

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

In the Matter of the First Amended Accusation
Against:

EFRAIN P. HARO
dba LOS AMIGOS AUTO
Gridley, CA 95948

Automotive Repair Dealer Registration
No. ARD 195692
Smog Check Station License
No. RC 195692
Official Lamp Station License No. LS 195692
Official Brake Station License No. BS 195692

and

EFRAIN P. HARO
Gridley, CA 95948

Advanced Emission Specialist Technician
License No. EA 142689
Brake Adjuster License No. BA 142689
Lamp Adjuster License No. LA 142689

Respondents.

Case No. 77/10-11

OAH No. 2011030167

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error on page 4, paragraph 12, line 7, Factual Findings, of the Proposed Decision is corrected as follows:

The word "includeding" is corrected to read "including."

This Decision shall become effective December 9, 2011.

DATED: November 2, 2011



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the First Amended Accusation Against:

Case No. 77/10-11

EFRAIN P. HARO DBA LOS AMIGOS AUTO
Gridley, CA 95948
Automotive Repair Dealer Registration No. ARD
195692
Smog Check Station License No. RC 195692
Official Lamp Station License No. LS 195692
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and

EFRAIN P. HARO
Gridley, CA 95948
Advanced Emission Specialist Technician License No.
EA 142689
Brake Adjuster License No. BA 142689
Lamp Adjuster License No. LA142689

Respondents.

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on September 20, 2011.

Patrick M. Kenady, Deputy Attorney General, represented Sherry Mehl (complainant), Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Attorney Michael B. Levin represented respondent Efrain P. Haro, individually and dba Los Amigos Auto, who was present throughout the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on September 20, 2011.

SUMMARY

Complainant filed an Accusation seeking to discipline the automotive repair dealer registration and various other licenses issued to respondent Haro individually and dba Los Amigos Auto. At the hearing, the parties stipulated to a factual and legal basis for disciplining the registration and licenses, as well as the advanced emission specialist technician license and smog check station license issued to respondent Haro, individually and dba Los Amigos Auto, respectively. Therefore, cause exists for disciplining the registration and various licenses, and the brake and lamp station licenses issued to respondent Haro dba Los Amigos Auto and the brake adjuster and lamp adjuster licenses issued to respondent Haro are revoked. The registration and smog check station license issued to respondent Haro dba Los Amigos Auto and the advanced emission specialist technician license issued to respondent Haro are placed on probation subject to the terms and conditions specified in the Order below, which include a 15 day actual suspension for each.

FACTUAL FINDINGS

1. On August 23, 2010, complainant, acting solely in her official capacity as Chief of the Bureau, filed an Accusation seeking to discipline the automotive repair dealer registration, lamp station license, and brake station license issued to respondent Haro dba Los Amigos Auto. The Accusation also seeks to discipline the lamp adjuster license and brake adjuster license issued to respondent Haro.

2. At the administrative hearing, the parties stipulated to a factual and legal basis for disciplining the automotive repair dealer registration, smog check station license, lamp station license, and brake station license issued to respondent Haro dba Los Amigos Auto and the advanced emission specialist technician license, lamp adjuster license, and brake adjuster license issued to respondent Haro. They also stipulated to the discipline specified in the Order below. The use of the parties' stipulation was expressly limited to this and any future proceedings before the Bureau of Automotive Repair. The reliance on any discipline imposed as a result of the stipulation, however, is not limited in any manner.

3. The Accusation was amended to include allegations seeking to discipline the smog check station license issued to respondent Haro dba Los Amigos Auto and the advanced emission specialist technician license issued to respondent Haro in order to accommodate the parties' stipulation.¹

¹ While the parties did not expressly request that the Accusation be amended, such request was implicitly included in the stipulation since there would otherwise be no factual basis for disciplining the smog check station license or advanced emission specialist technician license since no such basis was alleged in the Accusation. (See, *Wheeler v. State Board of Forestry* (1983) 144 Cal.App.3d 522, 526-527 [order of

Registration and Licenses Issued to Respondent Haro dba Los Amigos Auto

4. On August 6, 1997, the Bureau issued Automotive Repair Dealer Registration No. ARD 195692 (registration) to Efrain P. Haro dba Los Amigos Auto. The registration expired on August 31, 2010.²

5. On November 16, 2001, the Bureau issued Smog Check Station License No. RC 195692 (smog check station license) to Efrain P. Haro dba Los Amigos Auto. The smog check station license expired on August 31, 2010.³

6. On September 3, 2003, the Bureau issued Lamp Station License No. LS 195692 (lamp station license) to Efrain P. Haro dba Los Amigos Auto. The lamp station license expired on August 31, 2010.⁴

7. On September 3, 2003, the Bureau issued Brake Station License No. BS 195692 (brake station license) to Efrain P. Haro dba Los Amigos Auto. The brake station license expired on August 31, 2010.

Licenses Issued to Respondent Haro Individually

8. In 2002, the Bureau issued Advanced Emission Specialist Technician License No. EA 142689 (advanced technician license) to Mr. Haro. The license expires on February 28, 2013, unless renewed or revoked.

