

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

In the Matter of the Accusation Against:

**BAJA AUTO
TUSOP KIM, Owner**

Automotive Repair Dealer Registration
No. ARD 214103
Smog Check Station License No. RC 214103
Official Lamp Station License No. LS 214103
Official Brake Station License No. BS 214103

and

TUSOP KIM

Advanced Emission Specialist Technician
License No. EA 036194
Brake Adjuster License No. BA 036194
Lamp Adjuster License No. LA 036194

Respondents.

Case No. 77/09-31

OAH No. 2010070990

DECISION

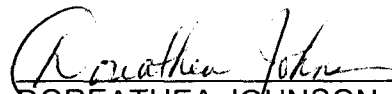
The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical errors on the following pages of the Proposed Decision are corrected as follows:

1. Page 2, paragraph 2, line 5, "LS 214103" is corrected to read "BS 214103"
2. Page 3, paragraph 40, line 2, the word "no" between the words "were" and "functional" is corrected to read "now"
3. Page 3, paragraph 40, line 3, the word "now" between the words "were" and "within" is corrected to read "not"
4. Page 5, paragraph 7, line 8, the word "a" between the words "became" and "certified" is deleted

5. Page 6, paragraph 10c, third line from the bottom, the words "will be" between the words "is" and "reduced" are deleted
6. Page 9, paragraph 1 under Order, line 1, the Official Brake Station License Number LS 214103 is corrected to read "Official Brake Station License No. BS 214103"
7. Page 10, paragraph 6, subparagraph d, first line, third word which reads "2ithin" is corrected to read "within"

This Decision shall become effective August 3, 2011.

DATED: June 28, 2011


BOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

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Official Lamp Station License No. LS 214103

and

TUSOP KIM,

Advanced Emission Specialist Technician License
No. EA 036194
Brake Adjuster License No. BA 036194
Lamp Adjuster License No. LA 036194

Respondents.

Case No. 77/09-31

OAH No. 2010070990

PROPOSED DECISION

This matter was heard by Mark Harman, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on January 11, 2011.

Gregory J. Salute, Deputy Attorney General, represented Sherry Mehl (Complainant). Tusop Kim (Respondent Kim) represented himself and his sole proprietorship, Baja Auto.

Evidence was received by written stipulations, documents, and testimony. The matter was submitted for decision on January 11, 2011.

FACTUAL FINDINGS

1. On May 6, 2010, Complainant, Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, State of California (Bureau), made and filed the Accusation in her official capacity. Respondent Kim timely filed a Notice of Defense, and this matter ensued.

2. On January 22, 2001, the Bureau issued Automotive Repair Dealer Registration Number ARD 214103 to Respondent Kim, doing business as Baja Auto. On February 6, 2001, the Bureau issued Smog Check Station License Number RC 214103 to Respondent Kim. On May 7, 2001, the Bureau issued Official Lamp Station License Number LS 214103 to Respondent Kim. On May 7, 2001, the Bureau issued Official Brake Station License Number LS 214103 to Respondent Kim.

3. In 1997, the Bureau issued Advanced Emission Specialist Technician License Number EA 036194 to Respondent Kim. In 2001, the Bureau issued Brake Adjuster License Number BA 036194 to Respondent Kim. In 1998, the Bureau issued Lamp Adjuster License Number LA 036194 to Respondent Kim.

4. The parties entered a stipulation, whereby Respondent Kim admitted the entirety of the allegations contained within the Accusation. The following are the significant factual portions of the Accusation's allegations, corresponding with the paragraph numbering of the Accusation:

“UNDERCOVER OPERATION #1: 2000 CHEVROLET S-10 PICKUP

“26. On August 19, 2008, a representative of the Bureau, acting in an undercover capacity (hereinafter “operator”), took the Bureau's 2000 Chevrolet S-10 pickup to Respondent's facility and was greeted by employee, “Moy”. The operator requested smog, brake, and lamp inspections on the vehicle. The rear brake drums on the Bureau-documented vehicle were machined beyond the manufacturer's drum discard diameter specifications, the passenger side headlamp was out of adjustment, and the license plate lamps were not functioning. Moy told the operator that he could do the work in about 15 minutes and that it would cost \$45 for the smog inspection and \$60 for the lamp and brake inspections, for a total of \$105. Moy asked the operator for the keys and drove the vehicle into the smog check bay. Moy had the operator sign a work order, but did not provide him with a copy or a written estimate. Moy performed the smog inspection on the vehicle. After the inspection was completed, Moy pulled the vehicle out of the smog check bay and drove it into another service bay. The operator observed Moy place a machine in front of the vehicle headlamps with the headlamps activated. Moy appeared to be making adjustments to the headlamps. The operator observed another employee replacing some bulbs at the rear of the vehicle. Moy raised the front of the vehicle then removed the left front wheel. A few minutes later, Moy reinstalled the wheel and lowered the vehicle. Moy then raised the rear of the vehicle and removed the left rear wheel and brake drum. After a few minutes, Moy reinstalled the wheel and drum and lowered the vehicle. The operator was told that the vehicle was ready, but not the paperwork. The operator observed another person with the name “Tony” printed on his shirt walking in and out of the office. The operator asked Tony if he was completing the paperwork on the vehicle and he replied “yes.” Tony gave Moy various documents which Moy handed to the operator. The operator received copies of an invoice, a vehicle inspection report, a Certificate of Brake Adjustment Number BC 681761, and Certificate of Lamp Adjustment Number LC 673161. The operator paid Moy \$105 in cash and asked Moy if he was the owner fo the facility. Moy indicated that Tony was the owner.

“27. On September 19, 2008, the Bureau inspected the vehicle and found that the license plate lamps were now functional; however, both headlamps were out of adjustment, the rear brake drums were not within manufacturer’s specifications, and the wheels on the right side of the vehicle had not been removed to inspect the brakes.

