

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 DAVID E. BRICE
Deputy Attorney General
4 State Bar No. 269443
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-8010
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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. 77/15-28

13 **AMERIKAR**
14 **NINOUS SARGONY, OWNER**
1219 N. Golden State Blvd.
Turlock, CA 95380

A C C U S A T I O N

15 **Automotive Repair Dealer Reg. No. ARD 205482**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity
21 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
22 2. In or about 1999, the Director of Consumer Affairs ("Director") issued Automotive
23 Repair Dealer Registration Number ARD 205482 to Ninous Sargony ("Respondent"), owner of
24 Amerikar. The automotive repair dealer registration was in full force and effect at all times
25 relevant to the charges brought herein and will expire on June 30, 2015, unless renewed.

26 **JURISDICTION**

- 27 3. Business and Professions Code ("Code") section 9884.7 provides that the Director
28 may revoke an automotive repair dealer registration.

1 4. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
2 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
3 against an automotive repair dealer or to render a decision temporarily or permanently
4 invalidating (suspending or revoking) a registration.

5 **STATUTORY AND REGULATORY PROVISIONS**

6 5. Code section 9884.7 states, in pertinent part:

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

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

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17 (4) Any other conduct that constitutes fraud.

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

21 6. Code section 9884.7, subdivision (c), states, in pertinent part, that the Director may
22 suspend, revoke, or place on probation the registration for all places of business operated in this
23 state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
24 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
25 automotive repair dealer.

26 7. Code section 9884.9, subdivision (a), states, in pertinent part:

27 The automotive repair dealer shall give to the customer a written
28 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 regulation the procedures to be followed by an automotive repair
dealer when an authorization or consent for an increase in the original estimated price

1 is provided by electronic mail or facsimile transmission. If that consent is oral, the
2 dealer shall make a notation on the work order of the date, time, name of person
authorizing the additional repairs and telephone number called, if any, together with a
specification of the additional parts and labor and the total additional cost . . .

3 8. Code section 22, subdivision (a), states:

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

7 9. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes
8 "registration" and "certificate."

9 10. California Code of Regulations, title 16, section ("Regulation") 3303 states, in
10 pertinent part:

11 In this chapter, unless the context otherwise requires:

12

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

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17 (q) Original Equipment Manufacturer crash part" or OEM crash part"
18 means a crash part made for or by the original vehicle manufacturer that
manufactured, fabricated or supplied a vehicle or a component part.

19 (r) Non-Original Equipment Manufacturer aftermarket crash part" or non-
20 OEM aftermarket crash part" means aftermarket crash parts not made for or by the
manufacturer; of the motor vehicle.

21 11. Regulation 3356 states, in pertinent part:

22 (a) All invoices for service and repair work performed, and parts
23 supplied, as provided for 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
25 number . . . as shown in the Bureau's records . . .

26 (2) The invoice shall separately list, describe and identify all of the
following:

27 (A) All service and repair work performed, including all diagnostic and
28 warranty work, and the price for each described service and repair.

1 (B) Each part supplied, in such a manner that the customer can
2 understand what was purchased, and the price for each described part. The description
of each part shall state whether the part was new, used, reconditioned, rebuilt, or an
OEM crash part, or a non-OEM aftermarket crash part . . .

3 **COST RECOVERY**

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

8 **CONSUMER COMPLAINT (R.D.): 2007 HONDA ODYSSEY**

9 13. On or about April 6, 2013, R.D.'s 2007 Honda Odyssey was involved in an accident,
10 resulting in damage to the front end of the vehicle. R.D. had the vehicle towed to Respondent's
11 facility, then made a claim for the collision damage with his insurance company, State Farm.

12 14. On or about April 12, 2013, State Farm inspected the vehicle and prepared a written
13 estimate in the amount of \$2,754.37 ("insurance estimate"). R.D. received a copy of the estimate
14 and a check from State Farm to cover the repair costs. R.D. went to Respondent's facility and
15 authorized them to repair the vehicle per the insurance estimate. The facility did not provide R.D.
16 with an estimate or have him sign a work order.

17 15. In or about May 2013, R.D. went to the facility to pick up the vehicle, paid \$2,754.37
18 for the repairs, and received a copy of an invoice. R.D. noticed various problems with the vehicle
19 and returned it to the facility for corrective repairs. Respondent attempted to resolve the
20 problems, but R.D. was not satisfied with the work.

