

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

In the Matter of the Accusation Against:

BERNARDO H. SORIA, Owner, dba EDS GARAGE

15514 S. Atlantic Ave.

Compton, CA 90221

Automotive Repair Dealer Registration No. ARD 267967

Smog Check Station License No. RC 267967

Lamp Station License No. LS 267967, Class A

Brake Station License No, BS 267967, Class A

and

BERNARDO H. SORIA

9833 Alexander Ave.

South Gate, CA 90280

Smog Check Inspector License No. EO 634942

Smog Check Repair Technician License No. EI 634942

Brake Adjuster License No. BA 634942, Class A

Lamp Adjuster License No. LA 634942, Class A

Respondents.

Case No. 77/17-20691

OAH No. 2019031152

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517, subdivision (c)(2)(C), technical or other minor changes in the Proposed Decision are made as follows:

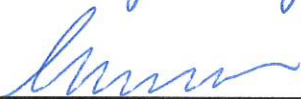
1. Paragraph 7 on page 4 is deleted.

The technical or minor change made above does not affect the factual or legal basis of the Proposed Decision.

FEB 19 2020

This Decision shall be effective on _____.

IT IS SO ORDERED this 9 day of January, 2020.



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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

In the Matter of the Accusation against:

BERNARDO H. SORIA doing business as EDS GARAGE

Automotive Repair Dealer Registration No. ARD 267967

Smog Check Station License No. RC 267967

Lamp Station License No. LS. 267967, Class A

Brake Station License No. BS 267967, Class A

and

BERNARDO H. SORIA

Smog Check Repair Technician License No. EI 634942

Smog Check Inspector License No. EO 634942

Brake Adjuster License No. BA 634942, Class A

Lamp Adjuster License No. LA 634942, Class A,

Respondents.

Case No. 77/17-20691

OAH No. 2019031152

PROPOSED DECISION

Administrative Law Judge (ALJ) Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter on October 7, 2019, in Los Angeles, California.

Deputy Attorney General Artin DerOhanian represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

Attorney William D. Ferreira represented respondent Bernardo H. Soria (Respondent Soria) as the owner and operator of respondent Eds Garage (Respondent Eds Garage) and in his individual capacity (collectively, Respondents).

Evidence was received, the record was closed, and the matter submitted for decision on the hearing date. On her motion, this ALJ reopened the record to request respondent to submit an additional copy of an exhibit, the resume of Respondents' expert, which had been marked Exhibit B and admitted into evidence during the hearing, and for any objection by complainant. The record was closed on the final submission date, November 12, 2019.

FACTUAL FINDINGS

Respondents' Licenses and Registrations

1. On February 14, 2012, the Bureau issued Automotive Repair Dealer Registration No. ARD 267967 (registration) to Respondent Eds Garage. The registration expired on February 28, 2019, unless it has been renewed.
2. On February 2, 2015, the Bureau issued Smog Check Station License No. RC 267967 to Respondent Eds Garage. The station license expired on February 28, 2019, unless it has been renewed.
3. On May 15, 2015, the Bureau certified Respondent Eds Garage as a STAR station. The certification will remain active unless the Automotive Repair Dealer registration or the Smog Check Station license is revoked or canceled, or the license becomes delinquent or the registration is invalidated.
4. On February 17, 2015, the Bureau issued Lamp Station License No. LS 267967, Class A to Respondent Eds Garage. This license expired on February 28, 2019, unless it has been renewed.
5. On February 1, 2018, the Bureau issued Brake Station License No. BS 267967 to Respondent Eds Garage. This license expired on February 28, 2019, unless it has been renewed.
6. On November 7, 2012, the Bureau issued Advanced Emission Specialist Technician License No. EA 634942 to Respondent Soria. This license was cancelled on July 3, 2014 and, pursuant to California Code of Regulations, title 16 (Regulation), section 3340.28, subdivision (e), was renewed as Smog Check Inspector License

Number EO 634942 and Smog Check Repair Technician License Number EI 634942. The Smog Check Inspector License expired on October 31, 2018. The Smog Check Repair Technician License will expire on October 31, 2020, unless it is renewed or revoked.

7. On December 22, 2014, the Bureau issued Brake Adjuster License No. BA 634942, Class C, to Respondent Soria. This license will expire on October 31, 2021, unless renewed or revoked.

8. On December 22, 2014, the Bureau issued Brake Adjuster License No. BA 634942, Class A, to Respondent Soria. This license will expire on October 31, 2021, unless renewed or revoked.

9. On December 11, 2014, the Bureau issued Lamp License Number LA 634942, Class A, to Respondent Soria. The Lamp License expired on October 31, 2018, and was cancelled on December 2, 2018.

Board Disciplinary Action

10. On January 24, 2019, complainant signed and authorized the filing of the Accusation in his official capacity as the Chief of the Bureau. Complainant seeks to have respondents' licenses and registrations disciplined based on allegations of multiple violations of the Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq.) (ARA), the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000 et seq.) (MVIP), and the regulations adopted pursuant to them. Respondents timely filed a Notice of Defense to the charges in the Accusation, and this hearing ensued.

Undercover Operations

11. The Bureau regulates the automotive repair and smog check industry, including enforcing the laws and regulations related to brake and lamp adjusting. As part of its enforcement efforts, the Bureau conducts undercover runs, in which an undercover operator brings a state-owned vehicle to a licensed brake and lamp station for inspection and repair. Prior to an undercover run, the Bureau may induce a defect or adjustment to the vehicle's braking or lamp systems so the vehicle should not qualify for certificates of compliance for brake and lamp adjustment standards. The Bureau ran two such undercover operations at Eds Garage.