[¶] . . . [¶]

“UNDERCOVER OPERATION #2: 2000 TOYOTA TACOMA

“39. On May 5, 2009, a representative of the Bureau, acting in an undercover capacity (hereinafter “operator”), took the Bureau’s 2000 Toyota Tacoma to Respondent’s facility and was greeted by a man, who identified himself as “Tony”. The operator requested smog, brake, and lamp inspections on the vehicle. The rear brake drums on the Bureau-documented vehicle were machined beyond the manufacturer’s drum discard diameter specifications, the left side headlamp was out of adjustment, and the back up lamps were not functioning. Tony had the operator sign a work order, then backed the vehicle onto the EIS dynamometer. The operator gave the work order back to Tony but did not receive a copy of the document. Tony performed a smog test on the vehicle. After the smog test was completed, Tony pulled the vehicle off of the dynamometer and partway into the adjacent bay. The operator observed the front of the vehicle being lifted with a floor jack. None of the wheels were removed from the vehicle and the rear of the vehicle was never off of the ground. Tony told the operator that the backup lights did not work and would cost \$35 to repair. Tony also stated that the left headlamp needed adjustment. The operator authorized Tony to repair the back up lights. After Tony replaced the back up bulbs, he gave the operator an invoice totaling \$130, a vehicle inspection report, Certificate of Brake Adjustment Number BC 797835, and Certificate of Lamp Adjustment Number LC 787085. The operator paid Tony \$130 then left the facility.

“40. Later that same day, the Bureau inspected the vehicle and found that the back up lamps were no functional; however, both headlamps were out of adjustment, the rear brake drums were now within manufacturer’s specifications, and none of the wheels had not [sic] been removed to inspect the brakes.

[¶] . . . [¶]

“UNDERCOVER OPERATION #3: 1998 TOYOTA CAMRY

“51. On July 8, 2009, a representative of the Bureau, acting in an undercover capacity (hereinafter “operator”), took the Bureau’s 1998 Toyota Camry to Respondent’s facility and was greeted by Tony. The operator told Tony that he needed a smog inspection on the vehicle and asked Tony if he needed to go to the Highway Patrol to have the brake and headlights checked. Tony told the operator that he would do all of the work for \$100. The front brake rotors on the Bureau-documented vehicle were machined beyond the

manufacturer's rotor discard diameter specifications, both headlamps were out of adjustment, and amber bulbs were installed in both license plate lamps.

"52. At approximately 10:50 a.m., Tony drove the vehicle into the service bay and onto the EIS dynamometer. Tony then had the operator sign a work order/estimate and gave him a copy. The operator observed a man with the name "Julio" on his shirt get into the vehicle and move it to the adjacent service bay. Julio parked the vehicle, then set a single headlamp aiming device on the left headlamp and then on the right headlamp. Julio checked the running lights, brake lights and turn signals. Julio then took a flash light and shone it through the spokes on the front wheels. Julio raised the right rear of the vehicle and removed the right rear wheel and drum (the front of the vehicle was never lifted). Julio took a tool with a hook on the end and appeared to lift the edge of the wheel cylinder boot, then put the drum back on. Julio did not take any measurements. Julio lowered the vehicle then parked it in the lot. Julio returned to the building and met with Tony. Later, Tony provided the operator with an invoice, vehicle inspection report, Certificate of Brake Adjustment Number BC 854346, and Certificate of Lamp Adjustment Number LC 841446. The operator paid Tony \$100, then left the facility.

"53. On July 15, 2009, the Bureau inspected the vehicle and found that both headlamps were out of adjustment, the amber bulbs were still in the license plate lamps, the front brake rotors were not within manufacturer's specifications, and only the right rear wheel had been removed on the vehicle, indicating that the left rear brake had not been inspected."

5. Business and Professions Code (the Code) section 9889.16 provides in pertinent part that: "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." The Bureau has adopted regulations prescribing the required equipment maintained by licensed stations, and the qualifications required of lamp or brake adjusters. A licensee is allowed to perform inspections or make adjustments; afterwards, he certifies, under penalty of perjury, that the lamps, lighting equipment, and related electrical systems, or that the entire brake system of a vehicle, are in compliance with all requirements of the Vehicle Code and Bureau regulations.¹ Section 9889.22 defines the act of willfully making a false statement with regard to a material matter in any certificate of compliance as "perjury." Respondent signed and issued certificates of compliance that were false with regard to several material matters during each of the three undercover operations referenced in factual finding number 4, *ante*. The perjured certificates falsely state that Respondent performed the applicable inspections or adjustments in a proper manner and that the required equipment was in a satisfactory condition or was properly adjusted. Additionally, the brake certificates falsely state that Respondent road-tested the vehicles. Significantly, Respondent certified

¹ For a brake certificate, he also certifies that the vehicle has been road-tested. (See Cal. Code of Regs., tit. 16, §§ 3316, subd. (d)(2) & 3321, subd. (c)(2).)

three undercover vehicles, none of which could have passed a proper inspection. Respondent's conduct violated numerous statutory provisions and Bureau regulations.

6. The Code's requirements for lamp and brake inspections are designed to prevent, among other things, salvage vehicles, or those that have been in accidents or thefts, from getting back on the highway in an unsafe condition. Although undercover vehicles were involved, Respondent's failure to perform the proper inspections and adjustments appears to be a pattern and practice that endangers the consumer and the public safety.