9. In 2002, the Bureau issued Brake Adjuster License No. BA 142689 (brake adjuster license) to Mr. Haro. The license expired on February 28, 2006. Mr. Haro reapplied and was issued the same license on May 15, 2009. The license expires on February 28, 2013, unless renewed or revoked.

discipline must be based on law and facts alleged in the accusation].) Respondent's stipulation to a factual and legal basis for discipline constitutes a judicial admission. (See, *Gonzales v. Pacific Greyhound Lines* (1950) 34 Cal.2d 749, 754-758.) "A judicial admission is a party's unequivocal concession of the truth of the matter, and removes the matter as an issue in the case." (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 48.)

² The expiration of the registration does not divest the Bureau of jurisdiction to discipline the registration. (Bus. & Prof. Code, § 9884.13.)

³ The expiration of the license does not divest the Bureau of jurisdiction to discipline the license. (Health & Saf. Code, § 44072.6.)

⁴ The expiration of the lamp station license and brake station license does not divest the Bureau of jurisdiction to discipline either or both licenses. (Bus. & Prof. Code, § 9889.7.)

10. In 2002, the Bureau issued Lamp Adjuster License No. LA 142689 (lamp adjuster license) to Mr. Haro. The license expired on February 28, 2006. Mr. Haro reapplied and was issued the same license on May 15, 2009. The license expires on February 28, 2013, unless renewed or revoked.

Bureau's Investigation of Los Amigos Auto

11. On April 2, 2009, Bureau representative Carl Holmes performed an inspection of Los Amigos Auto because Mr. Haro had relocated his smog check station from Vallejo, California to Gridley, California. Mr. Holmes discovered that Mr. Haro was the only licensed adjuster at Los Amigos Auto and that his lamp and brake adjuster licenses had expired on February 28, 2006. Mr. Holmes obtained Los Amigos Auto's unused brake and lamp certificates, a book of 50 brake certificates numbered sequentially from BC783351 to BC783400 and a book of 50 lamp certificates numbered sequentially from LC771501 to LC771550. He told Mr. Haro that the books would be held by the Bureau until further notice, that Mr. Haro's lamp and brake adjuster licenses had expired, and that Mr. Haro could not perform lamp and brake inspections without valid adjuster licenses.

12. On June 18, 2009, Bureau representative Kelly Renihan performed a follow up lamp and brake station inspection of Los Amigos Auto. Mr. Renihan had with him an inventory sheet of lamp and brake certificates that Mr. Haro had purchased from the Bureau between April 10, 2008, and December 16, 2008. Mr. Renihan asked Mr. Haro for the lamp and brake certificate books listed on the inventory sheet. Mr. Haro provided Mr. Renihan with the certificate books as requested, including 50 lamp certificates numbered sequentially from LC771551 to LC771600 and 50 brake certificates numbered sequentially from BC783401 to BC783450, all of which were purchased on December 16, 2008. Mr. Renihan browsed through the certificates and found that Mr. Haro had issued certain certificates after Mr. Holmes' inspection on April 2, 2009. Mr. Renihan asked Mr. Haro why he had issued the certificates when his adjuster licenses were invalid. Mr. Haro stated that he had taken and passed his lamp and brake adjuster license tests and provided Mr. Renihan with copies of the test results. Mr. Renihan told Mr. Haro that Los Amigos Auto had not been approved by the Bureau as an official lamp and brake station at its current location and that he did not have valid lamp and brake adjuster licenses posted at his location. Mr. Renihan warned Mr. Haro not to operate as a lamp and brake station until Los Amigos Auto passed the Bureau's inspection.

13. Later that same day, Mr. Renihan reviewed the lamp and brake certificate books he had obtained from Mr. Haro and discovered that Mr. Haro had issued the following certificates on the following dates while his adjuster licenses were expired:

<u>Lamp Certificate No.</u>	<u>Date of Issuance</u>
LC771551	February 2, 2009
LC771552	April 28, 2009
LC771553	May 11, 2009
LC771554	April 1, 2009
LC771555	April 2, 2009
LC771556	April 3, 2009
LC771557	April 4, 2009
LC771558	March 21, 2009
LC771559	May 1, 2009

<u>Brake Certificate No.</u>	<u>Date of Issuance</u>
BC783401	February 2, 2009
BC783402	April 28, 2009
BC783403	May 11, 2009
BC783404	March 19, 2009
BC783405	March 20, 2009
BC783406	March 20, 2009
BC783407	April 20, 2009
BC783408	March 21, 2009
BC783409	May 1, 2009

14. On July 31, 2009, Mr. Renihan returned to Los Amigos Auto and requested invoices for the lamp and brake inspections identified in the certificate books numbers BC783401 to BC783450 and LC771551 to LC771600. Mr. Haro stated that those customers were from the Vallejo area and had not requested invoices, and that he had not created invoices relating to those inspections. Mr. Rehnihan asked why Mr. Haro issued lamp and brake certificates after Mr. Holmes warned him not to perform inspections without valid adjuster licenses. Mr. Haro said he needed the cash and knew he was violating the law when he issued the certificates.