UNDERCOVER OPERATION ONE – 2006 TOYOTA PRIUS

12. a. In January 2018, Program Representative Renwick Bonker (PR Bonker) documented the condition of the brake, lamp, and emissions systems on a vehicle owned and operated by the Bureau for undercover operations, a 2006 Toyota Tacoma, Vehicle Identification Number (VIN) 5TEJU62N76Z273479 (2006 Tacoma). To introduce a defect into the vehicle, PR Bonker machined the right front rotor and the left rear brake drum of the vehicle, decreasing the thickness of the right front brake rotor to 0.998 of an inch and increasing the left rear brake drum to 10.104 inches. As altered by PR Bonker, the rotor and the brake drum no longer met the required specifications for the vehicles. PR Bonker also placed tamper indicators on the wheels of the 2006 Tacoma in order to detect their removal.

b. PR Bonker next installed defective light bulbs in the license plate light holders and moved the right headlight out of alignment. He then transported the vehicle by truck to the custody of Program Representative Ho Young (aka, Rubin) Kim (PR Kim) at the Bureau's facility in Compton California.

c. PR Kim released the 2006 Tacoma to Undercover Operator Edgar Ponce (UO Ponce). UO Ponce drove the vehicle to Eds Garage, located at 15514 Atlantic Avenue in Compton. UO Ponce asked an employee there to perform a brake, lamp and smog inspection on the 2006 Tacoma. After giving UO Ponce a written estimate of \$100 for the work requested, the employee drove the vehicle to a location at Eds Garage out of sight from the garage's waiting area. Once the vehicle was returned, EO Ponce paid \$100 in accordance with the estimate and received Brake Certificate number BA 2747584 and Lamp Certificate number LA 2711435, as well as a Vehicle Inspection Report. All three documents indicated the 2006 Tacoma had passed the respective tests. (See Exhs 10, 11, and 12.)

d. UO Ponce drove the 2006 Tacoma back to the Bureau's Compton facility where PR Kim received it and then transported back to the PR Bonker at the Bureau's documentation facility. PR Bonker noted that the tamper seals on the vehicle's wheels and lights had not been broken, indicating no work had been done on those areas of the vehicle. He also noted that the machined components on the brake system were still in place, the right headlamp remained misaligned, and the defective bulbs had not been replaced.

UNDERCOVER OPERATION TWO – 1999 TOYOTA SIENNA

13. a. Between January 22, 2018 and February 21, 2018, Program Representative Paul Hsu (PR Hsu) documented the condition of the brake, lamp, and emissions systems on another vehicle owned and operated by the Bureau for undercover operations, a 1999 Toyota Sienna, VIN 4T3ZF13C3XU142883 (1999 Sienna). To introduce a defect in the vehicle, PR Hsu machined the left front brake rotor and the rear brake drum to below the minimum thickness specifications for that vehicle. PR Hsu also placed tamper seals on the vehicle's wheels.

b. PR Hsu next mis-aimed the vehicle's left headlight. He then transported it to the custody of PR Kim at the Bureau's facility in Compton, California.

c. On February 21, 2018, PR Kim gave custody of the 1999 Sienna to Tharanga Amaratunga (UO Amaratunga), an undercover operator hired by the Bureau. PR Kim instructed Amaratunga to take it to Eds Garage and request that a brake, lamp, and smog inspection be performed on the vehicle.

d. UO Amaratunga drove the 1999 Sienna to Eds Garage and requested the inspections. Once the vehicle was returned to him, UO Amaratunga received an invoice, Brake Certificate number BA 2747530 and Lamp Certificate number LA 2711481. Despite the defects introduced into the 1999 Sienna, it passed both the brake and lamp inspections. For reasons not established in the record, the smog check was not performed.

The Respondents' Evidence

14. Respondent Soria testified at hearing. He stated that Eds Garage had been his father's business and that he had worked there since he was a teenager. In 2012, Respondent Soria took ownership of the garage. Respondents do not have a history of discipline with the Bureau.

15. Respondent Soria did not dispute the charges. He stated that he had become increasingly careless as Ed's Garage attracted more business. In an effort to service all the vehicles coming to the garage, Respondent Soria stopped fully inspecting them before issuing certificates of compliance.

16. In October 2019, Respondent Soria completed a 16-hour brake and lamp training course. The course's instructor, Oscar Gomez, has 23 Bureau-issued licenses

and has been a master instructor for 12 years. In a report submitted at the hearing, Mr. Gomez wrote:

While training [Respondent Soria], I was able to determine that he is an excellent technician with great learning abilities and very eager to learn new materials. I did however see and experience first-hand his inexperience with laws and regulations and BAR brake and lamp procedures.

(Exh. F, p. 4.)

Mr. Gomez's report went on to explain, in great technical detail, misinformation he maintained Respondent Soria had about proper inspection practices related to brake and lamp inspections.

17. Respondent Soria stated that, since the time of the undercover operations, he has improved his work methods and slowed down his inspections.

Reasonable Costs

18. a. Pursuant to Business and Professions Code section 125.3, respondents may be ordered to reimburse the Bureau for the reasonable costs of investigation and enforcement of this matter. California Code of Regulations, title 1, section 1042, subdivision (b)(1), requires that when seeking reimbursement of costs, the Bureau must submit cost certifications that "describe the general tasks performed, the time spent on each task and the method of calculating the cost."

b. The Bureau submitted a Certification of Prosecution Costs: Declaration of the Deputy Attorney General, which asks that Respondents be ordered to reimburse

the Board for the costs of legal services provided by the Attorney General's Office for enforcement costs in the amount of \$8,890.75, including \$1,760 for anticipated hearing preparation. Attached to the Deputy Attorney General's Declaration are computer records titled "Matter Time Activity By Professional Type," which details the work performed by the Attorney General's Office, the time spent performing that work, and the hourly rate charged. From a review of the Certification of Prosecution Costs and the attached computer records, the work performed and amounts billed, including costs for hearing preparation, are deemed reasonable and appropriate for the nature and scope of this matter.

c. The Bureau submitted a declaration from Mark Fernandez, a Program Manager in the Bureau's Enforcement Operations Branch, which requests \$2,710.68 for investigative costs incurred by the Bureau. Attached to Program Manager Fernandez's declaration is a document entitled Investigative And Other Costs that identifies the hours and rate of pay the Program Representative and the Undercover Operator incurred, but does not describe or explain what work was performed. As such, no determination can be made regarding whether these costs are reasonable and appropriate.

d. The Bureau submitted a declaration from Wayne Ramos, a Program Manager in the Forensic Documentation Program, which requests \$10,632.25 for costs the Bureau incurred in undertaking the two undercover operations. Attached to Program Manager Ramos's declaration are two documents, each entitled Documentation Hours and Cost Spread. These documents detail the tasks and associated hourly rate and resulting cost for each of the undercover operations. These documents present sufficient information to determine whether the fees are reasonable and appropriate and, after reviewing them, the costs are deemed as such.

e. Respondents, through counsel, did not provide any information or argument challenging the costs requested or presenting their own financial circumstances.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. Bureau revocation proceedings are governed by the preponderance of the evidence standard. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th, 911, 916.) The Bureau bears the burden of proof. (Evid. Code, § 115.)