7. Respondent has operated his own automotive repair business for 10 years. He is married and has two children. His business is well-regarded in his community. He is concerned about the consequences for him and his family if he were to lose his licenses. Respondent emigrated from his native South Korea in 1985 and graduated from Granada Hills High School, but was a low scholastic achiever possibly due to a language barrier. He attended automotive courses at Los Angeles Trade Tech College, found that he had talent working with automobiles, and liked the work. He passed the test for a technician license in 1990, and worked for various employers until he became a certified as a master mechanic by the National Institute for Automotive Service Excellence (ASE). He has maintained certifications as a master automobile and medium/heavy truck technician, and an advanced level specialist certificate in automobile advanced engine performance. These credentials sometimes were a hindrance while he was employed by others. Since he could command a higher salary, his employers frequently would lay him off first when business was slow.

8. Respondent attributed his wrongdoing as the consequences of a slow-down in his automotive repair business and succumbing to dereliction, rather than mendacity. He estimated that a brake inspection could take as long as 25 minutes. Based on the amount he charged customers, this business was not providing a large income for him. He accepted responsibility but claims he was not operating a wholesale business to sell certificates or just trying to collect charges for performing no work. He routinely conducted a more thorough inspection of vehicles than what was found in this matter. He referenced the headlight aiming machines that he maintains to perform lamp inspections and adjustments. He said, "I always do the headlights." He presented a form "Baja Auto B/L Check List" (exhibit A), which he said would be rigorously adhered to in all future brake and lamp inspections.

9. Respondent said that he was previously cited by the Bureau in 1998 for allowing Moy to perform a smog inspection, although this was not alleged by the Bureau in this proceeding. In the prior incident, Respondent was watching Moy during a smog inspection, trying to help Moy get a feel for how to use the equipment because Moy wanted to learn. Currently, Respondent's business has slowed down again, and he is down to only one employee, who is not licensed by the Bureau.

10a. Complainant incurred \$16,847.46 in Bureau investigative services and \$5,052.50 (estimated) in Department of Justice attorney's fees and costs, for a total of \$21,889.96 in costs for the investigation and enforcement of this matter.

10b. Under the case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, several factors are used in determining reasonableness of the costs to be awarded to any agency in an administrative proceeding, which include: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

10c. The Bureau's investigation initially sought to determine whether Respondent was operating a wholesale business to sell brake and lamp certificates without performing the work, because he had been purchasing from the Bureau an unusually large number of the required form certificates. The Bureau conducted three undercover runs between August 2008 and July 2009, the cost of which averaged slightly more than \$5,500 each. The Bureau sustained all of the factual allegations, but did so principally by way of a stipulation with Respondent. Respondent's other license can be disciplined on these facts, but the Bureau theoretically has not demonstrated that Respondent has failed to perform properly the other aspects of his automotive repair business. At the hearing, Respondent did not deny culpability, but asked for a second chance. The only issue is whether Respondent, who sincerely wants to continue in business, has the financial means to pay these costs, especially since, as a result of these proceedings, he will be losing at least some of his licenses, and will be suspended for a period of time as to others. The evidence suggests Respondent is unable to pay such a large sum. Therefore, considering these factors, the Bureau's reasonable costs and fees in relation to the investigation and prosecution of Respondent's misconduct in this matter is will be reduced by \$5,500, to \$16,389.96. It is recommended that the Director permit Respondent to make periodic payments on this amount, in a schedule to be determined by the Bureau.

LEGAL CONCLUSIONS

Discipline of Respondent's Automotive Repair Dealer Registration

1a. Under Business and Professions Code² section 9884.7, the Director of the Department of Consumer Affairs (Director) may suspend, revoke, or place on probation the registration of an automotive repair dealer on grounds including, that the registrant has made false or misleading statements related to the conduct of the business of the registrant (§ 9884.7, subd. (a)(1)), has failed to give to a customer a copy of any document requiring his signature as soon as the customer signs the document (§ 9884.7, subd. (a)(3)), has engaged in conduct constituting fraud (§ 9884.7, subd. (a)(4)), or has failed to comply with provisions of the Code or the regulations adopted pursuant to it (§ 9884.7, subd. (a)(6)).

1b. As set forth in factual finding number 4 and 5, Respondent failed to conduct applicable inspections or adjustments of the brakes and lamps of three undercover vehicles.

² All further statutory references are to the Business and Professions Code, unless specified otherwise.

He subsequently issued lamp and brake certificates, which falsely stated that he had performed the applicable inspections or adjustments for these vehicles. Respondent's conduct violated sections 9889.16 and 9889.22,³ and California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2).

1c. As set forth in factual finding number 4, subparagraph 26, Respondent certified on a vehicle inspection report that he performed the smog inspection on a vehicle, when instead, his employee Moy had performed the smog inspection, in violation of Health and Safety Code section 44012.

1d. Respondent provided written work orders to each of the Bureau's operators, which they signed before the work commenced. Contrary to Complainant's assertions, these work orders contained sufficient information regarding the anticipated cost of the parts and/or labor for a specific job to constitute written estimates. With regard to two undercover runs, Respondent, however, failed to provide the two operators with copies of the signed work orders as soon as the operators signed them, which are grounds for disciplining Respondent's automotive repair dealer registration.

2. Cause exists to suspend, revoke, or place on probation Respondent's automotive repair dealer registration under section 9884.7, subdivisions (a)(1), for making false and misleading statements related to the conduct of the registrant's business, as set forth in factual finding numbers 4 and 5, and legal conclusion numbers 1b and 1c.

3. Cause exists to suspend, revoke, or place on probation Respondent's automotive repair dealer registration under section 9884.7, subdivisions (a)(3), for failing to provide the Bureau's operators in two instances with copies of work orders as soon as the operators signed them. (Factual finding number 4; legal conclusion number 1d.)

4. Cause exists to suspend, revoke, or place on probation Respondent's automotive repair dealer registration under section 9884.7, subdivision (a)(4), for acts which constitute fraud, as set forth in factual finding number 4 and 5, and legal conclusion number 1b.

