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

12 In the Matter of the Accusation Against:

Case No. 77/14-56

13 **WEST COVINA AUTO GROUP, LLC,**
14 **DBA WEST COVINA TOYOTA; UCN**
PARTNERS, LLP; SAGE HOLDING
COMPANY

A C C U S A T I O N

15 **1800 E. Garvey Ave.**
16 **West Covina, CA 91791**

17 **205 N. Citrus St.**
West Covina, CA 91791

18 **Automotive Repair Dealer Registration No.**
19 **ARD 254109**

20 Respondent.

21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about March 18, 2008, the Bureau of Automotive Repair issued Automotive
26 Repair Dealer Registration Number ARD 254109 to West Covina Auto Group, LLC, dba West
27 Covina Toyota; UCN Partners, LLP; Sage Holding Company (Respondent). The Automotive
28

1 Repair Dealer Registration was in full force and effect at all times relevant to the charges brought
2 herein and will expire on February 28, 2015, unless renewed.

3 JURISDICTION

4 3. This Accusation is brought before the Director of Consumer Affairs (Director) for the
5 Bureau of Automotive Repair, under the authority of the following laws. All section references
6 are to the Business and Professions Code unless otherwise indicated.

7 STATUTORY PROVISIONS

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

12 5. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
13 "commission," "committee," "department," "division," "examining committee," "program," and
14 "agency." "License" includes certificate, registration or other means to engage in a business or
15 profession regulated by the Code.

16 6. Section 9884.7 of the Code states:

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

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

25 * * *

26 (4) Any other conduct that constitutes fraud.

27 * * *

28

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

3 7. Section 9884.5 of the Code states:

4 "A registration that is not renewed within three years following its expiration shall not be
5 renewed, restored, or reinstated thereafter, and the delinquent registration shall be canceled
6 immediately upon expiration of the three-year period. An automotive repair dealer whose
7 registration has been canceled by operation of this section shall obtain a new registration only if
8 he or she again meets the requirements set forth in this chapter relating to registration, is not
9 subject to denial under Section 480, and pays the applicable fees.

10 "An expired registration may be renewed at any time within three years after its expiration
11 upon the filing of an application for renewal on a form prescribed by the bureau and the payment
12 of all accrued renewal and delinquency fees. Renewal under this section shall be effective on the
13 date on which the application is filed and all renewal and delinquency fees are paid. If so
14 renewed, the registration shall continue in effect through the expiration date of the current
15 registration year as provided in Section 9884.3, at which time the registration shall be subject to
16 renewal."

17 8. Section 9884.6 of the Code states:

18 "(a) It is unlawful for any person to be an automotive repair dealer unless that person has
19 registered in accordance with this chapter [the Automotive Repair Act] and unless that
20 registration is currently valid.

21 "(b) A person who, for compensation, adjusts, installs, or tests retrofit systems for purposes
22 of Chapter 6 (commencing with Section 44200) of Part 5 of Division 26 of the Health and Safety
23 Code is an automotive repair dealer for purposes of this chapter."

24 9. Section 9884.8 of the Code states:

25 "All work done by an automotive repair dealer, including all warranty work, shall be
26 recorded on an invoice and shall describe all service work done and parts supplied. Service work
27 and parts shall be listed separately on the invoice, which shall also state separately the subtotal
28 prices for service work and for parts, not including sales tax, and shall state separately the sales

1 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice
2 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt
3 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
4 statement indicating whether any crash parts are original equipment manufacturer crash parts or
5 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
6 given to the customer and one copy shall be retained by the automotive repair dealer."

7 10. Section 9884.9 of the Code states:

8 "(a) The automotive repair dealer shall give to the customer a written estimated price for
9 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
10 before authorization to proceed is obtained from the customer. No charge shall be made for work
11 done or parts supplied in excess of the estimated price without the oral or written consent of the
12 customer that shall be obtained at some time after it is determined that the estimated price is
13 insufficient and before the work not estimated is done or the parts not estimated are supplied.
14 Written consent or authorization for an increase in the original estimated price may be provided
15 by electronic mail or facsimile transmission from the customer. The bureau may specify in
16 regulation the procedures to be followed by an automotive repair dealer if an authorization or
17 consent for an increase in the original estimated price is provided by electronic mail or facsimile
18 transmission. If that consent is oral, the dealer shall make a notation on the work order of the date,
19 time, name of person authorizing the additional repairs and telephone number called, if any,
20 together with a specification of the additional parts and labor and the total additional cost, and
21 shall do either of the following:

22 "(1) Make a notation on the invoice of the same facts set forth in the notation on the work
23 order .

