9884.7, subdivision (a)(6), in that regarding the Bureau's 2015 Chevrolet, on or
12 about July 27, 2021, it failed to materially comply with provisions of the Automobile Repair Act,
13 as follows:

14 a. As set forth in paragraph 33, above, Respondent Victory Smog issued
15 Certificate of Compliance – Brake Adjustment, No. BA 33579506, to the operator, certifying that
16 the vehicle was in compliance with Bureau regulations or the requirements of the Vehicle Code.
17 In fact, as set forth in paragraph 34, above, Respondent Victory Smog's employee, Respondent
18 Soriano, did not test or inspect the vehicle in a manner that conforms with Bureau regulations or
19 requirements of the Vehicle Code, in violation of Code section 9889.16.

20 b. As set forth in paragraph 32, above, on or about July 27, 2021, Respondent
21 Victory Smog failed to provide the operator with a written estimate prior to commencing work on
22 the vehicle, in violation of Code section 9884.9, subdivision (a).

23 **SIXTH CAUSE FOR DISCIPLINE**

24 **(Violations of Regulations)**

25 41. Respondent Victory Smog's registration is subject to disciplinary action pursuant to
26 Code section 9884.7, subdivision (a)(6), in that, as set forth in paragraphs 33 and 34, above, on or
27 about July 27, 2021, regarding the Bureau's 2015 Chevrolet, it failed to comply with Regulations,
28 as follows:

1 a. Respondent Victory Smog failed to ensure that the brake system was inspected
2 in accordance with specifications, instructions, and directives issued by the Bureau and vehicle
3 manufacturer, in violation of CCR section 3305, subdivision (a).

4 b. Respondent Victory Smog issued Certificate of Compliance - Brake
5 Adjustment, No. BA 33579506, for the vehicle, certifying that the vehicle's brake system had
6 been properly tested or inspected by Respondent Victory Smog's employee, Respondent Soriano.
7 In fact, Respondent Soriano had not properly tested or inspected the vehicle, in violation of CCR
8 section 3321, subdivision (c)(2).

9 **SEVENTH CAUSE FOR DISCIPLINE**

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

11 42. Respondent Victory Smog's brake and lamp station licenses are subject to
12 disciplinary action pursuant to Code section 9889.3, subdivision (d), in that it committed
13 dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth in paragraphs 32
14 through 34, above.

15 **EIGHTH CAUSE FOR DISCIPLINE**

16 **(Violations of Motor Vehicle Inspection Program)**

17 43. Respondent Victory Smog's brake and lamp station licenses are subject to
18 disciplinary action pursuant to Code section 9889.3, subdivisions (a) and (h), in that on or about
19 July 27, 2021, regarding the Bureau's 2015 Chevrolet, it committed acts in violation of the Code
20 relating to its licensed activities, as set forth in paragraph 40, above.

21 **NINTH CAUSE FOR DISCIPLINE**

22 **(Violations of Regulations)**

23 44. Respondent Victory Smog's brake and lamp station licenses are subject to
24 disciplinary action pursuant to Code section 9889.3, subdivision (c), in that on or about July 27,
25 2021, regarding the Bureau's 2015 Chevrolet, it committed acts in violation of Regulations, as set
26 forth in paragraph 41, above.

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subdivision (d), in that he committed dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth in paragraphs 33 and 34, above.

UNDERCOVER OPERATION NO. 2

50. On or about July 21, 2021, a Bureau undercover operator took a Bureau-documented 2007 Chevrolet to Respondent Hernandez' facility and requested brake and lamp inspections. Respondent Victory Smog's employee told the operator it would cost \$80.00. The operator signed an estimate, but did not receive a copy of the signed document.

51. Later that same day, the operator returned to the facility to retrieve the 2007 Chevrolet. The operator was provided an un-numbered estimate dated July 21, 2021, in the amount of \$80.00, an un-numbered invoice dated July 21, 2021, in the amount of \$80.00, Certificate of Compliance- Brake Adjustment number BA 3579507, and Certificate of Compliance-Lamp Adjustment number LA 3535457.

52. On or about July 23, 2021, a Bureau representative inspected the 2007 Chevrolet using the unnumbered invoice dated July 21, 2021, and the brake and lamp certificates of compliance Respondent's facility gave the operator for comparison. The Bureau representative determined that the vehicle should not have passed a proper California brake inspection because the right rear brake rotor and the left front brake rotor were undersized.

53. Undercover Operation No. 2 revealed that Respondent Victory Smog and Respondent Hernandez failed to properly perform a California brake inspection on the 2007 Chevrolet resulting in the issuance of Certificate of Compliance- Brake Adjustment BA 3579507.

FIFTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

54. Respondent Victory Smog's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that regarding the Bureau's 2007 Chevrolet, it made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading. Specifically, on or about July 21, 2021, Respondent Victory Smog issued Certificate of Compliance – Brake Adjustment, No. BA 3579507 to the operator, certifying that the vehicle was in compliance with Bureau Regulations or the requirements of the Vehicle

Code, as set forth in paragraph 51, above. In fact, a brake certificate should not have been issued for the vehicle because the right rear brake rotor and the left front brake rotor were undersized, as set forth in paragraph 52, above.

