

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

In the Matter of the Accusation Against:

**JOSE MARTIN MERCADO
MARTINS TRANSMISSION & AUTO
REPAIR**

2828 S. Elm Avenue
Fresno, CA 93706

Automotive Repair Dealer Registration No.
ARD 208330

Case No. 77/13-18

OAH No. 2012110713

Respondent.


DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

The suspension of Automotive Repair Dealer Registration No. ARD 208330 shall commence on the effective date of this Decision.

This Decision shall become effective April 30, 2014.

DATED: APR 10 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 KENT HARRIS
Supervising Deputy Attorney General
3 ELENA L. ALMANZO
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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:
13 **JOSE MARTIN MERCADO**
MARTINS TRANSMISSION & AUTO
14 **REPAIR**
2828 S. Elm Avenue
15 Fresno, CA 93706
Automotive Repair Dealer Registration No.
16 **ARD 208330**

17 Respondent.

Case No. 77/13-18

OAH No. 2012110713

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
23 brought this action solely in his official capacity and is represented in this matter by Kamala D.
24 Harris, Attorney General of the State of California, by Elena L. Almanzo, Deputy Attorney
25 General.

26 2. Respondent Jose Martin Mercado, Martins Transmission & Auto Repair
27 ("Respondent") is represented in this proceeding by attorney William Ferreira, Esq., whose
28 address is: 582 Market Street, Suite 1608, San Francisco, CA 94104

3. On or about January 1, 1999, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration No. ARD 208330 to Jose Martin Mercado, Martins Transmission & Auto Repair (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 77/13-18 and will expire on December 31, 2014, unless renewed.

JURISDICTION

4. Accusation No. 77/13-18 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 15, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 77/13-18 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 77/13-18. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 77/13-18.

4 10. Respondent agrees that his Automotive Repair Dealer Registration is subject to
5 discipline and he agrees to be bound by the Director's probationary terms as set forth in the
6 Disciplinary Order below.

7 CONTINGENCY

8 11. This stipulation shall be subject to approval by the Director of Consumer Affairs or
9 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
10 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
11 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
12 or participation by Respondent or his counsel. By signing the stipulation, Respondent
13 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
14 prior to the time the Director considers and acts upon it. If the Director fails to adopt this
15 stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
16 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
17 the parties, and the Director shall not be disqualified from further action by having considered
18 this matter.

19 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
20 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
21 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

22 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
23 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
24 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
25 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
26 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
27 writing executed by an authorized representative of each of the parties.
28

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 208330 issued to Respondent Jose Martin Mercado, Martins Transmission & Auto Repair (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 208330 issued to Respondent Jose Martin Mercado is suspended for seven (7) days.

2. **Obey All Laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

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

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

5. **Report Financial Interest.** Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

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

7. **Jurisdiction.** If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter

1 until the final decision on the accusation, and the period of probation shall be extended until such
2 decision.

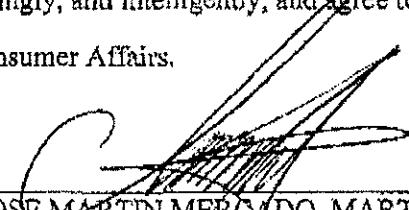
3 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
4 Respondent has failed to comply with the terms and conditions of probation, the Department may,
5 after giving notice and opportunity to be heard may permanently invalidate the registration.

6 9. **Cost Recovery.** Payment to the Bureau of partial cost recovery in the amount of
7 \$22,759 which shall be received no later than 6 months before probation terminates. Failure to
8 complete payment of cost recovery within this time frame shall constitute a violation of probation
9 which may subject Respondent's registration to outright revocation; however, the Director or the
10 Director's Bureau of Automotive Repair designee may elect to continue probation until such time
11 as reimbursement of the entire cost recovery amount has been made to the Bureau.

12 ACCEPTANCE

13 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
14 discussed it with my attorney, William Ferreira, Esq.. I understand the stipulation and the effect
15 it will have on my Automotive Repair Dealer Registration. I enter into this Stipulated Settlement
16 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
17 Decision and Order of the Director of Consumer Affairs.

18
19 DATED: 2/4/14


JOSE MARTIN MERCADO, MARTINS
TRANSMISSION & AUTO REPAIR
Respondent

22 I have read and fully discussed with Respondent Jose Martin Mercado, Martins
23 Transmission & Auto Repair the terms and conditions and other matters contained in the above
24 Stipulated Settlement and Disciplinary Order. I approve its form and content.