21 16. On or about May 20, 2013, R.D. took the vehicle to another automotive repair facility
22 and obtained a written estimate for corrective repairs. R.D. learned that the hood panel had not
23 been replaced on the vehicle.

24 17. On or about May 22, 2013, R.D. filed a complaint with the Bureau.

25 18. On or about June 7, 2013, a representative of the Bureau inspected the vehicle using
26 the insurance estimate for comparison, and found that Respondent's facility failed to repair the
27 vehicle as estimated.

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19. On or about June 13, 2013, the representative went to the facility and discussed the complaint with Respondent. Respondent claimed that he had repaired the vehicle per the insurance estimate. The representative obtained copies of Respondent's repair records on the vehicle, with the exception of the parts receipts. Respondent told the representative that he would have the receipts in a few days.

20. On or about June 17, 2013, the representative returned to the facility and met with Respondent. Respondent provided the representative with various part receipts, but not a part receipt for the hood panel. The representative asked Respondent if he had replaced the hood panel with an Original Equipment Manufacturer ("OEM") part as set forth on the insurance estimate. Respondent admitted that he had not replaced the part, but had repaired it instead because the damage "was minimal". Respondent also admitted that he installed an aftermarket right fog lamp assembly on the vehicle rather than a new OEM part, and had not informed R.D. of the changes in the method of repair. The total value of the repairs Respondent failed to perform on the vehicle approximately \$1,298.05.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

21. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: On or about June 13, 2013, Respondent falsely represented to the Bureau representative that he had repaired R.D.'s 2007 Honda Odyssey per the insurance estimate.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

22. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:

a. Respondent obtained payment from State Farm and/or R.D. for replacing the hood panel on R.D.'s 2007 Honda Odyssey with a new OEM part. In fact, Respondent had not

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1 replaced the hood panel on the vehicle, but had repaired it instead without R.D.'s knowledge or
2 authorization.

3 b. Respondent obtained payment from State Farm and/or R.D. for replacing the right fog
4 lamp assembly on R.D.'s 2007 Honda Odyssey with a new OEM part. In fact, Respondent
5 replaced the right fog lamp assembly with an aftermarket part instead, without R.D.'s knowledge
6 or authorization.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Violations of the Code)**

9 23. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
10 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
11 that Code in a material respect, as follows: Respondent failed to obtain R.D.'s authorization for
12 the collision repairs on his 2007 Honda Odyssey.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Violations of Regulations)**

15 24. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
16 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following
17 material respects:

18 a. **Subdivision (a)(1):** Respondent failed to show his automotive repair dealer
19 registration number on the invoice.

20 b. **Subdivision (a)(2)(B):** Respondent failed to state on the invoice whether the parts
21 installed on R.D.'s 2007 Honda Odyssey were new, used, reconditioned, rebuilt, or OEM crash
22 parts or non-OEM aftermarket crash parts.

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UNDERCOVER OPERATION #1: 1993 CHEVROLET TRUCK

25. On January 6, 2014, an undercover operator with the Bureau ("operator") took the Bureau's 1993 Chevrolet truck to Respondent's facility. A defective coolant temperature sensor had been installed in the Bureau-documented vehicle. The operator met with "Nick" and requested an inspection of the vehicle. The operator told Nick that she had been getting bad gas mileage for the last month or so and that in the last two weeks, the exhaust had smelled bad when she started the vehicle in the garage. Nick provided the operator with a form and had her fill in her name and contact information. Nick also gave the operator a business card for Amerikar, with "Ninous (Nick) Sargony" as the owner. The operator left the facility.

26. At approximately 1415 hours that same day, Nick called the operator and asked her when the catalytic converter had been replaced on the vehicle. The operator stated that she did not know as she had the vehicle for about three months. Nick told the operator that the exhaust smell was coming from the catalytic converter and that he was "90% sure" the vehicle needed a complete tune-up, including spark plugs, wires, a cap, a rotor, and a PCV (positive crankcase ventilation) valve. Nick also claimed that there was a second problem with the vehicle involving the "trottle body" (throttle body) and that the vehicle was idling at low speed and had a backfire. The operator asked Nick about the repair costs. Nick told the operator that he still needed to check over the second problem and would call her back in about a half hour.