5. Cause exists to suspend, revoke, or place on probation Respondent's automotive repair dealer registration under section 9884.7, subdivision (a)(6), for failure to comply with provisions of the Code and the regulations promulgated thereunder, as set forth in factual finding numbers 4 and 5, and legal conclusion numbers 1b and 1c.

³ Section 9889.22 provides that "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."

Discipline of Respondent's Official Brake and Lamp Station Licenses; and Brake and Lamp Adjuster Licenses

6. Under section 9889.3, the Director may suspend, revoke, or take other disciplinary action against the license of a lamp or brake adjusting station, or a lamp or brake adjuster, on grounds that include, the licensee has violated any section of the Code that relates to his or her licensed activity (§ 9889.3, subd. (a)), has violated any pertinent regulations (§ 9889.3, subd. (c)), has committed any acts involving dishonesty, fraud, or deceit whereby another is injured (§ 9889.3, subd. (d)), or has violated or has attempted to violate a provision of the Code relating to the licensed activity (§ 9889.3, subd. (h)).

7. Cause exists to suspend, revoke, or take other disciplinary action against Respondent's lamp or brake adjusting station, or a lamp or brake adjuster licenses under section 9889.3, subdivisions (a), (c), and (h), for failure to comply with provisions of the Business and Professions Code and the regulations promulgated thereunder, as set forth in factual finding numbers 4 and 5, and legal conclusion numbers 1b and 1c.

8. Cause exists to suspend, revoke, or take other disciplinary action against Respondent's lamp or brake adjusting station, or a lamp or brake adjuster licenses under section 9889.3, subdivision (d), for committing acts involving dishonest, fraud, or deceit whereby another was injured, as set forth in factual finding numbers 4 and 5, and legal conclusion numbers 1b and 1c.

Discipline of Respondent's Smog Check Station and Advanced Emission Specialist Technician Licenses

9a. Under Health and Safety Code section 44072.2, the Director may suspend, revoke, or take other disciplinary action against a license upon grounds that include, violating any section of the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000 et seq.) and the regulations adopted pursuant to it, which relate to the licensed activities (Health & Saf. Code, § 44072.2, subd. (a)), violating any of the regulations adopted by the Director pursuant to Motor Vehicle Inspection Program (Health & Saf. Code, § 44072.2, subd. (c)), or committing any act involving dishonesty, fraud, or deceit whereby another is injured (Health & Saf. Code, § 44072.2, subd. (d)).

9b. Respondent has engaged in misconduct which violated pertinent statutes and regulations under the Motor Vehicle Inspection Program, as follows: Health and Safety Code section 44012 [failing to perform a smog test in accordance with the procedures prescribed by the Bureau, by allowing an unlicensed person to perform the test], and California Code of Regulations, title 16, sections 3340.41, subdivision (b) [permitting an unlicensed person, Moy, to conduct a smog test] and 3340.42 [permitting Moy to conduct the smog test, and failing to conduct a smog test in accordance with the Bureau's specifications].

10. Cause exists to discipline Respondent's smog check station and advanced emission specialist technician licenses under Health and Safety Code section 44072.2,

subdivisions (a) and (c), for failing to comply with provisions of the Health and Safety Code, and the regulations adopted pursuant to it, pertaining to smog inspections, by reason of factual finding number 4 and 5, and legal conclusion numbers 1c and 9b.

11. Cause exists to discipline Respondent's smog check station and advanced emission specialist technician licenses under Health and Safety Code section 44072.2, subdivision (d), for committing dishonest and fraudulent acts in connection with a smog inspection, by reason of factual finding numbers 4 and 5, and legal conclusion numbers 1c and 9b.

12. Respondent's acts involved dishonesty and are serious violations of the Automotive Repair Act. These acts go to the very core of what a Bureau licensee does on a daily basis. The Bureau has promulgated "Guidelines for Disciplinary Penalties and Terms of Probation" (Guidelines) as directed by section 9882. The Guidelines request that specified factors of aggravation and mitigation contained therein be considered in arriving at the appropriate discipline. Respondent failed to do the work he was contracted to do, which could have placed consumers and the public at risk of harm. He also permitted his employees to conduct inspections without his supervision. On the other hand, the violations appeared isolated, as they almost all related to Respondent's brake and lamp inspections, a somewhat arcane activity. This could crossover into Respondent's other businesses; however, Respondent's argument that he was being lazy rather than malicious appears accurate. There were no customer complaints presented regarding the quality of Respondent's automotive repair work. He is obviously highly qualified in this area. He recognizes that he should not allow others to do work which only he can perform under his licenses, and appeared willing to abide by higher standards in the future. On the whole, the circumstances do not warrant outright revocation of all licenses. The following orders will likely ensure Respondent's compliance with the law, for the protection of the public.

13. The reasonable amount for costs that should be awarded to the Bureau is \$16,389.96, by reason of factual finding numbers 10a, 10b, and 10c.

ORDER

1. Official Brake Station License Number LS 214103 issued to Respondent, Tusop Kim, doing business as Baja Auto, is revoked.

2. Official Lamp Station License Number LS 214103 issued to Respondent, Tusop Kim, doing business as Baja Auto, is revoked.

3. Brake Adjuster License Number BA 036194 issued to Respondent, Tusop Kim, is revoked.

4. Lamp Adjuster License Number LA 036194 issued to Respondent, Tusop Kim, is revoked.

5. Automotive Repair Dealer Registration Number ARD 214103 and Smog Check Station License Number RC 214103, issued to Respondent, Tusop Kim, doing business as Baja Auto; and Advanced Emission Specialist Technician License Number EA 036194, issued to Respondent, Tusop Kim, and each of them, are suspended for 10 days.