Costs of Investigation and Enforcement

15. Pursuant to Business and Professions Code section 125.3, complainant requested costs of investigation and enforcement in the total amount of \$4,238.70. That amount consists of costs incurred directly by the Bureau (\$908.70), as well as costs incurred by the Office of the Attorney General and billed to the Bureau (\$3,330). At the hearing, A Certification of Prosecution Costs; Declaration of Patrick M. Kenady was introduced. Attached as Exhibit A to that Certification is a document entitled Matter Time Activity by Professional Type, which shows that the Bureau has incurred costs in the amount of \$3,300 for work performed by the Attorney General's Office in this matter. A Certification of Investigative and Other Costs in support of the investigation costs incurred directly by the Bureau was also submitted.

Pursuant to the parties' stipulation, costs in the amount of \$3,179.03 are reasonable in light of the issues involved in this matter as discussed in Legal Conclusion 23 below.

LEGAL CONCLUSIONS

Cause to Discipline Registration and Licenses Issued to Respondent Haro dba Los Amigos Auto

1. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has made or authorized in any manner or by any means any written or oral statement which is untrue or misleading when the person knew, or through the exercise of reasonable care should have known, that the statement was untrue or misleading. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) By signing each of the brake certificates identified in Factual Finding 13, Mr. Haro certified under penalty of perjury that he inspected each brake system in accordance with the Automotive Repair Act and all regulations adopted pursuant to it, including those which required him to have a brake adjuster license in order to issue such certificates. (Bus. & Prof. Code, § 9888.3 [official brake certificate must be issued by licensed brake adjuster; Cal. Code Regs., tit. 16, § 3305, subd. (a) [accord].) But each certificate was issued after his brake adjuster license had expired and before it was reissued. (Factual Findings 9 and 13.) Therefore, he made an untrue or misleading statement about the manner in which he inspected each brake system, being fully aware that he did not have a valid brake adjuster license, when he issued each brake certificate identified in Factual Finding 13, and cause exists to discipline Automotive Repair Dealer Registration No. ARD 195692 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

2. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has made or authorized in any manner or by any means any written or oral statement which is untrue or misleading when the person knew, or through the exercise of reasonable care should have known, that the statement was untrue or misleading. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) By signing each of the lamp certificates identified in Factual Finding 13, Mr. Haro certified under penalty of perjury that he inspected each lamp system in accordance with the Automotive Repair Act and all regulations adopted pursuant to it, including those which required him to have a lamp adjuster license in order to issue such certificates. (Bus. & Prof. Code, § 9888.3 [official lamp certificate must be issued by licensed lamp adjuster; Cal. Code Regs., tit. 16, § 3305, subd. (a) [accord].) But each certificate was issued after his lamp adjuster license had expired and before it was reissued. (Factual Findings 10 and 13.) Therefore, he made an untrue or misleading statement about the manner in which he inspected each lamp system, being fully aware that he did not have a valid lamp adjuster license, when he issued each lamp certificate identified in Factual Finding 13, and cause exists to

discipline Automotive Repair Dealer Registration No. ARD 195692 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

3. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed in a material manner to comply with any provision of the Automotive Repair Act or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) An invoice must be prepared for all work performed at an automotive repair dealer. (Bus. & Prof. Code, § 9884.8.) No invoices were prepared for any of the brake or lamp inspections identified in Factual Finding 13. (Factual Finding 14.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 195692 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that statute relates to Business and Professions Code section 9884.8.

4. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed in a material manner to comply with any provision of the Automotive Repair Act or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) No person may issue an official brake or lamp certificate without having the appropriate adjuster's license. (Bus. & Prof. Code, § 9888.3.) And a licensee whose brake or lamp adjuster license has expired shall immediately stop issuing official brake or lamp certificates. (Bus. & Prof. Code, § 9887.1.) Mr. Haro's brake adjuster and lamp adjuster licenses initially expired on February 29, 2006, and were not reissued until May 15, 2009. (Factual Findings 9 and 10.) Nonetheless, he issued the official brake and lamp certificates identified in Factual Finding 13 during the period his licenses were expired. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 195692 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that statute relates to Business and Professions Code sections 9887.1 and 9888.3, jointly and severally.

5. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed in a material manner to comply with any provision of the Automotive Repair Act or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) Business and Professions Code section 9889.22 prohibits the willful making of any false statement or entry on a certificate. For the reasons discussed in Legal Conclusions 1 and 2, jointly and severally, cause exists to discipline Automotive Repair Dealer Registration No. ARD 195692 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that statute relates to Business and Professions Code section 9889.22.

6. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed in a material manner to comply with any provision of the Automotive Repair Act or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).)

Work performed on a vehicle's brake or lamp system for the purpose of issuing an official brake or lamp certificate must be performed by a licensed brake adjuster or licensed lamp adjuster, respectively. (Cal. Code of Regs., tit. 16, § 3305, subd. (a).) For the reasons discussed in Legal Conclusion 4, cause exists to discipline Automotive Repair Dealer Registration No. ARD 195692 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that statute relates to California Code of Regulations, title 16, section 3305, subdivision (a).

7. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed in a material manner to comply with any provision of the Automotive Repair Act or any regulation adopted pursuant to the Act. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) An official brake or lamp station shall cease performing services when it no longer has the services of a licensed adjuster. (Cal. Code of Regs., tit. 16, § 3308.) Mr. Haro was the only licensed brake and lamp adjuster at Los Amigos Auto. (Factual Finding 11.) For the reasons discussed in Legal Conclusion 4, cause exists to discipline Automotive Repair Dealer Registration No. ARD 195692 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that statute relates to California Code of Regulations, title 16, section 3308.

8. An automotive repair dealer registration may be disciplined when the dealer has engaged in a course of repeated and willful violations of the Automotive Repair Act or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (c).) For the reasons discussed in Legal Conclusions 1 through 7, individually and collectively, cause exists to discipline Automotive Repair Dealer Registration No. ARD 195692 pursuant to Business and Professions Code section 9884.7, subdivision (c).

9. An official brake and lamp station license may be disciplined when the licensee violates any provision of the Business and Professions Code that relates to his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (a).) For the reasons discussed in Legal Conclusion 3, cause exists to discipline Brake Station License No. BS 195692 and Lamp Station License No. LS 195692, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (a), as that statute relates to Business and Professions Code section 9884.8.

10. An official brake and lamp station license may be disciplined when the licensee violates any provision of the Business and Professions Code that relates to his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (a).) For the reasons discussed in Legal Conclusion 4, cause exists to discipline Brake Station License No. BS 195692 and Lamp Station License No. LS 195692, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (a), as that statute relates to Business and Professions Code sections 9887.1 and 9888.3, jointly and severally.

11. An official brake and lamp station license may be disciplined when the licensee violates any provision of the Business and Professions Code that relates to his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (a).) For the reasons discussed in Legal Conclusion 5, cause exists to discipline Brake Station License No. BS 195692 and Lamp Station License No. LS 195692, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (a), as that statute relates to Business and Professions Code section 9889.22.

12. An official brake and lamp station license may be disciplined when the licensee violates or attempts to violate any provision of the Automotive Repair Act that relates to his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (h).) For the reasons discussed in Legal Conclusion 3, cause exists to discipline Brake Station License No. BS 195692 and Lamp Station License No. LS 195692, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (h), as that statute relates to Business and Professions Code section 9884.8.

13. An official brake and lamp station license may be disciplined when the licensee violates or attempts to violate any provision of the Automotive Repair Act that relates to his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (h).) For the reasons discussed in Legal Conclusion 4, cause exists to discipline Brake Station License No. BS 195692 and Lamp Station License No. LS 195692, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (h), as that statute relates to Business and Professions Code sections 9887.1 and 9888.3, jointly and severally.

14. An official brake and lamp station license may be disciplined when the licensee violates or attempts to violate any provision of the Automotive Repair Act that relates to his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (h).) For the reasons discussed in Legal Conclusion 5, cause exists to discipline Brake Station License No. BS 195692 and Lamp Station License No. LS 195692, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (h), as that statute relates to Business and Professions Code section 9889.22.

15. An official brake and lamp station license may be disciplined when the licensee violates or attempts to violate any regulation adopted pursuant to the Automotive Repair Act. (Bus. & Prof. Code, § 9889.3, subd. (c).) For the reasons discussed in Legal Conclusion 6, cause exists to discipline Brake Station License No. BS 195692 and Lamp Station License No. 195692, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (c), as that statute relates to California Code of Regulations, title 16, section 3305, subdivision (a). And for the reasons discussed in Legal Conclusion 7, cause exists to discipline Brake Station License No. BS 195692 and Lamp Station License No. 195692, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (c), as that statute relates to California Code of Regulations, title 16, section 3308.

16. A smog check station license may be disciplined if the licensee commits an act involving dishonesty, fraud, or deceit whereby another is injured. (Health & Saf. Code, § 44072.2, subd. (c).) For the reasons discussed in Legal Conclusions 1 and 2, jointly and severally, cause exists to discipline Smog Check Station License No. RC 195692 pursuant to Health and Safety Code section 44072.2, subdivision (c).

Cause to Discipline Licenses Issued to Respondent Haro Individually

17. A brake adjuster license and lamp adjuster license may be disciplined when the licensee violates any provision of the Business and Professions Code that relates to his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (a).) For the reasons discussed in Legal Conclusion 4, cause exists to discipline Brake Adjuster License No. BA 142689 and Lamp Adjuster License No. LA 142689, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (a), as that statute relates to Business and Professions Code sections 9887.1 and 9888.3, jointly and severally.

18. A brake adjuster license and lamp adjuster license may be disciplined when the licensee violates any provision of the Business and Professions Code that relates to his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (a).) For the reasons discussed in Legal Conclusion 5, cause exists to discipline Brake Adjuster License No. BA 142689 and Lamp Adjuster License No. LA 142689, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (a), as that statute relates to Business and Professions Code section 9889.22.