27. At approximately 1535 hours, the operator called the facility to check on the status of the vehicle and spoke with a male individual. The male individual claimed, among other things, that the problem was mainly with the vehicle's "trottle body" and asked the operator if he could keep the vehicle overnight. The operator agreed.

28. On January 7, 2014, at approximately 1250 hours, the operator spoke with Nick. Nick told the operator that the vehicle needed a major tune-up because it was not running on all four cylinders and that the repairs would cost \$421. The operator authorized the work.

29. On January 14, 2014, the operator called the facility and spoke with Nick. Nick told the operator that they had taken another look at the vehicle and that it was "missing" again. Nick stated that one of the sensors was not reading the computer, that they had fixed the problem, and

1 that the repair costs were now \$512.15. That same day, the operator went to the facility to
2 retrieve the vehicle, paid \$512.15 for the repairs, and received a copy of an invoice.

3 30. On January 17, 2014, the Bureau inspected the vehicle and found that the defective
4 coolant temperature sensor had been replaced, although that repair was not recorded on the
5 invoice. The Bureau also found that the facility had performed unnecessary repairs on the vehicle
6 and had not repaired the vehicle as invoiced. The total value of the repairs Respondent failed to
7 perform on the vehicle is approximately \$460.34.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Untrue or Misleading Statements)**

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

13 a. Respondent represented to the operator that the Bureau's 1993 Chevrolet truck was in
14 need of a complete tune-up, including spark plugs, wires, a cap, a rotor, and a PCV valve. In fact,
15 the only repair needed on the vehicle was the replacement of the defective coolant temperature
16 sensor. Further, the spark plugs, spark plug wires, distributor cap, distributor rotor, and PCV
17 valve were new, were in good condition, and were not in need of replacement at the time the
18 vehicle was taken to Respondent's facility.

19 b. Respondent represented to the operator that there were problems with the "trottle
20 body" or throttle position sensor ("TPS") on the Bureau's 1993 Chevrolet truck. In fact, the TPS
21 was functioning properly and was not in need of replacement at the time the vehicle was taken to
22 Respondent's facility.

23 c. Respondent represented on the invoice that the fuel filter on the Bureau's 1993
24 Chevrolet truck had been replaced. In fact, that part had not been replaced on the vehicle as
25 invoiced.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 32. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:

5 a. Respondent made false or misleading representations to the operator regarding the
6 Bureau's 1993 Chevrolet truck, as set forth in subparagraphs 31 (a) and (b) above, in order to
7 induce the operator to authorize and pay for unnecessary repairs on the vehicle, then sold the
8 operator unnecessary repairs, including the tune-up and the replacement of the spark plugs, spark
9 plug wires, distributor cap, distributor rotor, PCV valve, and TPS.

10 b. Respondent obtained payment from the operator for replacing the fuel filter on the
11 Bureau's 1993 Chevrolet truck. In fact, that part had not been replaced on the vehicle as
12 invoiced.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Violations of the Code)**

15 33. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
16 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
17 that Code in the following material respects:

18 a. Respondent failed to provide the operator with a written estimate for parts and labor
19 necessary for a specific job.

20 b. Respondent failed to document on the invoice the operator's authorization for the
21 additional repairs on the vehicle; i.e., the repair of the sensor at the revised estimate price of
22 \$512.15.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(Violations of Regulations)**

25 34. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
26 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivisions
27 (a)(2)(A) and (B), in the following material respects: Respondent failed to list, describe, or
28 identify on the invoice all repairs performed and parts installed on the Bureau's 1993 Chevrolet

1 truck, including the diagnosis of the vehicle and/or the results of the diagnosis and the
2 replacement of the defective coolant temperature sensor.

3 **UNDERCOVER OPERATION #2: 1996 TOYOTA**

4 35. On April 28, 2014, an undercover operator with the Bureau ("operator") took the
5 Bureau's 1996 Toyota to Respondent's facility. A defective #1 cylinder fuel injector had been
6 installed in the Bureau-documented vehicle. The operator met with a male individual and asked
7 him if they could check the vehicle. The operator stated that the vehicle was not running well and
8 the check engine light was on. The operator provided the male with her contact information, then
9 told him that she would be out of town for a couple of days and that they could take their time
10 diagnosing the problem. The male did not have the operator sign a repair order or provide her
11 with a written estimate. The operator left the facility.

