

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 CHRISTINE J. LEE
Deputy Attorney General
4 State Bar No. 282502
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2539
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 77/15-30

12 **VINCE'S AUTOMOTIVE; VINCE**
13 **VALDIVIA**
18401 Vanowen Street # S
14 Reseda, CA 91335

15 **Automotive Repair Dealer Registration No.**
ARD 92735
16 **Smog Check Station License No. RC 92735**
Lamp Station License No. LS 92735
17 **Brake Station License No. BS92735**

ACCUSATION

18 and

19 **VINCE D. VALDIVIA**
18401 Vanowen Street Unit S
20 Reseda, CA 91335

21 **Smog Check Inspector License No. EO**
300740
22 **Smog Check Repair Technician License No.**
EI 300740

23 Respondent.

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25 Complainant alleges:

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1 PARTIES

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

4 **Automotive Repair Dealer Registration ARD 92735**

5 2 In 1982, the Bureau of Automotive Repair issued Automotive Repair Dealer
6 Registration Number ARD 92735 to Vince's Automotive; Vince Valdivia (Respondent). The
7 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
8 charges brought herein and will expire on January 31, 2015, unless renewed.

9 **Smog Check Station License RC 92735**

10 3. On or about April 26, 1990, the Bureau of Automotive Repair issued Smog Check
11 Station License Number RC 92735 to Vince's Automotive; Vince Valdivia (Respondent). The
12 Smog Check Station License was in full force and effect at all times relevant to the charges
13 brought herein and will expire on January 31, 2015, unless renewed.

14 **Lamp Station License LS 92735**

15 4. On or about May 19, 2005, the Bureau of Automotive Repair issued Lamp Station
16 License Number LS 92735 to Vince's Automotive; Vince Valdivia (Respondent). The Lamp
17 Station License was in full force and effect at all times relevant to the charges brought herein and
18 will expire on May 31, 2015, unless renewed.

19 **Brake Station License BS 92735**

20 5. On or about August 26, 1998, the Bureau of Automotive Repair issued Brake Station
21 License Number BS 92735 ("Brake Station License") to Respondent Vince's Automotive; Vince
22 Valdivia. The Brake Station License was in full force and effect at all times relevant to the
23 charges brought herein and will expire on January 31, 2015, unless renewed.

24 **Advanced Emission Specialist Technician License EA 300740**

25 6. In 1996, the Director issued Advanced Emission Specialist Technician License
26 Number EA 300740 to Vince D. Valdivia. Valdivia's advanced emission specialist technician
27 license was due to expire on November 30, 2012. Pursuant to California Code of Regulations,
28 title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Valdivia's

1 election, as Smog Check Inspector License Number EO 300740 and Smog Check Repair
2 Technician License Number EI 300740 ("technician licenses"), effective November 30, 2012.
3 Respondent's technician licenses will expire on November 30, 2014, unless renewed.¹

4 **Brake Adjuster License BA 300740, class C**

5 7. In 1998, the Bureau of Automotive Repair issued Brake Adjuster License Number
6 BA 300740, class C ("Brake Adjuster License") to Respondent Vince D. Valdivia. The Brake
7 Adjuster License was in full force and effect at all times relevant to the charges brought herein.
8 The license expired on November 30, 2002, and has not been renewed.

9 **Lamp Adjuster License LA 631193, class A**

10 8. In 1998, the Bureau of Automotive Repair issued Lamp Adjuster License Number LA
11 300740, class A ("Lamp Adjuster License") to Respondent Vince D. Valdivia. The Lamp
12 Adjuster License was in full force and effect at all times relevant to the charges brought herein.
13 The license expired on November 30, 2002, and has not been renewed.

14 **JURISDICTION**

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

18 10. Section 118, subdivision (b) of the Code, provides that the suspension, expiration,
19 surrender, or cancellation of a license shall not deprive the Board, Registrar, or Director of
20 jurisdiction to proceed with a disciplinary action during the period within which the license may
21 be renewed, restored, reissued or reinstated.

22 11. Section 477 of the Code states, in pertinent part:

23 (a) "Board" includes "bureau," "commission," "committee," "department,"
24 "division," "examining committee," "program," and "agency."

25 (b) "License" includes certificate, registration or other means to engage in a
business or profession regulated by the Code.

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.39, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 (4) Any other conduct that constitutes fraud.

2

3 (6) Failure in any material respect to comply with the provisions of this
4 chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or
5 regulations adopted pursuant to it.

6

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

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

18 18. Section 9888.3 of the Code states, "No person shall operate an "official" lamp or brake
19 adjusting station unless a license therefor has been issued by the director. No person shall issue,
20 or cause or permit to be issued, any certificate purporting to be an official lamp adjustment
21 certificate unless he or she is a licensed brake adjuster.