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

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

1 (signature or initials)"

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

4 "(b) The automotive repair dealer shall include with the written estimated price a statement
5 of any automotive repair service that, if required to be done, will be done by someone other than
6 the dealer or his or her employees. No service shall be done by other than the dealer or his or her
7 employees without the consent of the customer, unless the customer cannot reasonably be
8 notified. The dealer shall be responsible, in any case, for any service in the same manner as if the
9 dealer or his or her employees had done the service.

10 "(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto
11 body or collision repairs, shall provide an itemized written estimate for all parts and labor to the
12 customer. The estimate shall describe labor and parts separately and shall identify each part,
13 indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part
14 shall be identified on the written estimate and the written estimate shall indicate whether the crash
15 part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer
16 aftermarket crash part.

17 "(d) A customer may designate another person to authorize work or parts supplied in
18 excess of the estimated price, if the designation is made in writing at the time that the initial
19 authorization to proceed is signed by the customer. The bureau may specify in regulation the
20 form and content of a designation and the procedures to be followed by the automotive repair
21 dealer in recording the designation. For the purposes of this section, a designee shall not be the
22 automotive repair dealer providing repair services or an insurer involved in a claim that includes
23 the motor vehicle being repaired, or an employee or agent or a person acting on behalf of the
24 dealer or insurer."

25 11. Section 9884.11 of the Code states that "[e]ach automotive repair dealer shall
26 maintain any records that are required by regulations adopted to carry out this chapter [the
27 Automotive Repair Act]. Those records shall be open for reasonable inspection by the chief or
28 other law enforcement officials. All of those records shall be maintained for at least three years."

1 12. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
2 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
3 proceeding against an automotive repair dealer or to render a decision invalidating a registration
4 temporarily or permanently.

5 13. California Code of Regulations, title 16, section 3303, states in pertinent part:

6 In this chapter, unless the context otherwise requires:

7 "(a) 'Code' means the Business and Professions Code.

8 "(b) 'Department' means the Department of Consumer Affairs.

9 "(c) 'Act' means the Automotive Repair Act as contained in Chapter 20.3, Division 3 of the
10 Business and Professions Code.

11 "(d) 'Passenger vehicle' means a motor vehicle used for private transportation or
12 recreational purposes, including recreational vehicles and excluding commercial vehicles.

13 * * *

14 "(g) 'Compensation' means any form of remuneration received for repairing or diagnosing
15 malfunctions of motor vehicles. Where repair or diagnostic work is performed pursuant to a
16 warranty, compensation is presumed to have been paid, whether the warranty has been obtained
17 in connection with the purchase of a motor vehicle or otherwise.

18 "(h) 'Repair of motor vehicles' as used in subdivision (e) of Section 9880.1 of the Act shall
19 not include the repair of that portion of a recreational vehicle which is intended for human
20 habitation and which is unrelated to the operation of the vehicle, or a transmission fluid change.

21 * * *

22 "(j) 'Authorization' means consent. Authorization shall consist of the customer's signature
23 on the work order, taken before repair work begins. Authorization shall be valid without the
24 customer's signature only when oral or electronic authorization is documented in accordance with
25 applicable sections of these regulations.

26 14. California Code of Regulations, title 16, section 3353, states in pertinent part:

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

1 "(c) Additional Authorization. The dealer shall obtain the customer's authorization before
2 any additional work not estimated is done or parts not estimated are supplied. This authorization
3 shall be in written, oral, or electronic form, and shall describe additional repairs, parts, labor and
4 the total additional cost.

5 "(1) If the authorization from the customer for additional repairs, parts, or labor in excess
6 of the written estimated price is obtained orally, the dealer shall also make a notation on the work
7 order and on the invoice of the date, time, name of the person authorizing the additional repairs,
8 and the telephone number called, if any, together with the specification of the additional repairs,
9 parts, labor and the total additional costs.

10 "(2) If the authorization from the customer for additional repairs, parts, or labor in excess
11 of the written estimated price is obtained by facsimile transmission (fax), the dealer shall also
12 attach to the work order and the invoice, a faxed document that is signed and dated by the
13 customer and shows the date and time of transmission and describes the additional repairs, parts,
14 labor and the total additional cost.

15 "(3) If the authorization from the customer for additional repairs, parts, or labor in excess
16 of the written estimated price is obtained by electronic mail (e-mail), the dealer shall print and
17 attach to the work order and invoice, the e-mail authorization which shows the date and time of
18 transmission and describes the additional repairs, parts, labor, and the total additional costs.