Statutes and Regulations

2. The Bureau may discipline the registration of an automotive repair dealer for violating the Automotive Repair Act, the Motor Vehicle Inspection Program, and their underlying regulations. This includes: (1) the making of untrue or misleading statements; . . . (4) any other conduct that constitutes fraud; and (6) failure in any material respect to comply with the provisions of the Automotive Repair Act or regulations adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(1), (4), & (6).)

3. The Bureau may discipline a licensee's brake and lamp station licenses, and brake and lamp adjuster licenses for Automotive Repair Act, the Motor Vehicle Inspection Program, and their underlying regulations. This includes: (a) violating any section of the Code; . . . (c) violating any Bureau regulations; (d) committing acts involving dishonesty, fraud, or deceit whereby another is injured; and (h) violating the provisions of the Automotive Repair Act relating to brake and lamp inspections and

repair. (Bus. & Prof. Code, § 9889.3, subds: (a), (c), (d), & (h), Health & Saf. Code, §44072.2.)

4. Brake or lamp certificates may only be issued after a brake and lamp inspection has been performed in compliance with the law and the inspector determines that the brakes or lamps on the vehicle conform with requirements. (Bus. & Prof. Code, § 9889.16, 16 CCR (Reg.) §§ 3305, 3316, and 3321.)

5. The expiration or suspension of a license, or the voluntary surrender of a license does not deprive the Bureau from taking disciplinary action against such licensee, or to render a decision suspending or revoking such license. (Bus. & Prof. Code, § 9889.7.)

6. When any license has been revoked or suspended following a hearing for violations of the Automotive Repair Act, the Motor Vehicle Inspection Program, and their underlying regulations, 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. (Bus. & Prof. Code, § 9889.9.)

7. The Bureau may invalidate, temporarily or permanently, the registrations for all the places of business in California operated by respondent upon a finding that respondent has or is engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer. (Bus. & Prof. Code, § 9884.7, subd. (c).)

8. The Bureau may suspend, revoke, or take other disciplinary action against a licensee who commits any act of dishonesty, fraud, or deceit whereby another is injured. (Health & Saf. Code, § 44072.2, subd. (d).)

9. All adjusting, inspecting, servicing, and repairing of brake and lamp systems must be done in accordance with the manufacturer's current standards, specifications, and recommended procedures as published in the service and repair manuals. (Cal. Code Regs., tit. 16, § 3305, subd. (a).)

10. All lamp certificates must certify that the lamps, lighting equipment, and related electrical systems have been inspected and found to be in compliance with all requirements of the Vehicle Code and Bureau regulations, and that all lamps capable of adjustment are properly adjusted. (Cal. Code Regs., tit. 16, § 3316, subd. (d)(2).)

11. When an entire brake system has been inspected or tested and found to comply with the Vehicle Code and Bureau regulations, and the vehicle has been road-tested, the brake certificate shall certify that the entire brake system meets all requirements. (Cal. Code Regs., tit. 16, § 3321, subd. (c)(2).)

Causes for Discipline

UNDERCOVER OPERATION ONE – 2006 TACOMA

Untrue or Misleading Statements

12. The Bureau established cause to discipline Respondent Eds Garage's registration pursuant to Business and Professions section 9884.7, subdivision (a)(1) and Regulation section 3373, for making untrue and misleading statements. On February 13, 2018, regarding the 2006 Tacoma, respondent Eds Garage made or authorized statements it knew to be untrue. Specifically, respondent Eds Garage certified under penalty of perjury on Brake Certificate number BA 2747584 that the applicable inspection was performed on the 2006 Tacoma's brake system and that the inspection revealed that the brake components were in satisfactory condition when, in fact, the

inspection had not been properly performed and defects introduced into the brake system were not discovered. Ed's Garage also certified under penalty of perjury on Lamp Certificate number. LA 2711435 that the applicable adjustments had been performed on the 2006 Tacoma's lamp system when, in fact, the right headlight remained out of adjustment and the license plate lights were not functioning. (Factual Finding 12.)

Fraud

13. The Bureau established cause to discipline Respondent Eds Garage's registration pursuant to Business and Professions Code, section 9884.7, subdivision (a)(4), in that on February 13, 2018, regarding the 2006 Tacoma, Respondent Eds Garage committed acts constituting fraud when it obtained payment from the operator to perform inspections and adjustments on the vehicle's brake and lamp systems when, in fact, respondent Eds Garage failed to perform the agreed upon work. (Factual Finding 12.)

Failure to Comply with the Automotive Repair Act or its Underlying Regulations

14. The Bureau established cause to discipline Respondent Eds Garage's registration and Respondent Soria's brake adjuster and lamp adjuster licenses pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6) and 9889.3, subdivision (a), in that on or about February 13, 2018, regarding the 2006 Tacoma, Respondents Eds Garage and Soria issued Brake Certificate number BA 2747584 for the vehicle when its brake system was not in compliance with applicable specifications and Lamp Certificate number LA 2711435 when its lamp system was defective. (Factual Finding 12.)

15. The Bureau established cause to discipline Respondent Ed's Garage's registration and Respondent Soria's brake adjuster and lamp adjuster licenses pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6) and 9889.3, in that GM Auto Repair failed to comply with Sections 9884.9, subdivision (a), and 9889.16. The Bureau also established cause to discipline GM Auto Repair's brake and lamp station licenses, pursuant to Section 9889.3, subdivisions (a) and (h), on the same basis. (Factual Finding 12.)

Dishonesty, Fraud, or Deceit

16. The Bureau established cause to discipline Respondent Ed's Garage brake and lamp station licenses and Respondent Soria's brake and lamp adjuster licenses, pursuant to Section 9889.22 in that Respondents committed acts involving dishonesty, fraud, or deceit whereby another was injured when, on February 13, 2018, with respect to the 2006 Tacoma when Respondents purportedly performed brake and lamp inspections and issued brake and lamp certificates of compliance for a noncompliant vehicle. (Factual Finding 12.)