6. Automotive Repair Dealer Registration Number ARD 214103 and Smog Check Station License Number RC 214103, issued to Respondent, Tusop Kim, doing business as Baja Auto; and Advanced Emission Specialist Technician License Number EA 036194, issued to Respondent, Tusop Kim, and each of them, are revoked; however, revocation of each of these licenses is stayed, for a period of three years, and Respondent is placed on probation for three years, subject to the following terms and conditions.

a. Respondent must comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

b. Respondent must post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indication 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.

c. 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.

d. Respondent shall, within 30 days of the effective date of this Decision, report any financial interest, which any partners, officers, or owners of Baja Auto may have in any other business required to be registered pursuant to Section 9884.6 of the Code.

e. Respondent shall provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

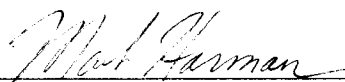
f. Prior to employment at any facility licensed by the Bureau, Respondent shall provide the facility licensee with a copy of this decision.

g. If an accusation is filed against Respondent 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.

h. 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, suspend or revoke Respondent's licenses.

7. Respondent, Tusop Kim, is ordered to pay \$16,389.96 to the Bureau of Automotive Repair. Respondent may make periodic payments on said amount in a schedule to be determined by the Bureau. This order to pay costs is enforceable regardless of Respondent's license status.

Dated: June 1, 2011



MARK HARMAN
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR.
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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.

77109-31

12 **BAJA AUTO**
13 **TUSOP KIM, OWNER**
14 **817 East Holt Blvd., Unit A**
Ontario, CA 91764
15 **Automotive Repair Dealer Reg. No. ARD 214103**
16 **Smog Check Station License No. RC 214103**
Official Lamp Station License No. LS 214103
Official Brake Station License No. BS 214103

A C C U S A T I O N

17 and

18 **TUSOP KIM**
19 **11362 Fulbourn Court**
Rancho Cucamonga, CA 91730
20 **Advanced Emission Specialist Technician**
License No. EA 036194
21 **Brake Adjuster License No. BA 036194**
Lamp Adjuster License No. LA 036194

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 **Baja Auto:**

2 2. On or about January 22, 2001, the Director of Consumer Affairs (“Director”) issued
3 Automotive Repair Dealer Registration Number ARD 214103 to Tusop Kim (“Respondent”),
4 owner of Baja Auto. Respondent’s automotive repair dealer registration was in full force and
5 effect at all times relevant to the charges brought herein and will expire on December 31, 2010,
6 unless renewed.

7 3. On or about February 6, 2001, the Director issued Smog Check Station License
8 Number RC 214103 to Respondent. Respondent’s smog check station license was in full force
9 and effect at all times relevant to the charges brought herein and will expire on December 31,
10 2010, unless renewed.

11 4. On or about May 7, 2001, the Director issued Official Lamp Station License Number
12 LS 214103 to Respondent. Respondent’s official lamp station license was in full force and effect
13 at all times relevant to the charges brought herein and will expire on December 31, 2010, unless
14 renewed.

15 5. On or about May 7, 2001, the Director issued Official Brake Station License Number
16 BS 214103 to Respondent. Respondent’s official brake station license was in full force and effect
17 at all times relevant to the charges brought herein and will expire on December 31, 2010, unless
18 renewed.

19 **Tusop Kim:**

20 6. In or about 1997, the Director issued Advanced Emission Specialist Technician
21 License Number EA 036194 to Respondent. Respondent’s advanced emission specialist
22 technician license was in full force and effect at all times relevant to the charges brought herein
23 and will expire on February 28, 2011, unless renewed.

24 7. In or about 2001, the Director issued Brake Adjuster License Number BA 036194 to
25 Respondent. Respondent’s brake adjuster license was in full force and effect at all times relevant
26 to the charges brought herein and will expire on September 30, 2013, unless renewed.

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

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

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

....

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

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

....

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

18. Bus. & Prof. 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.

19. Bus. & Prof. 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 [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.

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

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1 21. Bus. & Prof. Code section 22, subdivision (a), states:

2 "Board" as used in any provision of this Code, refers to the board in
3 which the administration of the provision is vested, and unless otherwise expressly
4 provided, shall include "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

5 22. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
6 "license" includes "registration" and "certificate."

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

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

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

12

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

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

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

19 **COST RECOVERY**

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

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1 drums were not within manufacturer's specifications, and the wheels on the right side of the
2 vehicle had not been removed to inspect the brakes.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 28. Respondent's automotive repair dealer registration is subject to disciplinary action
6 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), Respondent made or authorized
7 statements which he knew or in the exercise of reasonable care should have known to be untrue or
8 misleading, as follows:

9 a. Respondent certified under penalty of perjury on the vehicle inspection report that he
10 performed the smog inspection on the Bureau's 2000 Chevrolet S-10 pickup. In fact,
11 Respondent's employee, Moy, accessed the emissions inspection system ("EIS") using
12 Respondent's confidential access code and conducted the smog inspection on the vehicle.

13 b. Respondent certified under penalty of perjury on Brake Certificate Number BC
14 681761 that the applicable inspection was performed on the brake system on the Bureau's 2000
15 Chevrolet S-10 pickup. In fact, Respondent failed to inspect the entire brake system on the
16 vehicle, as set forth in paragraph 27 above.

17 c. Respondent certified under penalty of perjury on Brake Certificate Number BC
18 681761 that the rear brake drums on the Bureau's 2000 Chevrolet S-10 pickup were in a
19 satisfactory condition. In fact, the rear brake drums had been machined beyond the
20 manufacturer's drum discard diameter specifications.

21 d. Respondent certified under penalty of perjury on Brake Certificate Number BC
22 681761 that the Bureau's 2000 Chevrolet S-10 pickup had a stopping distance of 19 feet from a
23 speed of 20 miles per hour as a result of a road-test. In fact, Respondent never road tested the
24 vehicle.

