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7

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

11 In the Matter of the Accusation Against:

Case No. **77/14-30**

12 **ANGELO BERTOLLI AUTOMOTIVE INC.**
Pierangelo Bertolli, President/Secretary/Treasurer
13 dba A & R AUTOMOTIVE
1141 San Mateo Avenue
14 San Bruno, CA 94066-1527

A C C U S A T I O N

15 **Automotive Repair Dealer Registration No. ARD 123078**
Lamp Station License No. LS 123078, Class A
16 **Brake Station License No. BS 123078, Class C**

17 **And**

18 **PIERANGELO BERTOLLI**
1141 San Mateo Avenue
19 San Bruno, CA 94066-1527

20 **Brake Adjuster License No. BA 109822, Class C**
21 **Lamp Adjuster License No. LA 109822, Class A**

Respondents.

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25 Complainant alleges:

26 **PARTIES**

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

1 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
2 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
3 provided by law or to enter an order suspending or revoking the license or otherwise taking
4 disciplinary action against the licensee on any such ground.

5 9. Code section **9884.13** states:

6 The expiration of a valid [Auto Repair Dealer] registration shall not deprive the director or
7 chief of jurisdiction to proceed with any investigation or disciplinary proceeding against an
8 automotive repair dealer or to render a decision invalidating a registration temporarily or
9 permanently.

10 10. Code section **9889.7** states:

11 The expiration or suspension of a [lamp or brake adjuster/station] license by operation of
12 law or by order or decision of the director or a court of law, or the voluntary surrender of a license
13 by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of or
14 action or disciplinary proceedings against such licensee, or to render a decision suspending or
15 revoking such license.

16 **STATUTORY AND REGULATORY PROVISIONS**

17 11. Code section **9884.7** states, in pertinent part:

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

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

26 ...

27 (4) Any other conduct that constitutes fraud.

28 (5) Conduct constituting gross negligence.

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

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

6 . . .
7 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
8 than one place of business in this state, the director pursuant to subdivision (a) shall only suspend,
9 revoke, or place on probation the registration of the specific place of business which has violated
10 any of the provisions of this chapter. This violation, or action by the director, shall not affect in
11 any manner the right of the automotive repair dealer to operate his or her other places of business.

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

16 12. Code section 9884.9 states, in pertinent part:

17 (a) The automotive repair dealer shall give to the customer a written estimated price for
18 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
19 before authorization to proceed is obtained from the customer. No charge shall be made for work
20 done or parts supplied in excess of the estimated price without the oral or written consent of the
21 customer that shall be obtained at some time after it is determined that the estimated price is
22 insufficient and before the work not estimated is done or the parts not estimated are supplied.
23 Written consent or authorization for an increase in the original estimated price may be provided
24 by electronic mail or facsimile transmission from the customer. The bureau may specify in
25 regulation the procedures to be followed by an automotive repair dealer if an authorization or
26 consent for an increase in the original estimated price is provided by electronic mail or facsimile
27 transmission. If that consent is oral, the dealer shall make a notation on the work order of the date,
28 time, name of person authorizing the additional repairs, and telephone number called, if any,

1 together with a specification of the additional parts and labor and the total additional cost, and
2 shall do either of the following:

3 (1) Make a notation on the invoice of the same facts set forth in the notation on the work
4 order.

5 (2) Upon completion of the repairs, obtain the customer's signature or initials to an
6 acknowledgment of notice and consent, if there is an oral consent of the customer to additional
7 repairs, in the following language:

8 "I acknowledge notice and oral approval of an increase in the original estimated price.

9 _____
10 (signature or initials)"

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

13 ...
14 13. Code section **9889.1** states:

15 Any [lamp or brake adjuster/station] may be suspended or revoked by the director. The
16 director may refuse to issue a license to any applicant for the reasons set forth in Section 9889.2.
17 The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing
18 with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director
19 shall have all the powers granted therein.

20 14. Code section **9889.3** states, in pertinent part:

21 The director may suspend, revoke, or take other disciplinary action against a [lamp or brake
22 adjuster/station] license as provided in this article if the licensee or any partner, officer, or
23 director thereof:

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

26 ...
27 (c) Violates any of the regulations promulgated by the director pursuant to this chapter.

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

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

15. Code section **9889.16** states:

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

16. Code section **9889.22** states:

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

17. California Code of Regulations, title 16, section **3305**, states:

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

- (1) Vehicle Manufacturers' current standards, specifications and recommended procedures, as published in the manufacturers' vehicle service and repair manuals.
- (2) Current standards, specifications, procedures, directives, manuals, bulletins and instructions issued by vehicle and equipment or device manufacturers.