Perjury

17. The Bureau established cause to discipline Respondent Eds Garage's brake and lamp station licenses and Respondent Soria's brake and lamp adjuster licenses pursuant to Section 9889.22, in that on February 13, 2018, regarding the 2006 Tacoma, Respondents willfully made false statements on certificates of compliance issued for that vehicle. (Factual Finding 12.)

UNDERCOVER OPERATION TWO – 1999 SIENNA

Untrue and Misleading Statement

18. The Bureau established cause to discipline Respondent Eds Garage's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1) and Regulation section 3373, in that, on February 21, 2018, regarding the 1999 Sienna, Respondent Eds Garage made or authorized untrue statements as follows: (i) under penalty of perjury, Respondent Eds Garage issued Brake Certificate number BA 2747530 reflecting that the brake system had been properly inspected when it had not and that the brake components were in proper working order when they were not. In addition, under penalty of perjury, Respondent Eds Garage issued Lamp Certificate number LA 2711481 reflecting that the lamp system worked properly and all necessary adjustments had been made when the lamp system contained a misaligned headlight and a missing bulb. (Factual Finding 13.)

Fraud

19. The Bureau established cause to discipline Respondent Eds Garage's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that, on February 21, 2018, regarding the 1999 Sienna, Respondent Eds Garage committed fraud by obtaining payment from the operator for inspections and adjustments it failed to perform. (Factual Finding 13.)

Failure to Comply with the Automotive Repair Act or its Underlying Regulations

20. The Bureau established cause to discipline Respondent Eds Garage's brake and lamp station licenses and Respondent Soria's brake adjuster and lamp

adjuster licenses pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6) and 9889.3, subdivision (a), in that, on February 21, 2018, regarding the 1999 Sienna, Respondents issued Brake Certificate number 2747530 and Lamp Certificate number 2711481 when the vehicle was not in compliance with brake and lamp specifications and requirements. (Factual Finding 13.)

21. The Bureau established cause to discipline Respondent Eds Garage's brake and lamp station licenses and Respondent Soria's brake adjuster and lamp adjuster licenses pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6) and 9889.3, subdivision (c), in that, on February 21, 2018, regarding the 1999 Sienna, Respondent Eds Garage failed to comply with Regulation section 3305, subdivision (a) when it failed to perform a brake inspection in accordance with the standards applicable to the vehicle and failed to comply with Regulation section 3321, subdivision (c)(2) when it issued Brake Certificate number BA 2747530, certifying that the vehicle's brake system had been inspected and was in satisfactory condition when it was not. (Factual Findings 13.)

Acts of Dishonesty, Fraud, and Deceit

22. The Bureau established cause to discipline Respondent Eds Garage's brake and lamp station licenses and Respondent Soria's brake adjuster and lamp adjuster licenses are subject to discipline pursuant to Business and Professions Code sections 9889.3, subdivision (d) and 9889.22, in that Respondents committed acts involving dishonesty, fraud, or deceit whereby another was injured with respect to the brake and lamp inspections that were purportedly performed and certificates of compliance and adjustments were issued on February 21, 2018, regarding the 1999 Sienna, Respondents willfully made a false statement with regard to a material matter in the certificates of compliance.

Perjury

23. The Bureau established cause to discipline Eds Garage's brake and lamp station licenses and Respondent Soria's brake adjuster and lamp adjuster licenses are subject to discipline pursuant to Business and Professions Code section 9889.22 is that, on February 21, 2018, regarding the Toyota Sienna, Respondents willfully made a false statement with a material matter in the certificates of compliance. (Factual Finding 13.)

Appropriate Discipline

24. The Bureau's Guidelines recommend the level of discipline to be imposed and the applicable factors to be considered. Factors in aggravation include being issued prior citations, evidence of negligent or willful improper repair work that endangers consumers, evidence that the unlawful act was a part of a pattern of practice, and evidence of conduct which constitutes fraud or gross negligence. Factors in mitigation include evidence of voluntary participation in retraining, absence of prior disciplinary action, evidence that the violation was not part of a pattern of practice, evidence of no loss to consumer and no damage to consumer's property, and any other conduct which would constitute a factor in mitigation.

25. a. Here, Respondent Soria admitted to negligent repair work, which if the subject vehicle had not been a Bureau undercover vehicle, may well have endangered its operator or the public. Moreover, accepting payment for work not performed is fraudulent and dishonest behavior, a seriously aggravating factor. By way of mitigation, Respondents have no prior disciplinary history, Respondent Soria was forthright during his testimony and appeared to take responsibility for the misconduct, has taken proactive steps to ameliorate the situation, and has proactively addressed his past practices through additional training and education.

26. Pursuant to the Guidelines, the recommended discipline for each violation of the law established at hearing is an invalidation of Respondent Eds Garage's registration and a revocation of the licenses held by Respondents, stayed for up to five years, while subject to certain terms and conditions of probation. In light of the balance of factors in aggravation and mitigation, a restricted license in accordance with the Guidelines is appropriate, as set forth in the Order below.

Costs

27. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the 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 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 in light of the alleged misconduct.

28. As specified in Factual Finding 18, the reasonable cost of investigation and enforcement of this matter as established at hearing is \$19,503. When all the factors specified in *Zuckerman* are considered, there is a basis to reduce the costs sought by the Bureau, to the extent that Respondents presented important mitigating evidence that factored into determining that restricted registration and licenses rather than revocation was the appropriate outcome in this matter. As such, the costs

requested will be reduced by approximately one-third or \$6,500, resulting in an award of \$13,003.

ORDER

1. Automotive Repair Dealer Registration No. ARD 267967, Smog Check Station License No. RC 267967, Lamp Station License No. LS 267967, Class A, and Brake Station License No. BS 267967, Class A, issued to Bernardo H. Soria, doing business as Eds Garage, are revoked.

2. Smog Check Inspector License No. EO 634942, Smog Check Repair Technician License No. EI 634942, Brake Adjuster License No. BA 634942, Class A, and Lamp Adjuster License No. LA 634942, Class A, issued to Bernardo H. Sortia are revoked.