SIXTEENTH CAUSE FOR DISCIPLINE

(Fraud)

55. Respondent Victory Smog's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that on or about July 21, 2021, it committed acts that constitute fraud. Specifically, Respondent Victory Smog obtained payment from the operator for performing the applicable inspections, adjustments, or repairs of the brake system on the Bureau's 2007 Chevrolet as specified by the Bureau and in accordance with the Vehicle Code when, in fact, he had not, as set forth in paragraph 52, above.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Failure to Provide Customer with Copy of Signed Document)

56. Respondent Victory Smog's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(3), in that on or about July 21, 2021, Respondent Victory Smog failed to ensure that the operator was provided with a copy of the estimate as soon as the operator signed the document, as set forth in paragraph 50, above.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Gross Negligence)

57. Respondent Victory Smog's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(5), in that Respondent committed an act constituting gross negligence in that Respondent failed to perform, or properly perform, the brake inspection on the Bureau's 2007 Chevrolet, leaving the vehicle in unsafe condition, as set forth in paragraph in paragraph 51, above.

NINETEENTH CAUSE FOR DISCIPLINE

(Violations of Motor Vehicle Inspection Program)

58. Respondent Victory Smog's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that regarding the Bureau's 2007 Chevrolet, on or

1 about July 27, 2021, it failed to materially comply with provisions of the Automobile Repair Act,
2 as follows:

3 a. As set forth in paragraph 52, above, Respondent Victory Smog issued
4 Certificate of Compliance – Brake Adjustment, No. BA 33579507, to the operator, certifying that
5 the vehicle was in compliance with Bureau regulations or the requirements of the Vehicle Code.
6 In fact, as set forth in paragraph 53, above, Respondent Victory Smog’s employee, Respondent
7 Hernandez, did not test or inspect the vehicle in a manner that conforms with Bureau regulations
8 or requirements of the Vehicle Code, in violation of Code section 9889.16.

9 b. As set forth in paragraph 52, above, on or about July 27, 2021, Respondent
10 Victory Smog failed to provide the operator with a written estimate prior to commencing work on
11 the vehicle, in violation of Code section 9884.9, subdivision (a).

12 **TWENTIETH CAUSE FOR DISCIPLINE**

13 **(Violations of Regulations)**

14 59. Respondent Victory Smog’s registration is subject to disciplinary action pursuant to
15 Code section 9884.7, subdivision (a)(6), in that, as set forth in paragraphs 51 and 52, above, on or
16 about July 27, 2021, regarding the Bureau’s 2007 Chevrolet, it failed to comply with Regulations,
17 as follows:

18 a. Respondent Victory Smog failed to ensure that the brake system was inspected
19 in accordance with specifications, instructions, and directives issued by the Bureau and vehicle
20 manufacturer, in violation of CCR section 3305, subdivision (a).

21 b. Respondent Victory Smog issued Certificate of Compliance - Brake
22 Adjustment, No. BA 33579507, for the vehicle, certifying that the vehicle’s brake system had
23 been properly tested or inspected by Respondent Victory Smog’s employee, Respondent
24 Hernandez. In fact, Respondent Hernandez had not properly tested or inspected the vehicle, in
25 violation of CCR section 3321, subdivision (c)(2).

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TWENTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

60. Respondent Victory Smog's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (d), in that it committed dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth in paragraphs 50 through 53, above.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of Motor Vehicle Inspection Program)

61. Respondent Victory Smog's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivisions (a) and (h), in that on or about July 27, 2021, regarding the Bureau's 2007 Chevrolet, it committed acts in violation of the Code relating to its licensed activities, as set forth in paragraph 58, above.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Violations of Regulations)

62. Respondent Victory Smog's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (c), in that on or about July 27, 2021, regarding the Bureau's 2007 Chevrolet, it committed acts in violation of Regulations, as set forth in paragraph 59, above.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit Causing Injury to Another)

63. Respondent Victory Smog's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (d), in that it committed dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth in paragraphs 50 through 53, above.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

64. Respondent Victory Smog's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2(d), in that it committed dishonest,

1 fraudulent, or deceitful acts whereby another was injured, as set forth in paragraphs 50 through
2 53, above.

3 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

5 65. Respondent Hernandez's brake and lamp adjuster licenses are subject to disciplinary
6 action pursuant to Code section 9889.3, subdivision (d), in that on or about July 27, 2021,
7 regarding the Bureau's 2007 Chevrolet, he committed dishonest, fraudulent, or deceitful acts
8 whereby another was injured, as set forth in paragraphs 51 and 52, above.