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

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

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

8 (b) The specific activities for which an official station is licensed shall be performed only in
9 an area of the station that has been approved by the bureau. Other work may be performed in the
10 approved area, as desired. The work area shall be within a building and shall be large enough to
11 accommodate the motor vehicle being serviced. The bureau may make an exception to the
12 preceding requirement by approving a work area adjacent to a building for purposes of inspecting
13 and adjusting equipment and devices on buses, trucks, truck tractors, trailers, and semitrailers.
14 The work area shall be kept clean and orderly.

15 (c) The services of an officially licensed adjuster appropriate to each type and class of
16 station license held shall be available at each official station, except a fleet owner station, not less
17 than 40 hours weekly or not less than half of the hours the station is open for business weekly,
18 whichever is less. Fleet owner stations are required to provide the services of a licensed adjuster
19 only for certification procedures.

20 18. California Code of Regulations, title 16, section **3316**, states, in pertinent part:

21 The operation of official lamp adjusting stations shall be subject to the following
22 provisions:

23 . . .

24 (d) Effective April 1, 1999, licensed stations shall purchase certificates of adjustment from
25 the bureau for a fee of three dollars and fifty cents (\$3.50) each and shall not purchase or
26 otherwise obtain such certificates from any other source. Full payment is required at the time
27 certificates are ordered. Certificates are not exchangeable following delivery. A licensed station
28 shall not sell or otherwise transfer unused certificates of adjustment. Issuance of a lamp

1 adjustment certificate shall be in accordance with the following provisions:

2 (1) When a lamp adjustment certificate is issued to an applicant for an authorized
3 emergency vehicle permit, the certificate shall certify that the vehicle has been inspected, that all
4 lamps and related electrical systems meet all requirements of the Vehicle Code and bureau
5 regulations, and that all lamps capable of adjustment are properly adjusted.

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

10 . . .

11 19. California Code of Regulations, title 16, section 3321, states, in pertinent part:

12 . . .

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

19 (1) When a brake adjustment certificate is issued to an applicant for an authorized
20 emergency vehicle permit, the certificate shall certify that the vehicle has been road-tested and
21 that the entire braking system meets all requirements of the Vehicle Code and bureau regulations.

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

26 . . .

27 (d) After correcting specified defects, official brake adjusters shall certify that defects
28 indicated on citations or other enforcement forms have been corrected.

1 (1) The adjuster shall inform the customer of any other defective conditions present or
2 likely to occur in the future, which have come to the adjuster's attention in conjunction with
3 inspection of the vehicle and correction of specified defects. The adjuster shall inform the
4 customer of the percentage of braking material left on pads/shoes, as appropriate.

5 20. California Code of Regulations, title 16, section 3353, states, in pertinent part:

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

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

10 . . .

11 21. California Code of Regulations, title 16, section 3373, states, in pertinent part:

12 No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice,
13 or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold
14 therefrom or insert therein any statement or information which will cause any such document to
15 be false or misleading, or where the tendency or effect thereby would be to mislead or deceive
16 customers, prospective customers, or the public.

17 **COST RECOVERY**

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

22 **UNDERCOVER OPERATION ONE**

23 23. On or about October 16, 2011, Bureau staff assessed a covert operations vehicle, a
24 2002 Dodge, and induced a defect by machining the vehicle's right rear brake drum over the
25 manufacturer specifications. Bureau staff also misadjusted the vehicle's headlights so that they
26 were not within specifications. As modified by Bureau staff, the vehicle did not qualify for the
27 issuance of certificates of adjustment regarding the vehicle's brakes or lamps.

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1 California Code of Regulations, title 16, section 3305, in that Respondent A & R committed acts
2 constituting gross negligence, as set forth above in paragraphs 23-25.

3 **THIRD CAUSE FOR DISCIPLINE**

4 (A & R: Departure From Trade Standards)

5 28. Respondent A & R's registration and station licenses are subject to disciplinary action
6 under Code section 9884.7, subsections (a)(6) and (a)(7), and Code section 9889.3, subsection (c),
7 and under California Code of Regulations, title 16, section 3305, in that Respondent A & R
8 willfully departed from and/or disregarded accepted trade standards for good and workmanlike
9 repair, in a material respect, which was prejudicial to another, without consent of the owner or the
10 owner's duly authorized representative, as set forth above in paragraphs 23-25.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 (A & R: Failure to Provide Written Estimate)

13 29. Respondent A & R's registration and station licenses are subject to discipline under
14 Code sections 9884.7(a)(6) and 9884.9(a), and Code section 9889.3, subsection (c), and under
15 California Code of Regulations, title 16, section 3353, in that Respondent A & R failed to provide
16 the Bureau operator with a written estimate for assessment of the vehicle, as set forth above in
17 paragraphs 23-25.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 (A & R: Failure to Comply with Certificate Requirements)