25 e. Respondent certified under penalty of perjury on Lamp Certificate Number LC
26 673161 that the applicable adjustment had been performed on the lighting system on the Bureau's
27 2000 Chevrolet S-10 pickup. In fact, both headlamps were out of adjustment at the time the
28 Bureau inspected the vehicle following the undercover operation.

1 f. Respondent certified under penalty of perjury on Brake Certificate Number BC
2 681761 and Lamp Certificate Number LC 673161 that he performed the inspections of the brake
3 and lighting systems on the Bureau's 2000 Chevrolet S-10 pickup. In fact, Respondent's
4 employee, Moy, performed the inspections on the vehicle.

5 **SECOND CAUSE FOR DISCIPLINE**

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

7 29. Respondent's automotive repair dealer registration is subject to disciplinary action
8 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent's employee,
9 Moy, failed to provide the operator with a copy of the work order as soon as the operator signed
10 the document.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 30. Respondent's automotive repair dealer registration is subject to disciplinary action
14 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), Respondent committed an act
15 which constitutes fraud, as follows: Respondent obtained payment from the operator for
16 performing the applicable inspections, adjustments, or repairs of the brake and lighting systems
17 on the Bureau's 2000 Chevrolet S-10 pickup as specified by the Bureau and in accordance with
18 the Vehicle Code. In fact, Respondent failed to perform the necessary inspections, adjustments,
19 and repairs in compliance with Bureau Regulations or the Vehicle Code as set forth in paragraph
20 28 above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with the Bus. & Prof. Code)**

23 31. Respondent's automotive repair dealer registration is subject to disciplinary action
24 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
25 comply with provisions of that Code in the following material respects:

26 a. **Section 9884.9, subdivision (a):** Respondent's employee, Moy, failed to provide the
27 operator with a written estimate for parts and/or labor necessary for specific job.

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1 violated the provisions of Bus. & Prof. Code sections 9884.9, subdivision (a), 9889.16, and
2 9889.22 relating to Respondent's licensed activities, as set forth in paragraph 31 above.

3 **SEVENTH CAUSE FOR DISCIPLINE**

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

5 34. Respondent's official brake and lamp station licenses are subject to disciplinary
6 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
7 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
8 (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 32 above.

9 **EIGHTH CAUSE FOR DISCIPLINE**

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

11 35. Respondent's official brake and lamp station licenses are subject to disciplinary
12 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent
13 committed an act involving dishonesty, fraud, or deceit whereby another was injured, as set forth
14 in paragraph 30 above.

15 **NINTH CAUSE FOR DISCIPLINE**

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

17 36. Respondent's smog check station license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
19 section 44012 of that Code in a material respect, as follows: Respondent failed to ensure that the
20 emission control tests were performed on the Bureau's 2000 Chevrolet S-10 pickup in accordance
21 with procedures prescribed by the department.

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1 **TENTH CAUSE FOR DISCIPLINE**

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

4 37. Respondent's smog check station license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
6 provisions of California Code of Regulations, title 17, in the following material respects:

7 a. **Section 3340.41, subdivision (b)**: Respondent permitted his employee, Moy, to
8 access the EIS using the confidential access code issued to Respondent and to enter false
9 information into the unit concerning the identity of the technician performing the smog test on the
10 Bureau's 2000 Chevrolet S-10 pickup.

11 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were
12 conducted on the Bureau's 2000 Chevrolet S-10 pickup in accordance with the Bureau's
13 specifications.

14 **ELEVENTH CAUSE FOR DISCIPLINE**

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

16 38. Respondent's smog check station license is subject to disciplinary action pursuant to
17 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
18 fraudulent, or deceitful act whereby another is injured, as set forth in paragraph 30 above.

19 **UNDERCOVER OPERATION #2: 2000 TOYOTA TACOMA**

20 39. On May 5, 2009, a representative of the Bureau, acting in an undercover capacity
21 (hereinafter "operator"), took the Bureau's 2000 Toyota Tacoma to Respondent's facility and was
22 greeted by a man, who identified himself as "Tony". The operator requested smog, brake, and
23 lamp inspections on the vehicle. The rear brake drums on the Bureau-documented vehicle were
24 machined beyond the manufacturer's drum discard diameter specifications, the left side headlamp
25 was out of adjustment, and the back up lamps were not functioning. Tony had the operator sign a
26 work order, then backed the vehicle onto the EIS dynamometer. The operator gave the work
27 order back to Tony but did not receive a copy of the document. Tony performed a smog test on
28 the vehicle. After the smog test was completed, Tony pulled the vehicle off of the dynamometer

1 and partway into the adjacent bay. The operator observed the front of the vehicle being lifted
2 with a floor jack. None of the wheels were removed from the vehicle and the rear of the vehicle
3 was never off of the ground. Tony told the operator that the backup lights did not work and
4 would cost \$35 to repair. Tony also stated that the left headlamp needed adjustment. The
5 operator authorized Tony to repair the back up lights. After Tony replaced the back up bulbs, he
6 gave the operator an invoice totaling \$130, a vehicle inspection report, Certificate of Brake
7 Adjustment Number BC 797835, and Certificate of Lamp Adjustment Number LC 787085. The
8 operator paid Tony \$130 then left the facility.

9 40. Later that same day, the Bureau inspected the vehicle and found that the back up
10 lamps were now functional; however, both headlamps were out of adjustment, the rear brake
11 drums were not within manufacturer's specifications, and none of the wheels had not been
12 removed to inspect the brakes.

13 **TWELFTH CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 41. Respondent's automotive repair dealer registration is subject to disciplinary action
16 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), Respondent made or authorized
17 statements which he knew or in the exercise of reasonable care should have known to be untrue or
18 misleading, as follows:

19 a. Respondent certified under penalty of perjury on Brake Certificate Number BC
20 797835 that the applicable inspection was performed on the brake system on the Bureau's 2000
21 Toyota Tacoma. In fact, Respondent failed to inspect the brake system on the vehicle, as set forth
22 in paragraph 40 above.