25
26 DATED: 2/4/14


William Ferreira, Esq.
Attorney for Respondent

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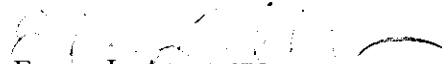
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
submitted for consideration by the Director of Consumer Affairs

Dated: 5/1/11

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KENT HARRIS
Supervising Deputy Attorney General


ELENA L. ALMANZO
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 77/13-18

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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. 77/13-18

13 **MARTINS TRANSMISSION & AUTO REPAIR**
14 **JOSE MARTIN MERCADO, OWNER**
2828 S. Elm Avenue
Fresno, CA 93706

A C C U S A T I O N

15 **Automotive Repair Dealer Reg. No. ARD 208330**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. John Wallauch ("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 208330 to Jose Martin Mercado ("Respondent"), owner
24 of Martins Transmission & Auto Repair. Respondent's automotive repair dealer registration was
25 in full force and effect at all times relevant to the charges brought herein and will expire on
26 December 31, 2012, unless renewed.

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28 ///

JURISDICTION

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

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

STATUTORY AND REGULATORY PROVISIONS

(Statutory Provisions)

5. Code section 9884.7 states, in pertinent part:

(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 that constitutes fraud.

....

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

(7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative . . .

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

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

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 . . .

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

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

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

(Regulatory Provisions)

10. California Code of Regulations, title 16, section ("Regulation") 3353, states, in pertinent part:

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

• • • •

(d) Estimated Price to Tear Down, Inspect, Report and Reassemble. For purposes of this article, to tear down" shall mean to disassemble, and teardown" shall mean the act of disassembly. If it is necessary to tear down a vehicle component in order to prepare a written estimated price for required repair, the dealer shall first give the customer a written estimated price for the teardown. This price shall include the cost of reassembly of the component. The estimated price shall also include the cost of parts and necessary labor to replace items such as gaskets, seals and O rings that are normally destroyed by teardown of the component. If the act of teardown might prevent the restoration of the component to its former condition, the dealer shall write that information on the work order containing the teardown estimate before the work order is signed by the customer.

The repair dealer shall notify the customer orally and conspicuously in writing on the teardown estimate the maximum time it will take the repair dealer to reassemble the vehicle or the vehicle component in the event the customer elects not to proceed with the repair or maintenance of the vehicle and shall reassemble the vehicle within that time period if the customer elects not to proceed with the repair or maintenance. The maximum time shall be counted from the date of authorization of teardown.

After the teardown has been performed, the dealer shall prepare a written estimated price for labor and parts necessary for the required repair. All parts required for such repair shall be listed on the estimate. The dealer shall then obtain the

customer's authorization for either repair or reassembly before any further work is done . . .

11. Regulation 3356 states, in pertinent part:

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

. . . .

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

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

12. Regulation 3361.1 states, in pertinent part:

The following minimum requirements specifying accepted trade standards for good and workmanlike rebuilding of automatic transmissions are intended to define terms that have caused confusion to the public and unfair competition within the automotive repair industry. The term "automatic transmission" shall also apply to the automatic transmission portion of transaxles for the purposes of this regulation, unless both the automatic transmission portion and the differential portion of the transaxle share a common oil supply, in which case the term "automatic transmission" shall apply to both portions of the transaxle . . . All automotive repair dealers engaged in the repair, sale, or installation of automatic transmissions in vehicles covered under the Act shall be subject to the following minimum requirements:

(a) Before an automatic transmission is removed from a motor vehicle for purposes of repair or rebuilding, it shall be inspected. Such inspection shall determine whether or not the replacement or adjustment of any external part or parts will correct the specific malfunction of the automatic transmission. In the case of an electronically controlled automatic transmission, this inspection shall include a diagnostic check, including the retrieval of any diagnostic trouble codes, of the electronic control module that controls the operation of the transmission. If minor service and/or replacement or adjustment of any external part or parts and/or of companion units can reasonably be expected to correct the specific malfunction of the automatic transmission, then prior to removal of the automatic transmission from the vehicle, the customer shall be informed of that fact as required by Section 3353 of these regulations. Before removing an automatic transmission from a motor vehicle, the dealer shall also comply with the provisions of section 3353(d), and disclose any applicable guarantee or warranty as provided in sections 3375, 3376 and 3377 of these regulations . . .