12 36. On April 29, 2014, the operator called the facility and spoke with Nick. Nick told the
13 operator that the vehicle needed a major tune-up, including spark plugs, a distributor cap, and a
14 fuel filter at a cost of \$453. The operator asked Nick if the tune-up would fix the problem with
15 the vehicle, and he said yes. The operator authorized the repairs.

16 37. On April 30, 2014, the operator called the facility and spoke with Nick. Nick told the
17 operator that the fuel filter "had so much junk and dirt in it" that one of the injectors had been
18 damaged, that only one injector needed replacement, and that "the other one" was just dirty and
19 would be cleaned free of charge. Nick also told the operator that he would charge her only half
20 the labor and that the total repair costs would be \$671.32. The operator authorized the additional
21 work on the vehicle.

22 38. On May 1, 2014, the operator returned to the facility to retrieve the vehicle, paid \$671
23 for the repairs, and received a copy of an invoice.

24 39. On May 6, 2014, the Bureau inspected the vehicle and found that the defective #1
25 cylinder fuel injector had been replaced with a used part rather than a remanufactured part as set
26 forth on the invoice. The Bureau also found that Respondent performed unnecessary repairs on
27 the vehicle. The total value of the repairs that were not needed on the vehicle or were not
28 performed as indicated on the invoice is approximately \$611.53.

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

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

6 a. Respondent represented to the operator that the Bureau's 1996 Toyota needed a major
7 tune-up, including spark plugs, a distributor cap, and a fuel filter, and that those repairs were
8 needed to correct the problem with the vehicle. In fact, the only repair needed on the vehicle was
9 the replacement of the defective #1 cylinder fuel injector. Further, the spark plugs, distributor cap
10 and fuel filter were new, were in good condition, and were not in need of replacement at the time
11 the vehicle was taken to Respondent's facility.

12 b. Respondent represented on the invoice that a remanufactured fuel injector was
13 installed in the Bureau's 1996 Toyota. In fact, a used fuel injector was installed in the vehicle.

14 **TENTH CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 41. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
17 subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:

18 a. Respondent made false or misleading representations to the operator regarding the
19 Bureau's 1996 Toyota, as set forth in subparagraph 40 (a) above, in order to induce the operator
20 to authorize and pay for unnecessary repairs on the vehicle, then sold the operator unnecessary
21 repairs, including the tune-up and the replacement of the spark plugs, spark plug wires, distributor
22 cap, distributor rotor, and fuel filter.

23 b. Respondent obtained payment from the operator for installing a remanufactured fuel
24 injector in the Bureau's 1996 Toyota. In fact, a used fuel injector was installed in the vehicle.

25 **ELEVENTH CAUSE FOR DISCIPLINE**

26 **(Violations of the Code)**

27 42. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
28 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of

1 that Code in the following material respects: Respondent failed to provide the operator with a
2 written estimate or obtain her authorization for the diagnosis of the Bureau's 1996 Toyota.

3 **TWELFTH CAUSE FOR DISCIPLINE**

4 **(Violations of Regulations)**

5 43. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
6 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivisions
7 (a)(2)(A) and (B), in the following material respects: Respondent failed to list, describe, or
8 identify on the invoice the diagnostic work that was performed on the Bureau's 1996 Toyota
9 pertaining to the defective fuel injector and/or the results of the diagnosis.

10 **OTHER MATTERS**

11 44. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
12 or place on probation the registration for all places of business operated in this state by
13 Respondent Ninous Sargony, owner of Amerikar, upon a finding that Respondent has, or is,
14 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
15 automotive repair dealer.

16 **PRAYER**

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

19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
20 205482, issued to Ninous Sargony, owner of Amerikar;

21 2. Revoking or suspending any other automotive repair dealer registration issued to
22 Ninous Sargony;

23 3. Ordering Ninous Sargony, owner of Amerikar, to pay the Director of Consumer
24 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
25 Business and Professions Code section 125.3;

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

DATED: December 23, 2014 

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

SA2014116949