20 30. Respondent A & R's registration and station licenses are subject to discipline under
21 Code section 9884.7(a)(6) and Code section 9889.3, subsections (a), (c) and (h), and under
22 California Code of Regulations, title 16, sections 3316 and 3321, in that Respondent A & R
23 issued brake and lamp certificates for the vehicle without performing required inspections and
24 when the vehicle could not pass such inspections, as set forth above in paragraphs 23-25.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 (Bertolli: Untrue or Misleading Statements, Fraud)

27 31. Respondent Bertolli's lamp and brake licenses are subject to disciplinary action under
28 Code section 9889.3, subsections (a), (c), (d) and (h), and under California Code of Regulations,

1 title 16, section 3373, in that Respondent Bertolli made untrue and/or misleading statements, both
2 orally and in invoices and in certificates, and/or committed fraud, and falsely represented that he
3 had inspected a vehicle's brakes and lights, as set forth above in paragraphs 23-25.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 (Bertolli: Issuance of False Certificates)

6 32. Respondent Bertolli's lamp and brake licenses are subject to discipline under Code
7 section 9889.3, subsections (a), (c) and (h), and Code sections 9889.16 and 9889.22, and under
8 California Code of Regulations, title 16, sections 3305, 3316, 3321 and 3373, in that Respondent
9 Bertolli willfully and under oath issued brake and lamp certificates for the vehicle which
10 contained false statements when he had not performed required inspections and when the vehicle
11 could not pass such inspections, as set forth above in paragraphs 23-25.

12 **EIGHTH CAUSE FOR DISCIPLINE**

13 (Bertolli: Failure to Adequately Inspect)

14 33. Respondent Bertolli's lamp and brake licenses are subject to discipline under Code
15 section 9889.3, subsections (a) and (c), and under California Code of Regulations, title 16, section
16 3305, in that Respondent Bertolli failed to inspect the vehicle in accordance with applicable
17 standards, as set forth above in paragraphs 23-25.

18 **UNDERCOVER OPERATION TWO**

19 34. On or about November 15-21, 2012, Bureau staff assessed a covert operations
20 vehicle, a 1997 Honda, and induced a defect by machining the vehicle's right rear brake drum
21 over the manufacturer specifications. Bureau staff also misadjusted the vehicle's headlights so
22 that they were not within specifications. As modified by Bureau staff, the vehicle did not qualify
23 for the issuance of certificates of adjustment regarding the vehicle's brakes or lamps.

24 35. On or about December 28, 2012, a Bureau operator, posing as a consumer, brought
25 the vehicle to Respondent A & R's shop and requested brake and lamp inspections of the vehicle.
26 The operator spoke with Pierangelo Bertolli, who stated that the cost of the inspections would be
27 \$60.00, but did not provide a written estimate. Later on the same date, the Bureau operator
28 retrieved the vehicle from the shop. The operator paid \$60.00 to Bertolli and received an invoice,

1 a brake adjustment certificate and a lamp adjustment certificate.

2 36. On or about December 31, 2012, Bureau staff reinspected the vehicle and observed
3 the following:

4 a. The vehicle's headlights remained out of specification. Previously-installed tamper
5 indicators on the headlight adjusters were intact, indicating that little or no attempt had been made
6 to properly adjust the headlights.

7 b. Previously-installed tamper indicators on all four wheels remained intact, indicating
8 that the wheels had not been removed as required by law.

9 c. The defective right rear brake drum had not been repaired.

10 d. The vehicle did not qualify for the issuance of a brake adjustment certificate or a
11 lamp adjustment certificate.

12 **NINTH CAUSE FOR DISCIPLINE**

13 (A & R: Untrue or Misleading Statements, Fraud)

14 37. Respondent A & R's registration and station licenses are subject to disciplinary action
15 under Code section 9884.7, subsections (a)(1), (a)(4) and (a)(6), and Code section 9889.3,
16 subsections (a), (c), (d) and (h), and under California Code of Regulations, title 16, section 3373,
17 in that Respondent A & R made untrue and/or misleading statements, both orally and in invoices
18 and in certificates, and/or committed fraud, and falsely represented that it had inspected a
19 vehicle's brakes and lights, as set forth above in paragraphs 34-36.

20 **TENTH CAUSE FOR DISCIPLINE**

21 (A & R: Gross Negligence)

22 38. Respondent A & R's registration and station licenses are subject to disciplinary action
23 under Code section 9884.7, subsection (a)(5), and Code section 9889.3, subsection (c), and under
24 California Code of Regulations, Title 16, section 3305, in that Respondent A & R committed acts
25 constituting gross negligence, as set forth above in paragraphs 34-36.