3. However, the revocations are set forth in paragraphs 1 and 2 above are stayed and Respondents are placed on probation for five years on the following terms and conditions.

a. Obey All Laws

During the period of probation, Respondents shall comply with all federal and state statutes, regulations and rules governing all Bureau registrations and licenses held by Respondent.

b. Quarterly Reporting

During the period of probation, Respondents shall report either by personal appearance or in writing as determined by Bureau on a schedule set by Bureau, but no

more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Report Financial Interests

Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the Bureau during the period of probation, report any financial interest which any Respondents or any partners, officers, or owners of any Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

d. Access to Examine Vehicles and Records

Respondents shall provide Bureau representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondents shall also provide Bureau representatives unrestricted access to all records pursuant to Bureau laws and regulations.

e. Tolling of Probation

If, during probation, Respondents leave the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, Respondents shall notify the Bureau in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that Respondents obey all laws, shall be held in abeyance during any period of time of 30 days or more in which

Respondents are not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which Respondents are not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

f. Violation of Probation

If Respondents violate or fail to comply with the terms and conditions of probation in any respect, the Director of Consumer Affairs, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once Respondents are served notice of the Bureau's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

g. Maintain Valid License

Respondents shall, at all times while on probation, maintain a current and active registration and/or license(s) with the Bureau including any period during which suspension or probation is tolled. If Respondents' registration or licenses are expired at the time the decision becomes effective, the registration or license must be renewed by Respondents within 30 days of that date. If Respondents registration or licenses expire during a term of probation, by operation of law or otherwise, then upon renewal Respondents' registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and

active registration or license during the period of probation shall also constitute a violation of probation.

h. Cost Recovery

Respondents shall pay the Bureau of Automotive Repair \$13,003 for the reasonable costs of the investigation and enforcement of Bureau Case No. 77/17-20691. Respondents shall make such payment no later than six months before probation terminates and upon terms and conditions established by the Bureau. Respondents shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for Bureau Case Number 77/17-20691. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. The Bureau may pursue any other lawful measures in collecting the costs ordered and past due, in addition to taking action based upon the violation of probation.

i. Completion of Probation

Upon successful completion of probation, Respondents' affected registration and licenses will be fully restored or issued without restriction, if Respondents meets all current requirements for registration or licensure and have paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

j. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if Respondents cease business operations or are otherwise unable to satisfy the terms and conditions of probation, Respondents may request that the stay

be vacated. Such request shall be made in writing to Bureau. The Director of Consumer Affairs and the Bureau Chief have the right to evaluate the request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director of Consumer Affairs will vacate the stay order and carry out the disciplinary order provided in the decision.

Respondents may not petition the Director of Consumer Affairs for reinstatement of the surrendered registration or licenses, or apply for a new registration or license under the jurisdiction of the Bureau at any time before the date of the originally scheduled completion of probation. If Respondents apply to the Bureau for a registration or license at any time after that date, Respondents must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery.

DATE: December 11, 2019

DocuSigned by:
Deena R. Ghaly
5D13AC50FBAD477...

DEENA R. GHALY

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
13 In the Matter of the Accusation Against:
14 **BERNARDO H. SORIA-OWNER DBA**
15 **EDS GARAGE**
15514 S Atlantic Ave
Compton, CA 90221

Case No. 77/17-20691

A C C U S A T I O N

16 **Automotive Repair Dealer Registration No.**
ARD 267967
17 **Smog Check Station License No. RC 267967**
18 **Lamp Station License No. LS 267967,**
Class A
19 **Brake Station License No. BS 267967**
Class A

20 **BERNARDO H. SORIA**
21 **9833 Alexander Ave**
South Gate, CA 90280

22 **Smog Check Repair Technician License No.**
EI634942
23 **Smog Check Inspector License No.**
E0634942
24 **Brake Adjuster License No. BA634942,**
Class A
25 **Lamp Adjuster License No. LA634942,**
Class A
26

27 Respondents.
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1 Complainant alleges:

2 **PARTIES**

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

5 **Bernardo H. Soria dba Eds Garage**

6 **Automotive Repair Dealer Registration**

7 2. On or about February 14, 2012, the Bureau issued Automotive Repair Dealer
8 Registration Number ARD 267967 (Registration) to Bernardo H. Soria dba Eds Garage
9 (Respondent Eds Garage). The Automotive Repair Dealer Registration was in full force and
10 effect at all times relevant to the charges brought herein and will expire on February 28, 2019,
11 unless renewed.

12 **Smog Check Station License**

13 3. On or about February 2, 2015, the Bureau issued Eds Garage Smog Check Station
14 License Number RC 267967 (Station License) to Respondent Eds Garage. The Smog Check
15 Station License was in full force and effect at all times relevant to the charges brought herein and
16 will expire on February 28, 2019, unless renewed.

17 **STAR Station Certification**

18 4. On or about May 15, 2015, The Bureau certified Eds Garage as a STAR Station. The
19 certification will remain active unless the Automotive Repair Dealer registration and/or Smog
20 Check Station license is revoked, canceled, licenses become delinquent or certification is
21 invalidated.

22 **Brake Station License**

23 5. On or about February 1, 2018, the Bureau issued Brake Station License Number BS
24 BS267967, Class A (Brake Station License) to Respondent Eds Garage. The Brake Station
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on February 28, 2019, unless renewed.

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1 **Lamp Adjuster**

2 9. On or about December 11, 2014, the Bureau issued Lamp License Number LA
3 LA634942, Class A (Lamp Adjuster License) to Respondent Soria. The Lamp Adjuster License
4 was in full force and effect at all times relevant to the charges brought herein. The Lamp
5 Adjuster License expired on October 31, 2018, and was cancelled on December 2, 2018.

6 **JURISDICTION**

7 10. Business and Professions Code ("Code") section 9884.7 provides that the director
8 may revoke an automotive repair dealer registration.

9 11. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
10 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
11 against an automotive repair dealer or to render a decision invalidating a registration temporarily
12 or permanently.

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

16 13. Section 44072.2 of the Health and Safety Code states:

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

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

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

25 15. Section 44072.8 of the Health and Safety Code states:

26 "When a license has been revoked or suspended following a hearing under this
27 article, any additional license issued under this chapter in the name of the licensee may be
28 likewise revoked or suspended by the director."

16. California Code of Regulations, title 16, section 3340.28(e), states that "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

STATUTORY PROVISIONS

17. Section 9884.7 of the Code states:

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

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

• • • •

“(4) Any other conduct which constitutes fraud.