. . . .

(c) Any automotive repair dealer that advertises or performs, directly or through a sublet contractor, automatic transmission work and uses the words "exchanged," "rebuilt," "remanufactured," "reconditioned," or "overhauled," or any expression of like meaning, to describe an automatic transmission in any form of advertising or on a written estimate or invoice shall only do so when all of the following work has been done since the transmission was last used:

1

2 (4) All the following parts have been replaced with new parts:

3

4 (B) Internal and external seals including seals that are bonded to metal
5 parts.

6 (C) All sealing rings

7 (D) Gaskets

8 (5) All impaired, defective, or substantially worn parts not mentioned
9 above have been restored to a sound condition or replaced with new, rebuilt, or
10 unimpaired parts. All measuring and adjusting of such parts has been performed as
11 necessary . . .

12 COST RECOVERY

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

17 CONSUMER COMPLAINT (TORRES): 2004 NISSAN SENTRA

18 14. On or about November 18, 2010, the Bureau received a complaint from Alberto
19 Torres ("Torres"), stating that he paid Respondent's facility over \$1,200 to repair a transmission
20 shifting problem on his 2004 Nissan Sentra, but the problem had not been resolved despite
21 several visits to the facility.

22 15. On November 23, 2010, a representative of the Bureau contacted Torres, who related
23 the following: On or about July 7, 2010, Torres took the vehicle to Respondent's facility because
24 the transmission would "jump" when cold and had a hard up-shift (the "check engine light" was
25 also illuminated). Torres authorized the facility to perform a diagnosis of the vehicle for \$125.
26 Later, the facility informed Torres that the shifting problem was due to the valve body. Torres
27 paid the facility \$650 to repair the part. On or about August 9, 2010, Torres took the vehicle back
28 to the facility due to the same shifting problem. Torres paid the facility \$616.55 to remove the
valve body and replace various valves and a separator plate. Torres returned the vehicle to the
facility on at least three other occasions due to the same problem, but the facility could not find

1 anything wrong with the vehicle. Torres requested his money back, but Respondent refused to
2 issue him a refund.

3 16. On January 18, 2011, the Bureau obtained copies of Respondent's repair records on
4 the vehicle, including a repair order dated August 9, 2010.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Violations of the Code)**

7 17. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
8 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
9 that Code in a material respect, as follows: Respondent stated on the repair order that the original
10 estimate price was "350.00 + parts", but did not list the specific parts that were needed on Torres'
11 2004 Nissan Sentra.

12 **CONSUMER COMPLAINT (RODRIGUEZ): 1994 TOYOTA PICKUP**

13 18. On or about April 30, 2010, Carlos Rodriguez ("Rodriguez") towed his 1994 Toyota
14 pickup to Respondent's facility because it would not move forward or in reverse. Rodriguez
15 signed a repair order and a "Job Approval Worksheet", authorizing the facility to perform a
16 diagnosis of the vehicle. Later that same day, Rodriguez authorized the facility to remove,
17 disassemble, and inspect the transmission for damage.

18 19. On or about May 3, 2010, Rodriguez signed the Job Approval Worksheet, authorizing
19 the facility to repair or rebuild the transmission for \$1,250.

20 20. On or about May 6, 2010, Rodriguez went to the facility to retrieve the vehicle, paid
21 \$1,300 for the repairs, and received a copy of an invoice. The invoice indicated that the
22 transmission repairs, including the torque converter, were covered by a 12 month, 12,000 mile
23 warranty.

24 21. On or about January 3, 2011, Rodriguez towed the vehicle back to the facility because
25 it began smoking, and the transmission was making noise and leaking fluid. Rodriguez
26 authorized the facility to perform a diagnosis of the vehicle for \$125. Respondent told Rodriguez
27 that he would waive the diagnostic fee if the vehicle's problem was covered under the warranty.

28 ///

1 22. On or about January 10, 2011, Respondent called Rodriguez and told him that the
2 engine had overheated, damaging the torque converter. Respondent stated that the warranty was
3 not valid due to Rodriguez's negligence.

4 23. On or about January 11, 2011, Rodriguez filed a complaint with the Bureau.