19. A brake adjuster license and lamp adjuster license may be disciplined when the licensee violates or attempts to violate any provision of the Automotive Repair Act that relates to his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (h).) For the reasons discussed in Legal Conclusion 4, cause exists to discipline Brake Adjuster License No. BA 142689 and Lamp Adjuster License No. LA 142689, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (h), as that statute relates to Business and Professions Code sections 9887.1 and 9888.3, jointly and severally.

20. A brake adjuster license and lamp adjuster license may be disciplined when the licensee violates or attempts to violate any provision of the Automotive Repair Act that relates to his licensed activities. (Bus. & Prof. Code, § 9889.3, subd. (h).) For the reasons discussed in Legal Conclusion 5, cause exists to discipline Brake Adjuster License No. BA 142689 and Lamp Adjuster License No. LA 142689, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (h), as that statute relates to Business and Professions Code section 9889.22.

21. A brake adjuster license and lamp adjuster license may be disciplined when the licensee violates or attempts to violate any regulation adopted pursuant to the Automotive Repair Act. (Bus. & Prof. Code, § 9889.3, subd. (c).) For the reasons discussed in Legal Conclusion 6, cause exists to discipline Brake Adjuster License No. BA 142689 and Lamp Adjuster License No. LA 142689, individually and collectively, pursuant to Business and Professions Code section 9889.3, subdivision (c), as that statute relates to California Code of Regulations, title 16, section 3305, subdivision (a).

22. Business and Professions Code section 9889.9 provides that the discipline of any license constitutes grounds for discipline of all other licenses issued to the same licensee pursuant to Articles 5 and 6 of the Automotive Repair Act (Bus. & Prof. Code, div. 3, ch. 20.3, § 9880 et seq.). For the reasons discussed in Legal Conclusions 17 through 21, individually and collectively, cause exists to discipline Advanced Emission Specialist Technician License No. EA 142689 pursuant to Business and Professions Code section 9889.9.

Cost Recovery

23. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) whether the licensee has been successful at hearing in getting charges dismissed or reduced; 2) the licensee's subjective good faith belief in the merits of his or her position; 3) whether the licensee has raised a colorable challenge to the proposed discipline; 4) the financial ability of the licensee to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct.

As set forth in Factual Finding 15, the parties stipulated to investigation and prosecution costs in the amount of \$3,179.03. Therefore, complainant's request for prosecution costs in the amount of \$3,179.03 is reasonable and is awarded against respondent Efrain P. Haro, individually and dba Los Amigos Auto, as set forth in the Order below.

ORDER

1. Brake Station License No. BS 195692 issued to respondent Efrain P. Haro dba Los Amigos Auto is REVOKED.

2. Lamp Station License No. LS 195692 issued to respondent Haro dba Los Amigos Auto is REVOKED.

3. Brake Adjuster License No. BA 142689 issued to respondent Haro is REVOKED.

4. Lamp Adjuster License No. LA 142689 issued to respondent Haro is REVOKED.

5. Automotive Repair Dealer Registration No. ARD 195692 and Smog Check Station License No. RC 195692, each of which was issued to respondent Haro dba Los Amigos Auto, and Advanced Emission Specialist Technician License No. EA 142689 issued to respondent Haro are each REVOKED. However, each revocation is STAYED and each registration or license is placed on PROBATION for a period of three years, subject to the following terms and conditions:

a. Each registration or license is suspended for a period of 15 days commencing on the effective date of this Decision.

b. During the period of probation, respondent Haro, individually and dba Los Amigos Auto, shall

i. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

ii. Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

iii. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

iv. Within 30 days of the effective date of this Decision, report any financial interest which any partners, officers, or owners of Los Amigos Auto may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

v. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

vi. If an accusation is filed against respondent individually or dba Los Amigos Auto during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

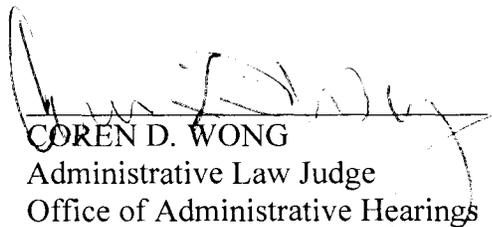
vii. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration and/or suspend or revoke any of the licenses.

c. During the period of probation, respondent Haro shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this Decision and Order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, Smog Check Station License No. RC 195692 and Advanced Emission Specialist Technician License No. EA 142689 shall each be immediately suspended until such proof is received.

d. During the period of probation, respondent Haro, individually and dba Los Amigos Auto, shall not perform any form of smog inspection, or emission system diagnosis or repair, until respondent has purchased, installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to properly perform such work, and BAR has been given 10 days notice of the availability of the equipment for inspection by a BAR representative.

6. Respondent Haro, individually and dba Los Amigos Auto, shall reimburse the Bureau the sum of \$3,179.03 for costs incurred while investigating and prosecuting this matter. The costs shall be paid over a 30-month period commencing on the effective date of this Decision. Respondent may pay these costs according to a payment plan approved by the Bureau or its designee.