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

18. Section 9884.9 of the Code states:

"(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in

1 regulation the procedures to be followed by an automotive repair dealer if an authorization or
2 consent for an increase in the original estimated price is provided by electronic mail or facsimile
3 transmission. If that consent is oral, the dealer shall make a notation on the work order of the
4 date, time, name of person authorizing the additional repairs and telephone number called, if any,
5 together with a specification of the additional parts and labor and the total additional cost . . .”

6 19. Section 9889.3 of the Code states:

7 "The director may suspend, revoke, or take other disciplinary action against a license as
8 provided in this article [Article 7 (commencing with section 9889.1) of Chapter 20.3 of Division
9 3 of the Business and Professions Code] if the licensee or any partner, officer, or director thereof:

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

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13 "(c) Violates any of the regulations promulgated by the director pursuant to this chapter [the
14 Automotive Repair Act].

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

16

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

19 20. Section 9889.16 of the Code states:

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

27 21. Section 9889.22 of the Code states:

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

5 **REGULATORY PROVISIONS**

6 22. California Code of Regulations, title 16, section 3305 states, in pertinent part:

7 "(a) Performance Standards. All adjusting, inspecting, servicing, and repairing of brake
8 systems and lamp systems shall be performed in official stations in accordance with current
9 standards, specifications, instructions, and directives issued by the bureau and by the
10 manufacturer of the device or vehicle."

11 23. California Code of Regulations, title 16, section 3316 states, in pertinent part:

12 "(d)(2) Inspection of the Entire Lighting System. "Where all of the lamps, lighting
13 equipment, and related electrical systems on a vehicle have been inspected and found in
14 compliance with all requirements of the Vehicle Code and bureau regulations, the certificate shall
15 certify that the entire system meets all such those requirements."

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

17 "(c)(2) Inspection of the Entire Brake System. "Where the entire brake system on
18 any vehicle has been inspected or tested and found in compliance with all requirements of
19 the Vehicle Code and bureau regulations, and the vehicle has been road-tested, the
20 certificate shall certify that the entire system meets all such requirements."

21 25. California Code of Regulations, title 16, section 3356, states:

22 "(a) All invoices for service and repair work performed, and parts supplied, as provided for
23 in Section 9884.8 of the Business and Professions Code, shall comply with the following:

24 (1) The invoice shall show the automotive repair dealer's registration number and the
25 corresponding business name and address as shown in the Bureau's records. If the automotive
26 repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b)
27 of Section 3371 of this chapter."

28 26. California Code of Regulations, title 16, section 3373, states:

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

6 COST RECOVERY

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

13 UNDERCOVER OPERATION NO. 1: 2006 TOYOTA TACOMA

14 28. On February 13, 2018, an undercover operator of the Bureau (operator) took the
15 Bureau's 2006 Toyota Tacoma (2006 Tacoma), vehicle to Respondent Eds Garage's facility and
16 requested brake, lamp and smog inspections. The vehicle defects included a brake system with
17 the right front rotor and the left rear brake drum machined out of specification. The vehicle's
18 lamp system was documented with the right headlight vertical aim out of adjustment and
19 defective license plate light bulbs.

20 29. At 1050 hours, the operator arrived at Respondent Eds Garage's facility. The operator
21 informed the adjuster at Respondent Ed's Garage that he needed brake, lamp and smog
22 inspections. The operator received a copy of the written estimate from Respondent Eds Garage
23 before work began.

24 30. After approximately 20-25 minutes, the adjuster advised that the inspections were
25 completed and requested a \$100 payment for the service. The operator then received a final
26 invoice, a Vehicle Inspection Report, Brake Certificate number BA 2747584 and Lamp
27 Certificate number LA 2711435.

31. On March 8, 2018, a Bureau representative re-inspected the vehicle and found that the left rear brake drum and the right front brake rotor were still out of specification and in need of replacement. The Bureau representative also found that right headlight remained out of adjustment and the license plate lights were not functioning. In its condition, the 2006 Tacoma should not have been issued either the Brake Certificate or the Lamp Certificate.

FIRST CAUSE FOR DISCIPLINE

(Untrue and Misleading Statement)

32. Respondent Eds Garage's registration is subject to discipline under Code section 9884.7, subdivision (a)(1) and California Code of Regulation, title 16, section 3373, in that on or about February 13, 2018, regarding the 2006 Tacoma vehicle, Respondent Eds Garage made or authorized statements, which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent Eds Garage certified under penalty of perjury on Certificate of Compliance-Brake Adjustment Number BA 2747584 that the applicable inspection was performed on the brake system when, in fact, Respondent Eds Garage's adjuster failed to inspect the brake system on the vehicle, as evidenced by his failure to remove the rear wheels on the 2006 Tacoma vehicle. Moreover, the left rear brake drum and the right front brake rotor were still out of specification and in need of replacement.

b. Respondent Eds Garage certified under penalty of perjury on Certificate of Compliance-Brake Adjustment Number BA 2747584 that the parking brake, lining and shoes, drums/rotors and antilock brake system were in satisfactory condition.

c. Respondent Eds Garage certified under penalty of perjury on Certificate of Compliance-Lamp Adjustment Number LA 2711435 that the applicable adjustment had been performed on the lamp system when, in fact, the right headlight remained out of adjustment and the license plate lights were not functioning.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 33. Respondent Eds Garage's registration is subject to discipline pursuant to Code section
4 9884.7, subdivision (a)(4), in that on or about February 13, 2018, regarding the 2006 Tacoma
5 vehicle, Respondent Eds Garage committed acts that constitute fraud, as follows:

6 a. Respondent Eds Garage obtained payment from the operator for performing the
7 applicable inspections and adjustments on the vehicle's brake and lamp systems as specified by
8 the Bureau and in accordance with the Vehicle Code when, in fact, Respondent Eds Garage
9 Service failed to perform the necessary inspections.

10 **THIRD CAUSE FOR DISCIPLINE**

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

12 34. Respondent Eds Garage's registration and Soria's brake adjuster license and lamp
13 adjuster license are subject to discipline pursuant to Code section, subdivision 9884.7(a)(6), and
14 9889.3(a) in that on or about February 13, 2018, regarding the 2006 Tacoma vehicle, Respondent
15 Eds Garage failed to comply with provisions of that Code in the following material respects:

16 a. **Section 9889.16:**

17 i. Respondents issued Certificate of Compliance-Brake Adjustment Number BA
18 2747584 for the vehicle, when the vehicle was not in compliance with Bureau regulations or the
19 requirements of the Vehicle Code, in that the right front brake rotor and left rear brake drum were
20 out of specification.