5 24. On or about January 12, 2011, a representative of the Bureau went to the facility and
6 obtained copies of the repair records on the vehicle. Respondent told the representative that while
7 overhauling the transmission, he found that the radiator was leaking. Respondent recommended
8 replacing the radiator and radiator cap, but Rodriguez declined the repairs. Respondent claimed
9 that the torque converter failed due to Rodriguez's negligence, which voided the warranty.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Departure from Trade Standards)**

12 25. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
13 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
14 standards for good and workmanlike repair without the consent of the owner or the owner's duly
15 authorized representative in a material respect, as follows: Respondent failed to provide
16 Rodriguez with a written teardown estimate before removing the transmission from Rodriguez's
17 1994 Toyota pickup, in violation of Regulations 3361.1, subdivision (a), and 3353, subdivision
18 (d).

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Violations of the Code)**

21 26. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
22 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
23 that Code in a material respect, as follows: Respondent failed to provide Rodriguez with a
24 written estimate for parts and labor necessary for a specific job, the repairing or rebuilding of the
25 transmission on Rodriguez's 1994 Toyota pickup.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 27. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivision
5 (a)(2)(A), in a material respect, as follows: Respondent failed to list, describe or identify on the
6 invoice all repair work performed on Rodriguez's 1994 Toyota pickup; specifically, the
7 replacement of the air filter and shift cable.

8 **UNDERCOVER OPERATION #1: 1996 CHEVROLET C-1500 PICKUP**

9 28. On February 10, 2011, an undercover operator of the Bureau ("operator") took the
10 Bureau's 1996 Chevrolet C-1500 pickup to Respondent's facility. The 1-2 (A) shift solenoid on
11 the Bureau-documented vehicle was damaged. The operator told Respondent's employee,
12 "Elizabeth", that she wanted the vehicle checked because the transmission was not shifting
13 correctly and the check engine light was illuminated. Elizabeth stated that it would cost \$125 to
14 diagnose the problem with the vehicle. The operator signed and received a copy of a repair order,
15 then left the facility.

16 29. At approximately 1300 hours that same day, Elizabeth called the operator and told her
17 that there was a problem with a shift solenoid. Elizabeth stated that they would need to remove
18 the transmission pan to test the electrical components and check for internal damage, and that the
19 repairs should not cost over \$700. The operator told Elizabeth that she would have to call her
20 back. At approximately 1330 hours, the operator called Elizabeth and authorized the repairs.

21 30. On February 11, 2011, Elizabeth called the operator and informed her that the vehicle
22 was ready. Elizabeth told the operator that they had to replace the 2-4 servo assembly, in addition
23 to the shift solenoid and the transmission pan gasket, because the shaft on the servo assembly was
24 bent.

25 31. On February 14, 2011, the operator returned to the facility to retrieve the vehicle, paid
26 \$700 in cash for the repairs, and received a copy of an invoice.

27 32. On and between February 18 and 22, 2011, the Bureau inspected the vehicle using the
28 invoice for comparison and found that the facility failed to repair the vehicle as invoiced.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 33. 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's employee, Elizabeth, represented to the operator that the shaft or servo
7 pin on the 2-4 servo assembly in the Bureau's 1996 Chevrolet C-1500 pickup was bent. In fact,
8 the 2-4 servo pin was not bent at the time the vehicle was taken to Respondent's facility. Further,
9 the 2-4 servo assembly was in good condition and was not impaired, defective, substantially
10 worn, or in need of replacement.

11 b. Respondent represented on the invoice that the 2-4 servo assembly in the Bureau's
12 1996 Chevrolet C-1500 pickup was replaced. In fact, only two components of the assembly were
13 replaced on the vehicle (the pin and pin spring).

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 34. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
17 subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows:
18 Respondent obtained payment from the operator for replacing the 2-4 servo assembly in the
19 Bureau's 1996 Chevrolet C-1500 pickup. In fact, only two components of the assembly were
20 replaced on the vehicle (the pin and pin spring).

21 **CONSUMER COMPLAINT (GODINEZ): 1991 GMC 3500 TRUCK**

22 35. On or about May 11, 2011, Raul Godinez ("Godinez") removed the transmission
23 from his 1991 GMC 3500 truck and took it to Respondent's facility. Godinez told the facility that
24 the vehicle would not go into forward or reverse gear and signed a repair order, authorizing them
25 to check the transmission for \$125. The facility inspected the transmission and informed Godinez
26 that it had severe internal damage. Godinez authorized the facility to rebuild the transmission.