9 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

10 **(Violations of Regulations)**

11 66. Respondent Hernandez's brake and lamp adjuster licenses are subject to disciplinary
12 action pursuant to Code section 9889.3, subdivision (c), in that on or about July 27, 2021,
13 regarding the Bureau's 2007 Chevrolet, he committed acts in violation of Regulations, as set forth
14 in paragraph 59, above.

15 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud, or Deceit Causing Injury to Another)**

17 67. Respondent Hernandez's smog check inspector and smog check repair technician
18 licenses are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,
19 subdivision (d), in that he committed dishonest, fraudulent, or deceitful acts whereby another was
20 injured, as set forth in paragraphs 51 and 52, above.

21 **OTHER MATTERS**

22 68. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily
23 or permanently or refuse to validate, the registrations for all places of business operated in this
24 state by Respondent Victory Smog upon a finding that it has, or is, engaged in a course of
25 repeated and willful violations of the laws and regulations pertaining to an automotive repair
26 dealer.

27 69. Pursuant to Code section 9889.9, if Brake Station License Number BS 294826, or
28 Lamp Station License Number LS 294816, issued to Respondent Victory Smog, is revoked or

1 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of Code in the
2 name of said licensee may be likewise revoked or suspended by the Director.

3 70. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
4 Number RC 2294816, issued to Respondent Victory Smog is revoked or suspended, any
5 additional licenses under Chapter 5 of part 5 of Division 26 of the Health & Safety Code in the
6 name of Victory Smog may be likewise revoked or suspended by the Director.

7 71. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 635350,
8 issued to Respondent Anthony J. Soriano, is revoked or suspended, any additional license issued
9 under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise
10 revoked or suspended by the Director.

11 72. Under Health & Saf. Code section 44072.8, if Smog Check Inspector License No. EO
12 635350 or Smog Check Repair Technician License No. EI 635350 issued to Respondent Anthony
13 J. Soriano is revoked or suspended, then any additional license issued under Chapter 5 of Part 5 of
14 Division 26 of the Health & Saf. Code in the name of said licensee may be likewise revoked or
15 suspended by the Director.

16 73. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 636633, or
17 Lamp Adjuster License Number LA 636633 issued to Respondent Eleazar Hernandez is revoked
18 or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Code in
19 the name of said licensee may be likewise revoked or suspended by the Director.

20 74. Under Health & Saf. Code section 44072.8, if Smog Check Inspector License No. EO
21 636633 or Smog Check Repair Technician License No. EI 636633 issued to Respondent Eleazar
22 Hernandez is revoked or suspended, then any additional license issued under Chapter 5 of Part 5
23 of Division 26 of the Health & Saf. Code in the name of said licensee may be likewise revoked or
24 suspended by the Director.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Director of the Department of Consumer Affairs issue a
28 decision:

- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
2 294816, issued to Victory Smog;
- 3 2. Revoking or suspending any other automotive repair dealer registration issued to
4 Victory Smog;
- 5 3. Revoking or suspending Lamp Station License Number LS 294816 and Brake Station
6 License Number BS 294816, issued to Eleazar Hernandez, dba Victory Smog.
- 7 4. Revoking or suspending any additional license issued under Division 3, Chapter 20.3,
8 Articles 5 and 6 of the Code in the name of Eleazar Hernandez, dba Victory Smog;
- 9 5. Revoking or suspending Smog Check Station License Number RC 294816, issued to
10 Eleazar Hernandez;
- 11 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
12 Division 26 of the Health & Saf. Code in the name of Eleazar Hernandez;
- 13 7. Revoking or suspending Smog Check Inspector License Number EO 635350, issued
14 to Anthony J. Soriano;
- 15 8. Revoking or suspending Smog Check Repair Technician Number EI 635350, issued
16 to Anthony J. Soriano;
- 17 9. Revoking or suspending any additional license issued under Division 3, Chapter 20.3,
18 Articles 5 and 6 of the Code in the name of Anthony J. Soriano;
- 19 10. Revoking or suspending Brake Adjuster License Number BA 635350, issued to
20 Anthony J. Soriano;
- 21 11. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
22 Division 26 of the Health & Saf. Code in the name of Anthony J. Soriano;
- 23 12. Revoking or suspending Smog Check Inspector License Number EO 636633, issued
24 to Eleazar Hernandez;
- 25 13. Revoking or suspending Smog Check Repair Technician Number EI 636633, issued
26 to Eleazar Hernandez;
- 27 14. Revoking or suspending Brake Adjuster License Number BA 635350, and Lamp
28 Adjuster License LA 635350 issued to Eleazar Hernandez;

1 15. Ordering Victory Smog, Eleazar Hernandez, and Anthony J. Soriano, to pay the
2 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
3 case, pursuant to Business and Professions Code section 125.3; and,

4 16. Taking such other and further action as deemed necessary and proper.

5
6 DATED: As of Digital Signature Date

Dorais,
Patrick@DCA

 Digitally signed by Dorais,
Patrick@DCA
Date: 2022.01.11 14:46:39 -08'00'

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

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