21 ii. Respondents issued Certificate of Compliance-Lamp Adjustment Number LA
22 2711435 for the vehicle, when the vehicle was not in compliance with Bureau regulations or the
23 requirements of the Vehicle Code, in that the right headlight was out of adjustment and there were
24 defective license plate light bulbs.

25 **FOURTH CAUSE FOR DISCIPLINE**

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

27 35. Respondent Eds Garage's registration, brake and lamp station and Respondent Soria's
28 brake adjuster license and lamp adjuster license are subject to discipline pursuant to Code section

1 9884.7, subdivision (a)(6), and 9889.3(c), in that on or about February 13, 2018, regarding the
2 2006 Tacoma vehicle, Respondents failed to comply with provisions of California Code of
3 Regulations, title 16, in the following material respects:

4 a. **Section 3305, subdivision (a):** Respondents failed to perform a brake inspection
5 in accordance with the vehicle's manufacturer standards and/or current standards, specifications,
6 recommended procedures, and/or directives issued by the Bureau.

7 b. **Section 3321, subdivision (c)(2):** Respondents issued Certificate of Compliance-
8 Brake Adjustment Number BA 2747584, certifying that the vehicle's brake system had been
9 inspected and was in satisfactory condition when, in fact, it was not.

10 c. **Section 3316, subdivision (d)(2):** Respondents issued Certificate of Compliance-
11 Lamp Certificate number LA 2711481, certifying that the vehicle's lighting system had been
12 inspected in accordance with the Vehicle Code and Bureau requirements and was in satisfactory
13 condition when, in fact, it was not.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Acts of Dishonesty/Fraud/Deceit)**

16 36. Respondent Eds Garage brake and lamp station licenses and Respondent Soria's
17 brake adjuster and lamp adjuster licenses are subject to discipline pursuant to Code section
18 9889.3, subdivision (d), in conjunction with Code section 9889.22, in that Respondents
19 committed acts involving dishonesty, fraud or deceit whereby another was injured with respect to
20 the brake and lamp inspections that were purportedly performed and certificates of
21 compliance/adjustment were issued on February 13, 2018 where certificates should not have
22 issued. Complainant refers to, and by this reference incorporates, the allegations contained in
23 paragraph 28-31, inclusive, as though set forth fully herein.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(Perjury)**

26 37. Respondent Eds Garage brake and lamp station licenses and Respondent Soria's
27 brake adjuster and lamp adjuster licenses are subject to discipline pursuant to Code section
28 9889.22 in that on or about February 13, 2018, regarding the 2006 Tacoma vehicle, Respondent

1 Eds Garage willfully made a false statement or entry with regard to a material matter in the
2 certificate of compliance as more particularly set forth above in paragraphs 28- 31.

3 **UNDERCOVER OPERATION NO. 2: 1999 Toyota Sienna**

4 38. On February 21, 2018, an undercover operator of the Bureau ("operator") took the
5 Bureau's 1999 Toyota Sienna (1999 Sienna) vehicle to Respondent Eds Garage's facility and
6 requested brake, lamp and smog inspections. The vehicle defects included the left front brake
7 rotor and right rear brake drum out of specification. The vehicle's lamp system was documented
8 with the left headlight mis-aimed.

9 39. At 1034 hours, the operator arrived at Respondent Eds Garage. Upon his arrival, the
10 operator requested that a brake, lamp, and smog inspection be performed on the vehicle. The
11 operator signed a work order and received a copy of the written estimate.

12 40. After the work was performed, the operator paid the requested sum of \$60.00 to
13 Respondents Eds Garage. The operator received an invoice, Certificate of Compliance-Brake
14 Certificate number BA 2747530, Certificate of Compliance-Lamp Certificate number LA
15 2711481. No smog check was performed and no reason was stated why the smog check had not
16 been performed.

17 41. A Bureau representative re-inspected the vehicle and found that Respondents failed to
18 remove the wheels on the 1999 Toyota Sienna vehicle and that the left front brake rotor and right
19 rear brake drum were still beyond specifications. The Bureau representative also found that the
20 left headlamp was out of manufacturer's specification and that no adjustment was performed.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Untrue and Misleading Statement)**

23 42. Respondent Eds Garage's registration is subject to discipline under Code section
24 9884.7, subdivision (a)(1) and California Code of Regulation, title 16, section 3373, in that on or
25 about February 21, 2018, regarding the 1999 Toyota Sienna vehicle, Respondent Eds Garage
26 made or authorized statements which it knew or in the exercise of reasonable care should have
27 known to be untrue or misleading, as follows:

1 a. Respondent Eds Garage certified under penalty of perjury on Certificate of
2 Compliance-Brake Certificate number BA 2747530 that the applicable inspection was performed
3 on the brake system when, in fact, Respondent Eds Garage's adjuster, failed to inspect the brake
4 system on the vehicle, as evidenced by his failure to remove the wheels on the 1999 Toyota
5 Sienna vehicle.

6 b. Respondent Eds Garage certified under penalty of perjury on Certificate of
7 Compliance-Brake Certificate number BA 2747530 that the parking brake, lining and shoes and
8 drums/rotors were within manufacturer's specification.

9 c. Respondent Eds Garage certified under penalty of perjury on Certificate of
10 Compliance-Lamp Certificate number LA 2711481 that the applicable adjustment had been
11 performed on the lamp system when, in fact, the left headlamp was out of manufacturer's
12 specification and that no adjustment was performed.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 43. Respondent Eds Garage's registration is subject to discipline pursuant to Code section
16 9884.7, subdivision (a)(4), in that on or about February 21, 2018, regarding the 1999 Toyota
17 Sienna vehicle, Respondent Eds Garage committed acts that constitute fraud, as follows:

18 a. Respondent Eds Garage obtained payment from the operator for performing the
19 applicable inspections and adjustments on the vehicle's brake and lamp systems as specified by
20 the Bureau and in accordance with the Vehicle Code when, in fact, Respondent Eds Garage
21 Service failed to perform the necessary inspections.