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1 36. On or about May 25, 2011, Godinez returned to the facility to pick up the
2 transmission, paid \$566.46 for the repairs, and received a copy of an invoice. The invoice
3 indicated that the repairs were covered by a 30 day warranty.

4 37. On or about June 20, 2011, Godinez reinstalled the transmission in the vehicle and
5 found that the vehicle would not go into reverse. Godinez took the vehicle to the facility to have
6 the problem diagnosed. Later, the facility called Godinez and informed him that the transmission
7 was removed from the vehicle and disassembled and that the transmission was burnt. Respondent
8 claimed that Godinez "broke the reverse" and was responsible for the damage to the transmission.
9 Respondent told Godinez that it would cost \$1,000 to rebuild the transmission.

10 38. On or about July 6, 2011, Godinez filed a complaint with the Bureau.

11 39. On or about August 8, 2011, the Bureau obtained copies of the facility's repair
12 records on the vehicle, including a repair order dated June 20, 2011.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Departure from Trade Standards)**

15 40. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
16 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
17 standards for good and workmanlike repair without the consent of the owner or the owner's duly
18 authorized representative in a material respect, as follows: On or about June 20, 2011,
19 Respondent failed to provide Godinez with a written teardown estimate before removing the
20 transmission from Godinez's 1991 GMC 3500 truck, in violation of Regulations 3361.1,
21 subdivision (a), and 3353, subdivision (d).

22 **EIGHTH CAUSE FOR DISCIPLINE**

23 **(Violations of the Code)**

24 41. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
25 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
26 that Code in the following material respects: On or about June 20, 2011, Respondent failed to
27 provide Godinez with a written estimate for parts and labor necessary for a specific job and obtain

28 ///

Godinez's authorization before removing and disassembling the transmission on Godinez's GMC 3500 truck.

UNDERCOVER OPERATION #2: 1997 CHEVROLET C-1500 PICKUP

42. On July 6, 2011, an undercover operator of the Bureau ("operator") took the Bureau's 1997 Chevrolet C-1500 pickup to Respondent's facility. A defective reactive sun shell had been installed in the transmission of the Bureau-documented vehicle. The operator met with Elizabeth and told her that the transmission would not go into reverse. Elizabeth stated that it would cost \$125 to perform a diagnosis of the transmission. The operator signed and received a copy of a repair order, then left the facility.

43. On July 7, 2011, Elizabeth called the operator and told her that they had completed their diagnosis. Elizabeth stated that the transmission had no reverse or upshift, "first gear jumped to third gear", and there was no overdrive. Elizabeth told the operator that they could either replace the transmission in the vehicle with a unit they had in stock or rebuild the existing transmission. The operator asked Elizabeth about the repair costs. Elizabeth told the operator that it would cost \$1,840 for a transmission with a three year, 36,000 mile warranty and \$1,350 for a transmission with a one year, 12,000 mile warranty. The operator stated that she would call Elizabeth back.

44. At approximately 1345 hours that same day, the operator called Elizabeth and authorized her to rebuild the transmission in the vehicle for \$1,350 with the one year warranty. Elizabeth stated that the cost would be the same whether they rebuilt the existing transmission or replaced it with a stock unit. The operator told Elizabeth that she wanted the transmission rebuilt.

45. On July 11, 2011, the operator returned to the facility to retrieve the vehicle and met with Elizabeth. Elizabeth went over the invoice with the operator and circled items 4 and 7 in the warranty section. Item #4 indicated that the transmission repairs were covered by a 12 month, 12,000 mile warranty; Item #7 indicated that the warranty covered "parts only". Elizabeth informed the operator that they had replaced the transmission in the vehicle. The operator told Elizabeth that she had asked her to rebuild the transmission. Elizabeth did not respond. The operator paid Elizabeth \$1,410.89 for the repairs and received a copy of the above invoice.

1 46. On July 19, 2011, the Bureau inspected the vehicle using the invoice for comparison
2 and found that the replacement transmission was defective and in poor operating condition and
3 had not been overhauled or rebuilt to accepted trade standards.

4 **NINTH CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

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

9 a. Respondent represented on the invoice that a new overhaul kit had been installed in
10 the replacement transmission. In fact, a complete overhaul kit had not been installed in the unit in
11 that various O-ring seals and gaskets were substantially worn or used (an overhaul kit would have
12 included all new O-ring seals and gaskets).