DATED: October 13, 2011


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 27/10-11

13 **LOS AMIGOS AUTO**
14 **EFRAIN P. HARO, OWNER**
57 E. Gridley
15 **Gridley, CA 95948**
Mailing Address:
16 **2136 Sacramento St.**
17 **Vallejo, CA 94590**
Automotive Repair Dealer Reg. No. ARD 195692
Office Lamp Station License No. LS 195692
Official Brake Station License No. BS 195692

ACCUSATION

18 **and**

19 **EFRAIN HARO**
1950 Nevada Street
20 **Gridley, CA 95948**
Brake Adjuster License No. BA 142689
21 **Lamp Adjuster License No. LA 142689**

22 Respondents.

23
24 Complainant alleges:

25 **PARTIES**

26 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
27 the Chief of the Bureau of Automotive Repair ("Bureau") Department of Consumer Affairs.

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1 **Los Amigos Auto:**

2 2. On or about August 6, 1997, the Director of Consumer Affairs ("Director") issued
3 Automotive Repair Dealer Registration Number ARD 195692 (hereinafter "registration") to
4 Efrain P. Haro ("Respondent"), owner of Los Amigos Auto. Respondent's registration will expire
5 on August 31, 2010, unless renewed.

6 3. On or about September 3, 2003, the Director issued Official Lamp Station License
7 Number LS 195692 (hereinafter "lamp station license") to Respondent. Respondent's lamp
8 station license will expire on August 31, 2010, unless renewed.

9 4. On or about September 3, 2003, the Director issued Official Brake Station License
10 Number BS 195692 (hereinafter "brake station license") to Respondent. Respondent's brake
11 station license will expire on August 31, 2010, unless renewed.

12 **Efrain Haro:**

13 5. In or about 2002, the Director issued Brake Adjuster License Number BA 142689 to
14 Respondent. Respondent's brake adjuster license expired on February 28, 2006. Respondent
15 reapplied for the license and it was issued, or reissued, on May 15, 2009. Respondent's brake
16 adjuster license will expire on February 28, 2013, unless renewed.

17 6. In or about 2002, the Director issued Lamp Adjuster License Number LA 142689 to
18 Respondent. Respondent's lamp adjuster license expired on February 28, 2006. Respondent
19 reapplied for the license and it was issued, or reissued, on May 15, 2009. Respondent's lamp
20 adjuster license will expire on February 28, 2013, unless renewed.

21 **JURISDICTION**

22 7. Business and Professions Code ("Code") section 9884.7 provides that the Director
23 may invalidate an automotive repair dealer registration.

24 8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
25 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
26 against an automotive repair dealer or to render a decision invalidating a registration temporarily
27 or permanently.

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

2
3 (h) Violates or attempts to violate the provisions of this chapter relating
4 to the particular activity for which he or she is licensed . . .

5 13. Code section 9884.8 states:

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

13 14. Code section 9887.1 states:

14 The director shall have the authority to issue licenses for official lamp
15 and brake adjusting stations and shall license lamp and brake adjusters. The licenses
16 shall be issued in accordance with this chapter and regulations adopted by the director
17 pursuant thereto. The director shall establish by regulation the terms of adjusters'
18 licenses as are necessary for the practical administration of the provisions relating to
19 adjusters, but those terms shall not be for less than one nor more than four years.
20 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, but the director shall accept applications for renewal during the
30-day period following the date of expiration if they are accompanied by a new
license fee. In no case shall a license be renewed where the application is received
more than 30 days after the date of expiration.

21 15. Code section 9888.3 states:

22 No person shall operate an "official" lamp or brake adjusting station
23 unless a license therefor has been issued by the director. No person shall issue, or
24 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.

25 16. Code section 9889.22 states:

26 The willful making of any false statement or entry with regard to a
27 material matter in any oath, affidavit, certificate of compliance or noncompliance, or
28 application form which is required by this chapter [the Automotive Repair Act] 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.

1 17. Code section 9889.9 states that “[w]hen any license has been revoked or suspended
2 following a hearing under the provisions of this article [Article 7 (commencing with section
3 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and 6 of
4 this chapter in the name of the licensee may be likewise revoked or suspended by the director.”

5 18. Code section 22, subdivision (a), states:

6 “Board” as used in any provision of this Code, refers to the board in
7 which the administration of the provision is vested, and unless otherwise expressly
8 provided, shall include “bureau,” “commission,” “committee,” “department,”
9 “division,” “examining committee,” “program,” and “agency.”

9 19. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes
10 “registration” and “certificate.”

11 **COST RECOVERY**

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

16 **BACKGROUND**

17 21. On April 2, 2009, Bureau Representative Carl Holmes ("Holmes") performed an
18 inspection of Respondent's smog check station (the inspection was required since Respondent had
19 moved his business from Vallejo, California, to Gridley). Holmes found that Respondent was the
20 only licensed adjuster at the facility and that his lamp and brake adjuster licenses had expired on
21 February 28, 2006. Holmes obtained the facility's unused lamp and brake certificates, a book of
22 50 brake certificates numbered BC783351 to BC783400 and a book of 50 lamp certificates
23 numbered LC771501 to LC771550. Holmes told Respondent that the books would be held by the
24 Bureau until further notice, that his lamp and brake adjuster licenses had expired, and that he
25 could not perform lamp and brake inspections without valid adjuster licenses.