19 "(4) The additional repairs, parts, labor, total additional cost, and a statement that the
20 additional repairs were authorized either orally, or by fax, or by e-mail shall be recorded on the
21 final invoice to Section 9884.9 of the Business and Professions Code. All documentation must be
22 retained pursuant to Section 9884.11 of the Business and Professions Code.

23 15. California Code of Regulations, title 16, section 3371, states:

24 "No dealer shall publish, utter, or make or cause to be published, uttered, or made any false
25 or misleading statement or advertisement which is known to be false or misleading, or which by
26 the exercise of reasonable care should be known to be false or misleading. Advertisements and
27 advertising signs shall clearly show the following:

28

1 Avenue South, West Covina California. He left the vehicle with Respondent's service advisor
2 William Nadler (Nadler).

3
4 20. On November 14, 2012, Nadler called Etonye and said that they had found the fuel
5 tank empty and the fuel pump had metal shavings in it. He was told that the fuel pump needed to
6 be replaced. He was given an estimate of \$1100 and he gave his authorization.

7 21. On November 15, 2012, Nadler called Etonye and told him the repairs were
8 completed. He returned to West Covina Toyota and paid \$1029.04 and received invoice
9 #TOCS132392, then drove the vehicle home. On his way home the dash lights came on.

10 22. On November 16, 2012, Etonye returned to West Covina Toyota. He spoke with
11 Nadler and explained that the dash lights were on. He left the vehicle and returned home. Nadler
12 called him the next day and told him the additional repairs would cost approximately \$500.00. He
13 told Nadler he already paid for the repairs and did not want to pay any more money. Nadler told
14 him he would talk to the manager and call him back. Nadler called him and told him he would not
15 charge him for the repairs.

16 23. On November 21, 2012, Etonye picked the vehicle up and received invoice
17 TOCS132630 showing an amount of \$54.11 which he did not pay. The dash lights came on the
18 next day.

19 24. On November 23, 2012, Etonye returned to West Covina Toyota and spoke with
20 Nadler. He told Nadler that the dash lights were on, and the vehicle was running poorly. Nadler
21 told him he would check the vehicle out and call him. A few days later Nadler called Etonye and
22 said it was repaired under warranty.

23 25. On November 30, 2012, Etonye received invoice# TOCS133076 which showed an
24 amount of \$0 he then drove the vehicle home. On December 8, 2012, Etonye took the vehicle
25 back to West Covina Toyota because it was hard to start and cranked a long time. He waited
26 while the vehicle was checked out. Nadler told him they found nothing wrong with the vehicle.
27 He received invoice #TOCS134098 and left.

28

1 26. On December 31, 2012, Etonye returned to West Covina Toyota because the vehicle
2 continued to be hard to start and cranked a long time. Also the dash lights continued to come on
3 and the vehicle lacked power. Nadler told him he would check the vehicle out. Nadler called him
4 a few days later and informed him that there was rodent damage to the engine wiring harness.
5 Nadler told him to contact his insurance company. The insurance company (Mid-Century) told
6 Etonye that they would inspect the vehicle. Nadler told Etonye that the insurance would pay for
7 the repairs, but he would have to pay the deductible of \$500.00.

8 27. Etonye went to see the vehicle and Nadler showed him a fuel tank on the floor.
9 Nadler told him that they had to replace the fuel tank but there was no charge to him. Nadler told
10 him that they had replaced the engine wiring harness and the vehicle was ready to be picked up.
11 Nadler told him he needed to pay the \$500 deductible. Etonye asked to speak with the manager
12 and spoke with Stacy Stephens (Stephens). She told him he had to pay the deductible, and file a
13 claim for the previous repairs with the insurance company.

14 28. On January 31, 2013, Etonye's wife paid the \$500 deductible and received invoice
15 #TOCS135425 . She then drove the vehicle home. After five days the dash lights came on.
16 Etonye took the vehicle to his local mechanic who told him the vehicle had two codes stored in
17 the computer. He then went to Puente Hills Toyota and asked if the codes were covered
18 under warranty. He was told that the codes might be covered under warranty. He did not receive
19 any paperwork from Puente Hills Toyota.

20 29. Etonye returned to West Covina Toyota and spoke with the new Service Director Ken
21 Stashik (Stashik). He told Stashik that he had paid for repairs that were not needed and did not
22 fix the vehicle. He asked for his money back for those repairs. Stashik told him he would check
23 on the matter and call him. After a few days Etonye called Stashik and asked about his refund.
24 Stashik told Etonye he was not owed a refund.