13 b. Respondent represented on the invoice that the operator had authorized the facility to
14 replace the transmission in the Bureau's 1997 Chevrolet C-1500 pickup with a "repaired stock
15 unit". In fact, the operator had authorized the facility to rebuild the existing transmission in the
16 vehicle.

17 **TENTH CAUSE FOR DISCIPLINE**

18 **(Fraud)**

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

21 a. Respondent obtained payment from the operator for installing a new overhaul kit in
22 the Bureau's 1997 Chevrolet C-1500 pickup. In fact, a complete overhaul kit had not been
23 installed in the vehicle, as set forth in subparagraph 47 (a) above.

24 b. Respondent obtained payment from the operator for installing a "repaired stock
25 transmission" in the Bureau's 1997 Chevrolet C-1500 pickup. In fact, the operator had
26 authorized the facility to rebuild the existing transmission. Further, the replacement transmission
27 was defective and in poor operating condition, and had not been overhauled or rebuilt to accepted
28 trade standards, as set forth in paragraph 49 below.

1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 49. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
5 standards for good and workmanlike repair without the consent of the owner or the owner's duly
6 authorized representative in the following material respects:

7 a. Respondent installed O-ring seals and gaskets in the replacement transmission that
8 were substantially worn or used, in violation of Regulation 3361.1, subdivision (c).

9 b. Respondent installed a replacement transmission in the Bureau's 1997 Chevrolet C-
10 1500 pickup which was defective in that the third and fourth gear steel and fiber clutches showed
11 signs of failure (blue and black spots caused by overheating) and the bolts retaining the control
12 body valve assembly were not evenly tightened (proper torque of these bolts is critical to the
13 operation of the transmission). Further, the transmission was in poor operable condition with
14 flare-ups between shifts, slippage, and hesitation.

15 c. Respondent failed to disclose to the operator the complete terms of the warranty
16 before removing the transmission from the Bureau's 1997 Chevrolet C-1500 pickup in that
17 Respondent failed to inform the operator that the warranty covered parts only, in violation of
18 Regulations 3361.1, subdivision (a).

19 **TWELFTH CAUSE FOR DISCIPLINE**

20 **(Violations of the Code)**

21 50. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
22 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
23 that Code in a material respect, as follows: Respondent replaced the transmission in the Bureau's
24 1997 Chevrolet C-1500 pickup when, in fact, the operator had authorized Respondent to rebuild
25 the existing transmission in the vehicle.

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1 **CONSUMER COMPLAINT (MASSEY): 1981 FORD F100 TRUCK**

2 51. On or about May 31, 2011, Vincent Massey ("Massey") took his 1981 Ford F100
3 truck to Respondent's facility because the transmission would not go into forward gear, just
4 reverse. Massey signed an estimate, authorizing the facility to remove the transmission and
5 "repair damage only" for \$600, not including "fluid or taxes".

6 52. On or about July 1, 2011, Massey went to the facility to retrieve the vehicle and paid
7 \$670 for the repairs.

8 53. On or about July 6, 2011, Massey returned the vehicle to the facility due to the same
9 transmission problem. Respondent told Massey that he would not test drive the vehicle because
10 the radiator was leaking. Respondent also informed Massey that the transmission was leaking as
11 well and refused to perform any warranty repairs on the vehicle. That same day, Massey filed a
12 complaint with the Bureau.

13 54. On August 18, 2011, a representative of the Bureau went to the facility and obtained
14 copies of Respondent's repair records on the vehicle, including the above estimate and a final
15 invoice. The representative reviewed the estimate with Respondent and asked him why he gave
16 Massey an estimate of \$600 without performing a diagnosis of the transmission. Respondent told
17 the representative that Massey wanted them to remove the transmission and replace "only the
18 broken parts", and that the facility removed and overhauled the transmission.

19 **THIRTEENTH CAUSE FOR DISCIPLINE**

20 **(Departure from Trade Standards)**

21 55. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
22 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
23 standards for good and workmanlike repair without the consent of the owner or the owner's duly
24 authorized representative in a material respect, as follows: Respondent failed to provide Massey
25 with a written teardown estimate before removing the transmission from Massey's 1981 Ford
26 F100 truck, in violation of Regulations 3361.1, subdivision (a), and 3353, subdivision (d).