22 19. Section 9889.3 of the Code states, in pertinent part, that "[t]he director may suspend,
23 revoke, or take other disciplinary action against a license as provided in this article if the licensee
24 or any partner, officer, or director thereof:

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

27

28 (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.

20. Section 9889.22 of the Code states, "The willful making of any false statement or entry

1 with regard to a material matter in any oath, affidavit, certificate of compliance or
2 noncompliance, or application form which is required by this chapter or Chapter 5 (commencing
3 with Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes perjury
4 and is punishable as provided in the Penal Code.”

5 21. Section 9889.16 of the Code states, “Whenever a licensed adjuster in a licensed
6 station upon an inspection or after an adjustment, made in conformity with the instructions of the
7 bureau, determines that the lamps or the brakes upon any vehicle conform with the requirements
8 of the Vehicle Code, he shall, when requested by the owner or driver of the vehicle, issue a
9 certificate of adjustment on a form prescribed by the director, which certificate shall contain the
10 date of issuance, the make and registration number of the vehicle, the name of the owner of the
11 vehicle, and the official license of the station.”

12 **REGULATORY PROVISIONS**

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

16 23. Health and Safety Code section 44072.2 states:

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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 Program
21 (Health and Safety Code, § 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 is
25 injured.

26

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

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

5 25. Health and Safety Code section 44072.8 states that “[w]hen a license has been
6 revoked or suspended following a hearing under this article, any additional license issued under
7 this chapter in the name of the licensee may be likewise revoked or suspended by the director.”

8 26. California Code of Regulations, title 16, section 3305, subdivision (a) states:

9 (a) All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for
10 the purpose of issuing any certificate of compliance or adjustment shall be performed in
11 official stations, by official adjusters, in accordance with the following, in descending order
12 of precedence, as applicable:

13 (4) The bureau's Handbook for Brake Adjusters and Stations, February 2003, which is
14 hereby incorporated by reference.

15 (5) The bureau's Handbook for Lamp Adjusters and Stations, February 2003, which is
16 hereby incorporated by reference.

17 27. California Code of Regulations, title 16, section 3308 states:

18 An official station shall stop performing the functions for which it has been licensed when
19 it no longer has the services of a licensed adjuster, or when its station license has expired or
20 has been surrendered, suspended, or revoked. The station must dispose of materials related
21 to its formerly licensed activity according to these provisions.

22 (a) An official station that no longer has the services of a licensed adjuster shall
23 immediately remove or cover the official station sign in accordance with subsection (b) of
24 this section. If the station does not employ a licensed adjuster within 60 days, the station
25 shall surrender its official station license to the bureau and shall return to the bureau all
26 unused certificates of adjustments bought by the station to carry out the function for which
27 it is no longer licensed.

28 (b) An official station that is no longer authorized to perform the function for which it has
been licensed shall remove or cover the sign pertaining to the licensed function. A station
that has a multipurpose sign shall cover those portions of the sign that pertain to the
functions for which it is no longer licensed.

 (c) When an official station license has expired or has been surrendered, suspended, or
revoked, the station shall return to the bureau all unused certificates purchased by the
station to carry out the function for which it is no longer licensed.

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1 COST RECOVERY

2 28. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 FIELD VISIT: FEBRUARY 11, 2014

7 29. On or about February 11, 2014, the Bureau made a field visit to Vince's Automotive
8 to perform a periodic station inspection and to issue brake and lamp certificate books
9 #LC1765051 and #BC1794351, which were recently purchased by Vince's Automotive. The
10 Bureau requested to review the last brake and lamp certificate books issued by Vince Valdivia to
11 verify compliance. Respondent Vince D. Valdivia provided a lamp certificate booklet containing
12 certificates #LC1733201 through #LC1733205 and a brake certificate booklet containing
13 certificates #BC1762001 through #BC1762005. Upon review of the certificate books, the Bureau
14 confirmed that Respondent Vince D. Valdivia owner of Vince's Automotive issued brake and
15 lamp certificates of adjustment using his brake and lamp adjuster license numbers that had
16 expired in 2002. Respondent Vince D. Valdivia acknowledged that his brake and lamp adjuster's
17 licenses were expired and that he had issued brake and lamp certificates of adjustment without
18 current and valid brake and lamp adjuster licenses.

19 FIRST CAUSE FOR DISCIPLINE

20 (Untrue or Misleading Statements)

21 30. Respondent Vince's Automotive's Automotive Repair Dealer Registration is subject
22 to disciplinary action pursuant to section 9884.7, subdivision (a)(1), in that Vince D. Valdivia,
23 Owner, issued lamp certificates #LC1733201 through #LC1733205 and brake certificates
24 #BC1762001 through #BC1762005 without possessing valid adjuster licenses to issue the
25 certificates of adjustment.

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