25 30. Between December 8, 2012, and January 31, 2013, Respondent accepted payment
26 from Mid-West Insurance Company in the amount of \$5,844.51 for repairs that were not
27 performed and parts that were not provided to the insured vehicle owned by Etonye.
28 Respondent by its employee/mechanic Cesar Cervantes told Mid- West Insurance Company that

1 the engine wiring harness was damaged by rodents and represented that replacement of the
2 engine wiring harness listed on estimate copy of repair order #TOCS135425 was
3 necessary.

4 31. Respondent and its employee Cervantes represented that repairs listed on invoice
5 copy of repair order #TOCS135425 had been completed when in fact only the air cleaner
6 assembly, intake resonator, and air cleaner inlet had been replaced. Based upon the
7 misrepresentations on the aforementioned invoice copy of the repair order, Mid-West Insurance
8 Company and John Etonye paid \$5,844.51 that includes a \$500.00 deductible for repairs that were
9 not needed or not provided by Respondent.

10 32. Respondent and its employee Cervantes presented to Mid-West Insurance Company
11 and Etonye and received payment for an invoice for goods and services that falsely lists complete
12 replacement of the engine wiring harness. In fact, none of those goods or services had been
13 provided.

14 33. Respondent and its employee Cervantes represented that the repairs had been
15 performed as listed on invoice copy of repair order #TOCS135425. The labor description is
16 replacement of the engine wiring harness. The invoice lists as one of the Materials Used- engine
17 wiring harness part # 82111-42D50. The Wiring harness was not replaced, only a small section
18 of the protective outer coating was taped.

19 SECOND CAUSE FOR DISCIPLINE

20 (Conduct that Constitutes Fraud)

21 34. Respondent is subject to disciplinary action under section 9884.7, subd. (a)(4) in that
22 Respondent committed acts of fraud. The circumstances are as alleged in the preceding
23 paragraphs 19 through 33 that are incorporated herein as though fully set forth.

24 THIRD CAUSE FOR DISCIPLINE

25 (Failure to Comply With the Provisions of the Automotive Repair Act
26 and Regulations-Untrue or Misleading Statements)

27 35. Respondent is subject to disciplinary action under section 9884.7, subd. (a)(6) in
28 conjunction with Title 16 California Code of Regulations (CCR) section 3371 for making untrue

1 or misleading statements. The circumstances are as alleged in the preceding paragraphs 19
2 through 33 that are incorporated herein as though fully set forth.

3 FOURTH CAUSE FOR DISCIPLINE

4 (Failure to Comply With the Provisions of the Automotive Repair Act
5 and Regulations-False or Misleading Statements or Records)

6 36. Respondent is subject to disciplinary action under section 9884.7, subd. (a)(6) in
7 conjunction with Title 16 California Code of Regulations (CCR) section 3373 for filling out
8 estimates, invoices and/or records that are false or misleading. The circumstances are as alleged
9 in the preceding paragraphs 19 through 33 that are incorporated herein as though fully set forth.

10 OTHER MATTERS

11 36. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
12 suspend, revoke or place on probation the registration for all places of business operated in this
13 state by Respondent WEST COVINA AUTO GROUP, LLC, DBA WEST COVINA TOYOTA;
14 UCN PARTNERS, LLP; SAGE HOLDING COMPANY, upon a finding that Respondent has, or
15 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
16 an automotive repair dealer.

17 37. Pursuant to Bus. & Prof. Code section 9889.9, if ARD registration 254109 issued to
18 Respondent WEST COVINA AUTO GROUP, LLC, DBA WEST COVINA TOYOTA; UCN
19 PARTNERS, LLP; SAGE HOLDING COMPANY, is revoked or suspended, any additional
20 license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said
21 licensee may be likewise revoked or suspended by the Director.

22 PRAYER

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

25 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
26 254109, issued to West Covina Auto Group, LLC, dba West Covina Toyota; UCN Partners, LLP;
27 Sage Holding Company, owner:

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1 2. Ordering West Covina Auto Group, LLC, dba West Covina Toyota; UCN Partners,
2 LLP; Sage Holding Company to pay the Bureau of Automotive Repair the reasonable costs of the
3 investigation and enforcement of this case, pursuant to Business and Professions Code section
4 125.3;

5 3. Taking such other and further action as deemed necessary and proper.

6 DATED: April 7, 2014

Patrick Dorais

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

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