26 22. On or about June 18, 2009, Bureau Representative Kelly Renihan ("Renihan")
27 performed a follow-up lamp and brake station inspection of the facility. At the time of the
28 inspection, Renihan had an inventory sheet of lamp and brake certificates that Respondent had

1 purchased from the Bureau between April 10, 2008, and December 16, 2008. Renihan asked
2 Respondent for the lamp and brake certificate books listed on the inventory sheet. Respondent
3 provided Renihan with the certificate books as requested, including 50 lamp certificates
4 numbered LC771551 to LC771600 and 50 brake certificates numbered BC783401 to BC783450,
5 all of which were purchased on December 16, 2008. Renihan browsed through the certificates
6 and found that Respondent had issued certain certificates after Holmes' inspection on April 2,
7 2009. Renihan asked Respondent why he issued the certificates when his adjuster licenses were
8 invalid (expired). Respondent stated that he had taken and passed his lamp and brake adjuster
9 license tests and provided Renihan with copies of the test results (Respondent had passed the tests
10 on May 13, 2009, but his adjuster licenses were not issued or reissued by the Bureau until May
11 15, 2009). Renihan told Respondent that his facility had not been approved by the Bureau as an
12 official lamp and brake station at his current location and that he did not have valid lamp and
13 brake adjuster licenses posted at the facility. Renihan warned Respondent not to operate as a
14 lamp and brake station until his facility passed the Bureau's inspection.

15 23. Later that same day, Renihan reviewed the certificate books numbered BC783401 to
16 BC783450 and LC771551 to LC771600 and found that Respondent had issued the brake and
17 lamp certificates, identified below, while his adjuster licenses were expired and/or after he was
18 warned by Holmes not to perform lamp and brake inspections without valid adjuster licenses.
19 Renihan also found that the lamp and brake certificates were not issued in sequence by date.

Lamp Certificate No.	Date of Issuance
LC 771551	February 2, 2009
LC 771552	April 28, 2009
LC 771553	May 11, 2009
LC 771554	April 1, 2009
LC 771555	April 2, 2009
LC 771556	April 3, 2009
LC 771557	April 4, 2009
LC 771558	March 21, 2009
LC 771559	May 1, 2009

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	Brake Certificate No.	Date of Issuance:
1		
2	BC 783401	February 2, 2009
3	BC 783402	April 28, 2009
4	BC 783403	May 11, 2009
5	BC 783404	March 19, 2009
6	BC 783405	March 20, 2009
7	BC 783406	March 20, 2009
8	BC 783407	April 20, 2009
9	BC 783408	March 21, 2009
10	BC 783409	May 1, 2009

24. On July 31, 2009, Renihan returned to the facility and requested invoices for all lamp and brake inspections performed by Respondent from March 2009 through May of 2009. Respondent provided Renihan with invoices relating to vehicle repairs performed during the specified time period, but only provided two invoices relating to lamp and brake inspections. Renihan requested invoices for the lamp and brake inspections identified in the certificate books numbered BC783401 to BC783450 and LC771551 to LC771600. Respondent stated that those customers were from the Vallejo area and had not requested invoices; and that he had not created invoices relating to those inspections. Renihan asked Respondent why he issued lamp and brake certificates after Holmes warned him not to perform inspections without valid adjuster licenses. Respondent stated that he needed the cash and knew that he was violating the law when he issued the certificates.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

25. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent certified under penalty of perjury on the lamp certificates, identified in paragraph 23 above, that he performed the applicable inspections of the lighting systems on the vehicles, described in the certificates, as specified by the Bureau and in accordance with Title 16 of the California Code of Regulations and the Business and Professions Code. In fact, Respondent issued the certificates when his lamp adjuster license had expired, in violation of

1 Code sections 9887.1 and 9888.3 and California Code of Regulations, title 16, section 3305,
2 subdivision (a). Further, Respondent issued Lamp Certificate Numbers LC 771552, LC 771553,
3 LC 771556, LC 771557, and LC 771559 after Bureau Representative Holmes told him that he
4 could not perform lamp and brake inspections without valid adjuster licenses.

5 b. Respondent certified under penalty of perjury on the brake certificates, identified in
6 paragraph 23 above, that he performed the applicable inspections of the brake systems on the
7 vehicles, described in the certificates, as specified by the Bureau and in accordance with Title 16
8 of the California Code of Regulations and the Business and Professions Code. In fact,
9 Respondent issued the certificates when his brake adjuster license had expired, in violation of
10 Code sections 9887.1 and 9888.3 and California Code of Regulations, title 16, section 3305,
11 subdivision (a). Further, Respondent issued Brake Certificate Numbers BC 783402, BC 783403,
12 BC 783407, and BC 783409 after Bureau Representative Holmes told him that he could not
13 perform lamp and brake inspections without valid adjuster licenses.