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1 **FOURTEENTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Code)**

3 56. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
5 that Code in a material respect, as follows: Respondent failed to provide Massey with a written
6 estimate for parts and labor necessary for a specific job after removing the transmission from
7 Massey's 1981 Ford F100 truck for rebuilding.

8 **UNDERCOVER OPERATION #3: 1996 CHEVROLET CAMARO**

9 57. On October 13, 2011, an undercover operator of the Bureau ("operator") took the
10 Bureau's 1996 Chevrolet Camaro to Respondent's facility. An open wire or circuit was created
11 in the transmission wiring harness of the Bureau-documented vehicle and the MIL (malfunction
12 indicator light) in the dash panel was disabled. The operator told Elizabeth that he wanted the
13 transmission checked on the vehicle because the vehicle was "jerking" and had to be started out in
14 second gear. Elizabeth stated that it would cost \$125 to determine the problem with the vehicle.
15 The operator signed and received a copy of a repair order, then left the facility.

16 58. At approximately 1115 hours that same day, Elizabeth called the operator and told
17 him that the transmission fluid in the vehicle was "real low" and that they had to add fluid before
18 they could road test the vehicle and continue with the diagnosis. Elizabeth stated that the charge
19 would be \$295. The operator authorized the addition of the fluid.

20 59. At approximately 1315 hours, Elizabeth called the operator and told him that they
21 completed the diagnosis, that some wires in the transmission and possibly one or two solenoids
22 needed to be replaced, and that the repair costs would not exceed \$650. The operator told Elizabeth
23 that he would call her back. At approximately 1320 hours, the operator called Elizabeth and
24 authorized the repairs.

25 60. On October 18, 2011, the operator returned to the facility to retrieve the vehicle, paid
26 \$650 in cash for the repairs, and received a copy of an invoice.

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1 61. On October 24 and 25, 2011, the Bureau inspected the vehicle using the invoice for
2 comparison and found that the MIL still was not functional. The Bureau also found that the
3 facility had performed an unnecessary repair on the vehicle, as set forth below.

4 **FIFTEENTH CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

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

9 a. Respondent's employee, Elizabeth, represented to the operator that the transmission
10 fluid in the Bureau's 1996 Chevrolet Camaro was "real low" and that they had to add fluid before
11 they could road test the vehicle and continue with the diagnosis. In fact, the transmission fluid
12 was filled to the proper level and the vehicle was not leaking or losing fluid at the time the vehicle
13 was taken to Respondent's facility

14 b. Respondent falsely represented on the invoice that the transmission fluid in the
15 Bureau's 1996 Chevrolet Camaro was low and that additional fluid was needed in order to
16 "continue with diagnostic test".

17 **SIXTEENTH CAUSE FOR DISCIPLINE**

18 **(Fraud)**

19 63. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
20 subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows:
21 Respondent's employee, Elizabeth, made a false or misleading statement to the operator
22 regarding the Bureau's 1996 Chevrolet Camaro, as set forth in subparagraph 62 (a) above, in
23 order to induce the operator to authorize an unnecessary repair on the vehicle, then sold the
24 operator an unnecessary repair; i.e., the addition of transmission fluid.

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1 **SEVENTEENTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 64. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
5 standards for good and workmanlike repair without the consent of the owner or the owner's duly
6 authorized representative in the following material respects:

7 a. Respondent failed to follow manufacturer's specifications in performing the diagnosis
8 of the electrical system on the transmission of the Bureau's 1996 Chevrolet Camaro in that
9 Respondent failed to verify the operation of the MIL and/or determine that the MIL was not
10 functioning.

11 b. Respondent failed to tighten the bolts on the transmission pan and as a result, the
12 vehicle was leaking transmission fluid.

13 **OTHER MATTERS**

14 65. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
15 or place on probation the registration for all places of business operated in this state by
16 Respondent Jose Martin Mercado, owner of Martin's Transmission & Auto Repair, upon a
17 finding that Respondent has, or is, engaged in a course of repeated and willful violations of the
18 laws and regulations pertaining to an automotive repair dealer.

19 **PRAYER**

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

22 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
23 208330, issued to Jose Martin Mercado, owner of Martin's Transmission & Auto Repair;


24 2. Revoking or suspending any other automotive repair dealer registration issued in the
25 name of Jose Martin Mercado;

26 3. Ordering Jose Martin Mercado, owner of Martin's Transmission & Auto Repair, to
27 pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement
28 of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: October 15, 2012


JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SA2012105875