23 b. Respondent certified under penalty of perjury on Brake Certificate Number BC
24 797835 that the rear brake drums on the Bureau's 2000 Toyota Tacoma were in a satisfactory
25 condition. In fact, the rear brake drums had been machined beyond the manufacturer's drum
26 discard diameter specifications.

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1 c. Respondent certified under penalty of perjury on Brake Certificate Number BC
2 797835 that the Bureau's 2000 Toyota Tacoma had a stopping distance of 19 feet from a speed of
3 20 miles per hour as a result of a road-test. In fact, Respondent never road tested the vehicle.

4 d. Respondent certified under penalty of perjury on Lamp Certificate Number LC
5 787085 that the applicable adjustment had been performed on the lighting system on the Bureau's
6 2000 Toyota Tacoma. In fact, both headlamps were out of adjustment at the time the Bureau
7 inspected the vehicle following the undercover operation.

8 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

10 42. Respondent's automotive repair dealer registration is subject to disciplinary action
11 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent failed to
12 provide the operator with a copy of the work order as soon as the operator signed the document.

13 **FOURTEENTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 43. Respondent's automotive repair dealer registration is subject to disciplinary action
16 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), Respondent committed an act
17 which constitutes fraud, as follows: Respondent obtained payment from the operator for
18 performing the applicable inspections, adjustments, or repairs of the brake and lighting systems
19 on the Bureau's 2000 Toyota Tacoma as specified by the Bureau and in accordance with the
20 Vehicle Code. In fact, Respondent failed to perform the necessary inspections, adjustments, and
21 repairs in compliance with Bureau Regulations or the Vehicle Code as set forth in paragraph 41
22 above.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Bus. & Prof. Code)**

3 44. Respondent's automotive repair dealer registration is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
5 comply with provisions of that Code in the following material respects:

6 a. **Section 9884.9, subdivision (a)**: Respondent failed to provide the operator with a
7 written estimate for parts and/or labor necessary for specific job.

8 b. **Section 9889.16**: Respondent issued Brake Certificate Number BC 797835 and
9 Lamp Certificate Number LC 787085 as to the Bureau's 2000 Toyota Tacoma when the vehicle
10 was not in compliance with Bureau Regulations or the requirements of the Vehicle Code.

11 c. **Section 9889.22**: Respondent willfully made false statements or entries on Brake
12 Certificate Number BC 797835 and Lamp Certificate Number LC 787085, as set forth in
13 paragraph 41 above.

14 **SIXTEENTH CAUSE FOR DISCIPLINE**

15 **(Violations of Regulations)**

16 45. Respondent's automotive repair dealer registration is subject to disciplinary action
17 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
18 comply with provisions of California Code of Regulations, title 16, in the following material
19 respects:

20 a. **Section 3305, subdivision (a)**: Respondent failed to perform the inspection of the
21 brake system and adjustment of the lamp system on the Bureau's 2000 Toyota Tacoma in
22 accordance with the specifications, instructions, and directives issued by the Bureau and the
23 vehicle manufacturer.

24 b. **Section 3316, subdivision (d)(2)**: Respondent issued Lamp Certificate Number LC
25 787085 as to the Bureau's 2000 Toyota Tacoma when all of the lamps, lighting equipment, and/or
26 related electrical systems on the vehicle were not in compliance with Bureau regulations, as set
27 forth in paragraph 41 above.

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1 c. **Section 3321, subdivision (c)(2)**: Respondent issued Brake Certificate Number BC
2 797835 as to the Bureau's 2000 Toyota Tacoma when the brake system on the vehicle had not
3 been tested or inspected, as set forth in paragraph 41 above.

4 **SEVENTEENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with the Bus. & Prof. Code)**

6 46. Respondent's official brake and lamp station licenses are subject to disciplinary
7 action pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent
8 violated the provisions of Bus. & Prof. Code sections 9884.9, subdivision (a), 9889.16, and
9 9889.22 relating to Respondent's licensed activities, as set forth in paragraph 44 above.

10 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

12 47. Respondent's official brake and lamp station licenses are subject to disciplinary
13 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
14 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
15 (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 45 above.

16 **NINETEENTH CAUSE FOR DISCIPLINE**

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

18 48. Respondent's official brake and lamp station licenses are subject to disciplinary
19 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent
20 committed an act involving dishonesty, fraud, or deceit whereby another was injured, as set forth
21 in paragraph 43 above.

22 **TWENTIETH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with the Bus. & Prof. Code)**

24 49. Respondent's brake and lamp adjuster licenses are subject to disciplinary action
25 pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that he violated the
26 provisions of Bus. & Prof. Code sections 9884.9, subdivision (a), 9889.16, and 9889.22 relating
27 to his licensed activities, as set forth in paragraph 44 above.

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1 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 50. Respondent's brake and lamp adjuster licenses are subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that he failed to comply with the
5 provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316,
6 subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 45 above.

7 **UNDERCOVER OPERATION #3: 1998 TOYOTA CAMRY**

8 51. On July 8, 2009, a representative of the Bureau, acting in an undercover capacity
9 (hereinafter "operator"), took the Bureau's 1998 Toyota Camry to Respondent's facility and was
10 greeted by Tony. The operator told Tony that he needed a smog inspection on the vehicle and
11 asked Tony if he needed to go to the Highway Patrol to have the brake and headlights checked.
12 Tony told the operator that he would do all of the work for \$100. The front brake rotors on the
13 Bureau-documented vehicle were machined beyond the manufacturer's rotor discard diameter
14 specifications, both headlamps were out of adjustment, and amber bulbs were installed in both
15 license plate lamps.