14 **SECOND CAUSE FOR DISCIPLINE**

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

16 26. Respondent's registration is subject to disciplinary action pursuant to Code section
17 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code in
18 the following material respects:

19 a. **Section 9884.8:** Respondent failed to make or maintain invoices for the lamp and
20 brake inspections identified in the certificate books numbered BC783401 to BC783450 and
21 LC771551 to LC771600.

22 b. **Sections 9887.1 and 9888.3:** Respondent continued to issue lamp and brake
23 certificates despite the fact that his lamp and brake adjuster licenses had expired on February 28,
24 2006.

25 c. **Section 9889.22:** Respondent willfully made false statements on the lamp and brake
26 certificates, as set forth in paragraph identified in paragraph 25 above.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 27. Respondent's registration is subject to disciplinary action pursuant to Code section
4 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of California
5 Code of Regulations, title 16, in the following material respects:

6 a. **Section 3305, subdivision (a)**: Respondent continued to issue lamp and brake
7 certificates despite the fact that his lamp and brake adjuster licenses had expired on February 28,
8 2006.

9 b. **Section 3308**: Respondent continued to perform his official functions as a lamp and
10 brake station, including issuing lamp and brake certificates, even though his brake and lamp
11 adjuster licenses had expired on February 28, 2006.

12 **FOURTH CAUSE FOR DISCIPLINE**

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

14 28. Respondent's official brake and lamp station licenses are subject to disciplinary
15 action pursuant to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the
16 provisions of Code sections 9884.8, 9887.1, 9888.3, and 9889.22 relating to his licensed
17 activities, as set forth in paragraph 26 above.

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 29. Respondent's official brake and lamp station licenses are subject to disciplinary
21 action pursuant to Code section 9889.3, subdivision (c), in that Respondent failed to comply with
22 the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), and
23 3308, as set forth in paragraph 27 above.

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 30. Respondent's brake and lamp adjuster licenses are subject to disciplinary action
27 pursuant to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the

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1 provisions of Code sections 9887.1, 9888.3, and 9889.22 relating to his licensed activities, as set
2 forth in paragraph 26 above.

3 **SEVENTH CAUSE FOR DISCIPLINE**

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

5 31. Respondent's brake and lamp adjuster licenses are subject to disciplinary action
6 pursuant to Code section 9889.3, subdivision (c), in that Respondent failed to comply with
7 California Code of Regulations, title 16, section 3305, subdivision (a), as set forth in paragraph 27
8 above.

9 **OTHER MATTERS**

10 32.. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
11 or may invalidate temporarily or permanently, the registrations for all places of business operated
12 in this state by Respondent Efrain P. Haro, owner of Los Amigos Auto, upon a finding that
13 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
14 regulations pertaining to an automotive repair dealer.

15 33. Pursuant to Code section 9889.9, if Official Lamp Station License Number LS
16 195692, issued to Respondent Efrain P. Haro, owner of Los Amigos Auto, is revoked or
17 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Code in the
18 name of said licensee may be likewise revoked or suspended by the Director.

19 34. Pursuant to Code section 9889.9, if Official Brake Station License Number BS
20 195692, issued to Respondent Efrain P. Haro, owner of Los Amigos Auto, is revoked or
21 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Code in the
22 name of said licensee may be likewise revoked or suspended by the Director.

23 35. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 142689,
24 issued to Respondent Efrain P. Haro, is revoked or suspended, any additional license issued under
25 Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be likewise
26 revoked or suspended by the Director.

27 36. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 142689,
28 issued to Respondent Efrain P. Haro, is revoked or suspended, any additional license issued under

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

3 **PRAYER**

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

6 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
7 Number ARD 195692, issued to Efrain P. Haro, owner of Los Amigos Auto;

8 2. Temporarily or permanently invalidating any other automotive repair dealer
9 registration issued to Efrain P. Haro, owner of Los Amigos Auto;

10 3. Revoking or suspending Official Lamp Station License Number LS 195692, issued to
11 Efrain P. Haro, owner of Los Amigos Auto;

12 4. Revoking or suspending Official Brake Station License Number BS 195692, issued to
13 Efrain P. Haro, owner of Los Amigos Auto;

14 5. Revoking or suspending Brake Adjuster License Number BA 142689, issued to
15 Efrain P. Haro;

16 6. Revoking or suspending Lamp Adjuster License Number LA 142689, issued to Efrain
17 P. Haro;

18 7. Revoking or suspending any additional license issued under Articles 5 and 6 of
19 Chapter 20.3 of the Business and Professions Code in the name of Efrain P. Haro;

20 8. Ordering Efrain P. Haro, individually, and as owner of Los Amigos Auto, to pay the
21 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
22 case, pursuant to Business and Professions Code section 125.3;

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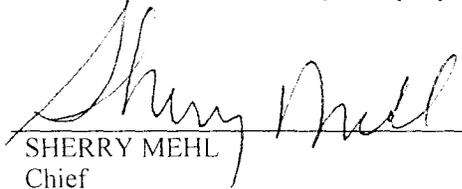
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9. Taking such other and further action as deemed necessary and proper.

DATED: 8/23/10



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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