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1 had inspected a vehicle's brakes and lights, as set forth above in paragraphs 34-36.

2 **FIFTEENTH CAUSE FOR DISCIPLINE**

3 (Bertolli: Issuance of False Certificates)

4 43. Respondent Bertolli's lamp and brake licenses are subject to discipline under Code
5 section 9889.3, subsections (a), (c) and (h), and Code sections 9889.16 and 9889.22, and under
6 California Code of Regulations, title 16, sections 3305, 3316, 3321 and 3373, in that Respondent
7 Bertolli willfully and under oath issued brake and lamp certificates for the vehicle which
8 contained false statements when he had not performed required inspections and when the vehicle
9 could not pass such inspections, as set forth above in paragraphs 34-36.

10 **SIXTEENTH CAUSE FOR DISCIPLINE**

11 (Bertolli: Failure to Adequately Inspect)

12 44. Respondent Bertolli's lamp and brake licenses are subject to discipline under Code
13 section 9889.3, subsections (a) and (c), and under California Code of Regulations, title 16, section
14 3305, in that Respondent Bertolli failed to inspect the vehicle in accordance with applicable
15 standards, as set forth above in paragraphs 34-36.

16 **UNDERCOVER OPERATION THREE**

17 45. On or about December 18, 2012, through January 3, 2013, Bureau staff assessed a
18 covert operations vehicle, a 2000 Chevrolet, and documented the fact that the vehicle's front
19 brake rotors failed to comply with manufacturer's service specifications. Bureau staff also
20 misadjusted the vehicle's headlights so that they were not within specifications. As modified by
21 Bureau staff, the vehicle did not qualify for the issuance of certificates of adjustment regarding
22 the vehicle's brakes or lamps.

23 46. On or about January 17, 2013, a Bureau operator, posing as a consumer, brought the
24 vehicle to Respondent A & R's shop and requested brake and lamp inspections of the vehicle.
25 The operator spoke with Pierangelo Bertolli, who stated that the cost of the inspections would be
26 \$60.00, but did not provide a written estimate. Later on the same date, the Bureau operator
27 retrieved the vehicle from the shop. The operator paid \$60.00 to Bertolli and received an invoice,
28 a brake adjustment certificate and a lamp adjustment certificate.

1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

2 (A & R: Gross Negligence)

3 50. Respondent A & R's registration and station licenses are subject to disciplinary action
4 under Code section 9884.7, subsection (a)(5), and Code section 9889.3, subsection (c), and under
5 California Code of Regulations, title 16, section 3305, in that Respondent A & R committed acts
6 constituting gross negligence, as set forth above in paragraphs 45-48.

7 **NINETEENTH CAUSE FOR DISCIPLINE**

8 (A & R: Departure From Trade Standards)

9 51. Respondent A & R's registration and station licenses are subject to disciplinary action
10 under Code section 9884.7, subsections (a)(6) and (a)(7), and Code section 9889.3, subsection (c),
11 and under California Code of Regulations, title 16, section 3305, in that Respondent A & R
12 willfully departed from and/or disregarded accepted trade standards for good and workmanlike
13 repair, in a material respect, which was prejudicial to another, without consent of the owner or the
14 owner's duly authorized representative, as set forth above in paragraphs 45-48.

15 **TWENTIETH CAUSE FOR DISCIPLINE**

16 (A & R: Failure to Provide Written Estimate)

17 52. Respondent A & R's registration and station licenses are subject to discipline under
18 Code sections 9884.7(a)(6) and 9884.9(a), and Code section 9889.3, subsection (c), and under
19 California Code of Regulations, title 16, section 3353, in that Respondent A & R failed to provide
20 the Bureau operator with a written estimate for assessment of the vehicle, as set forth above in
21 paragraphs 45-48.

22 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

23 (A & R: Failure to Comply with Certificate Requirements)

24 53. Respondent A & R's registration and station licenses are subject to discipline under
25 Code section 9884.7(a)(6) and Code section 9889.3, subsections (a), (c) and (h), and under
26 California Code of Regulations, title 16, sections 3316 and 3321, in that Respondent A & R
27 issued brake and lamp certificates for the vehicle without performing required inspections and
28 when the vehicle could not pass such inspections, as set forth above in paragraphs 45-48.

1 9. Ordering Respondents to pay the Bureau of Automotive Repair the reasonable costs
2 of the investigation and enforcement of this case, pursuant to Business and Professions Code
3 section 125.3;

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

5 DATED: November 22, 2013

Patrick Dorais

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

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