16 52. At approximately 10:50 a.m., Tony drove the vehicle into the service bay and onto the
17 EIS dynamometer. Tony then had the operator sign a work order/estimate and gave him a copy.
18 The operator observed a man with the name "Julio" on his shirt get into the vehicle and move it to
19 the adjacent service bay. Julio parked the vehicle, then set a single headlamp aiming device on
20 the left headlamp and then on the right headlamp. Julio checked the running lights, brake lights,
21 and turn signals. Julio then took a flash light and shone it through the spokes on the front wheels.
22 Julio raised the right rear of the vehicle and removed the right rear wheel and drum (the front of
23 the vehicle was never lifted). Julio took a tool with a hook on the end and appeared to lift the
24 edge of the wheel cylinder boot, then put the drum back on. Julio did not take any measurements.
25 Julio lowered the vehicle then parked it in the lot. Julio returned to the building and met with
26 Tony. Later, Tony provided the operator with an invoice, vehicle inspection report, Certificate of
27 Brake Adjustment Number BC 854346, and Certificate of Lamp Adjustment Number LC 841446.
28 The operator paid Tony \$100, then left the facility.

1 installed in the license plate lamps instead of white bulbs as required by California Vehicle Code
2 section 24601.

3 f. Respondent certified under penalty of perjury on Brake Certificate Number BC
4 854346 and Lamp Certificate Number LC 841446 that he performed the inspections of the brake
5 and lighting systems on the Bureau's 1998 Toyota Camry. In fact, Respondent's employee, Julio,
6 performed the inspections on the vehicle.

7 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

8 **(Fraud)**

9 55. Respondent's automotive repair dealer registration is subject to disciplinary action
10 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), Respondent committed an act
11 which constitutes fraud, as follows: Respondent obtained payment from the operator for
12 performing the applicable inspections, adjustments, or repairs of the brake and lighting systems
13 on the Bureau's 1998 Toyota Camry as specified by the Bureau and in accordance with the
14 Vehicle Code. In fact, Respondent failed to perform the necessary inspections, adjustments, and
15 repairs in compliance with Bureau Regulations or the Vehicle Code as set forth in paragraph 54
16 above.

17 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with the Bus. & Prof. Code)**

19 56. Respondent's automotive repair dealer registration is subject to disciplinary action
20 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to
21 comply with provisions of that Code in the following material respects:

22 a. **Section 9889.16:** Respondent issued Brake Certificate Number BC 854346 and
23 Lamp Certificate Number LC 841446 as to the Bureau's 1998 Toyota Camry when the vehicle
24 was not in compliance with Bureau Regulations or the requirements of the Vehicle Code.

25 b. **Section 9889.22:** Respondent willfully made false statements or entries on Brake
26 Certificate Number BC 854346 and Lamp Certificate Number LC 841446, as set forth in
27 paragraph 54 above.

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1 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

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

7 a. **Section 3305, subdivision (a)**: Respondent failed to perform the inspection of the
8 brake system and inspection, adjustment, and repair of the lamp system on the Bureau's 1998
9 Toyota Camry in accordance with the specifications, instructions, and directives issued by the
10 Bureau and the vehicle manufacturer.

11 b. **Section 3316, subdivision (d)(2)**: Respondent issued Lamp Certificate Number LC
12 841446 as to the Bureau's 1998 Toyota Camry when all of the lamps, lighting equipment, and/or
13 related electrical systems on the vehicle were not in compliance with Bureau regulations, as set
14 forth in paragraph 54 above.

15 c. **Section 3321, subdivision (c)(2)**: Respondent issued Brake Certificate Number BC
16 854346 as to the Bureau's 1998 Toyota Camry when the brake system on the vehicle had not
17 been completely tested or inspected, as set forth in paragraph 54 above.

18 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with the Bus. & Prof. Code)**

20 58. Respondent's official brake and lamp station licenses are subject to disciplinary
21 action pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent
22 violated the provisions of Bus. & Prof. Code sections 9889.16, and 9889.22 relating to
23 Respondent's licensed activities, as set forth in paragraph 56 above.

24 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

26 59. Respondent's official brake and lamp station licenses are subject to disciplinary
27 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to

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1 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
2 (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 57 above.

3 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

5 60. Respondent's official brake and lamp station licenses are subject to disciplinary
6 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent
7 committed an act involving dishonesty, fraud, or deceit whereby another was injured, as set forth
8 in paragraph 55 above.

9 **OTHER MATTERS**

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

15 62. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
16 Number RC 214103, issued to Respondent Tusop Kim, owner of Baja Auto, is revoked or
17 suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name
18 of said licensee, including, but not limited to, Advanced Emission Specialist Technician License
19 Number EA 036194, may be likewise revoked or suspended by the Director.

20 63. Pursuant to Bus. & Prof. Code section 9889.9, if Official Lamp Station License
21 Number LS 214103, issued to Respondent Tusop Kim, owner of Baja Auto, is revoked or
22 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. &
23 Prof. Code in the name of said licensee may be likewise revoked or suspended by the Director.

24 64. Pursuant to Bus. & Prof. Code section 9889.9, if Official Brake Station License
25 Number BS 214103, issued to Respondent Tusop Kim, is revoked or suspended, any additional
26 license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said
27 licensee may be likewise revoked or suspended by the Director.

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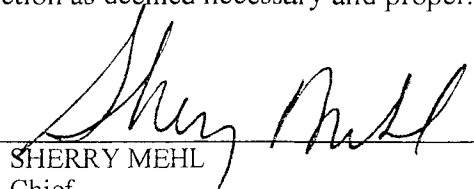
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9. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Tusop Kim;

10. Ordering Tusop Kim, individually, and as owner of Baja Auto, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/6/10



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