22 **NINTH CAUSE FOR DISCIPLINE**

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

24 44. Respondent Eds Garage's brake and lamp station licenses and Respondent Soria's
25 brake adjuster and lamp adjuster licenses are subject to discipline pursuant to Code section,
26 subdivision 9884.7(a)(6), and 9889.3(a), in that on or about February 21, 2018, regarding the
27 1999 Toyota Sienna vehicle, Respondents failed to comply with provisions of that Code in the
28 following material respects:

1 a. **Section 9889.16:**

2 i. Respondents issued Certificate of Compliance-Brake Certificate number BA
3 2747530 for the vehicle, when the vehicle was not in compliance with Bureau regulations or the
4 requirements of the Vehicle Code, in that the left front brake rotor and right rear brake drum were
5 out of specification.

6 ii. Respondents issued Certificate of Compliance-Lamp Certificate number LA
7 2711481 for the vehicle, when the vehicle was not in compliance with Bureau regulations or the
8 requirements of the Vehicle Code, in that the left headlamp was out of manufacturer's
9 specification and no adjustment was performed.

10 **TENTH CAUSE FOR DISCIPLINE**

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

12 45. Respondent Eds Garage's brake and lamp station licenses and Respondent Soria's
13 brake adjuster and lamp adjuster licenses are subject to discipline pursuant to Code section
14 9884.7, subdivision (a)(6), and 9889.3(c), in that on or about February 21, 2018, regarding the
15 1999 Toyota Sienna vehicle, Respondent Eds Garage failed to comply with provisions of
16 California Code of Regulations, title 16, in the following material respects:

17 a. **Section 3305, subdivision (a):** Respondent Eds Garage failed to perform a brake
18 inspection in accordance with the vehicle's manufacturer standards and/or current standards,
19 specifications, recommended procedures, and/or directives issued by the Bureau.

20 b. **Section 3321, subdivision (c)(2):** Respondent Eds Garage issued Certificate of
21 Compliance-Brake Certificate number BA 2747530, certifying that the vehicle's brake system had
22 been inspected and was in satisfactory condition when, in fact, it was not.

23 **ELEVENTH CAUSE FOR DISCIPLINE**

24 **(Acts of Dishonesty/Fraud/Deceit)**

25 46. Respondent Eds Garage's brake and lamp station licenses and Respondent Soria's
26 brake adjuster and lamp adjuster licenses are subject to discipline pursuant to Code section
27 9889.3, subdivision (d), in conjunction with Code section 9889.22, in that Respondents
28 committed acts involving dishonesty, fraud or deceit whereby another was injured with respect to

1. the brake and lamp inspections that were purportedly performed and certificates of
2. compliance/adjustment were issued on February 21, 2018 where certificates should not have
3. issued. Complainant refers to, and by this reference incorporates, the allegations contained in
4. paragraph 38-41, inclusive, as though set forth fully herein.

5. **TWELFTH CAUSE OF DISCIPLINE**

6. **(Perjury)**

7. 47. Respondent Eds Garage brake and lamp station licenses and Respondent Soria's
8. brake adjuster and lamp adjuster licenses are subject to discipline pursuant to Code section
9. 9889.22 in that on or about February 21, 2018, regarding the 1999 Toyota Sienna vehicle,
10. Respondents willfully made a false statement or entry with regard to a material matter in the
11. certificate of compliance as more particularly set forth above in paragraphs 38-41.

12. **OTHER MATTERS**

13. 48. Pursuant to Code section 9884.7, subdivision (c), the director may suspend, revoke,
14. or place on probation the registrations for all places of business operated in this state by Bernardo
15. H. Soria, upon a finding that he has, or is, engaged in a course of repeated and willful violation of
16. the laws and regulations pertaining to an automotive repair dealer.

17. 49. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License
18. Number RC 267967, issued to Bernardo H. Soria-Owner, is revoked or suspended, any additional
19. license issued under this Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the
20. name of said licensee may be likewise revoked or suspended by the director.

21. 50. Pursuant to Code section 9889.9, if Lamp Station License Number LS267967, Class
22. A issued to Bernardo H. Soria-Owner, is revoked or suspended, any additional license issued
23. under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said
24. licensees may be likewise revoked or suspended by the director.

25. 51. Pursuant to Code section 9889.9, if Brake Station License Number BS267967, Class
26. A issued to Bernardo H. Soria-Owner, is revoked or suspended, any additional license issued
27. under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said
28. licensees may be likewise revoked or suspended by the director.

52. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector License No. EO 634942 and Smog Check Repair Technician License Number EI 634942 (formerly Advanced Emission Specialist Technician License Number EA 634942), issued to Bernardo H. Soria, are revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

53. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA634942, Class A, issued to Bernardo H. Soria, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the director.

54. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA634942, Class A, issued to Bernardo H. Soria, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 267967, issued to Bernardo H. Soria-Owner dba Eds Garage;
2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Bernardo H. Soria;
3. Revoking or suspending Smog Check Station License Number RC 267967, issued to Bernardo H. Soria-Owner dba Eds Garage;
4. Revoking or suspending Brake Station License Number BS 267967, Class A, issued to Bernardo H. Soria-Owner dba Eds Garage;
5. Revoking or suspending Lamp Station License Number LS 267967, Class A, issued to Bernardo H. Soria-Owner dba Eds Garage;

1 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
2 Division 26 of the Health and Safety Code in the name of Bernardo H. Soria;

3 7. Revoking or suspending Smog Check Inspector License Number EO 634942
4 (formerly Advanced Emission Specialist Technician License Number EA 634942), issued to
5 Bernardo H. Soria;

6 8. Revoking or suspending Smog Check Repair Technician License Number EI 634942
7 (formerly Advanced Emission Specialist Technician License Number EA 634942), issued to
8 Bernardo H. Soria;

9 9. Revoking or suspending Brake Adjuster License Number BA 634942, Class A, issued
10 to Bernardo H. Soria;

11 10. Revoking or suspending Lamp Adjuster License Number LA 634942, Class A, issued
12 to Bernardo H. Soria;

13 11. Ordering Bernardo H. Soria-Owner dba Eds Garage and Bernardo H. Soria to pay the
14 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
15 case, pursuant to Business and Professions Code section 125.3;

16 12. Revoking or suspending any additional license issued under Articles 5 and 6 of
17 Chapter 20.3 of the Code in the name of Bernardo H. Soria; and

18 13. Taking such other and further action as deemed necessary and proper.
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21 DATED: January 24, 2019



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

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