

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

In the Matter of the Accusation Against:

**QUALITY TRUCK/AUTO OF FRESNO;
ARTHUR R. TERRIL,
a.k.a. ART TERRILL, a.k.a. ARTHUR ALLEN,
a.k.a. ART ALLEN, Owner,**

Automotive Repair Dealer Registration
No. ARD 250674

and

**AAMCO OF VISTA; ART TERRILL,
Owner,**

Automotive Repair Dealer Registration
No. ARD 255230

and

**AAMCO OF SAN DIEGO; ART TERRILL,
Owner,**

Automotive Repair Dealer Registration
No. ARD 262279

Case No. 77/14-14

OAH No. 2013100252

Respondents.

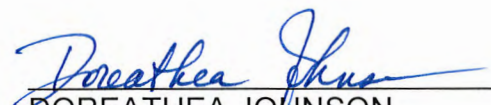
DECISION

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

1. Page 2, paragraph 1 under Factual Findings, second sentence: The expiration date of "May 31, 2014" is corrected to read "May 31, 2015."

This Decision shall become effective November 18, 2014.

DATED: October 6, 2014


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

QUALITY TRUCK/AUTO OF
FRESNO; ARTHUR R. TERRILL,
a.k.a. ART TERRILL, a.k.a. ARTHUR
ALLEN, a.k.a. ART ALLEN, Owner,

Automotive Repair Dealer Registration
No. ARD 250674

and

AAMCO OF VISTA; ART TERRILL,
Owner,

Automotive Repair Dealer Registration
No. ARD 255230

and

AAMCO OF SAN DIEGO; ART
TERRILL, Owner,

Automotive Repair Dealer Registration
No. ARD 262279

Respondents.

Case No. 77/14-14

OAH No. 2013100252

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on August 19, 2014, in Fresno, California.

Jeffery M. Phillips, Deputy Attorney General, represented complainant Patrick Dorais, Acting Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department), State of California.

Respondent Arthur R. Terrill, a.k.a. Art Terrill, a.k.a. Arthur Allen, a.k.a. Art Allen, represented himself and his current and former businesses Quality Truck/Auto of Fresno, AAMCO of Vista, AAMCO of San Diego, and AAMCO Transmission.

Evidence was received, the record was closed, and the matter was submitted for decision on August 19, 2014.

SUMMARY

Complainant seeks to discipline Automotive Repair Dealer Registration No. ARD 250674 based on respondent's violations of the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.) and regulations adopted pursuant to it. Complainant also seeks to discipline all other automotive repair dealer registrations issued to respondent on the grounds that he has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer. Cause exists to discipline each automotive repair dealer registration issued to respondent. Respondent did not introduce any evidence demonstrating his ability to perform the duties of an automotive repair dealer in a manner consistent with public health, safety, and welfare, even on a restricted basis. Therefore, Automotive Repair Dealer Registration No. ARD 250674, as well as every other automotive repair dealer registration issued to him, should be permanently invalidated.

FACTUAL FINDINGS

Procedural Background

1. On May 30, 2007, the Bureau issued Automotive Repair Dealer Registration No. ARD 250674 to respondent doing business as Quality Truck/Auto of Fresno. The registration expired on May 31, 2014, and has not been renewed.¹ There is no history of prior discipline of the registration.

2. On June 19, 2008, the Bureau issued Automotive Repair Dealer Registration No. ARD 255230 to respondent doing business as AAMCO of Vista. The registration expired on May 31, 2011, and has not been renewed. There is no history of prior discipline of the registration.

3. On June 17, 2010, the Bureau issued Automotive Repair Dealer Registration No. ARD 262279 to respondent doing business as AAMCO of San Diego. The registration expired on June 30, 2011, and has not been renewed. There is no history of prior discipline of the registration.

¹ The expiration of an automotive repair dealer registration does not deprive the Department of jurisdiction to discipline that registration. (Bus. & Prof. Code, § 9884.13.)

4. On May 30, 2007, the Bureau issued Automotive Repair Dealer Registration No. ARD 252551 to respondent doing business as AAMCO Transmission. The registration expired on October 31, 2011, and has not been renewed. There is no history of prior discipline of the registration.²

5. On August 30, 2013, complainant signed an Accusation seeking to discipline Automotive Repair Dealer Registration No. ARD 250674 based on respondent's numerous violations of the Automotive Repair Act and regulations adopted pursuant to it. Complainant also seeks to discipline all other automotive repair dealer registrations issued to respondent and each of his current and former businesses pursuant to Business and Professions Code section 9884.7, subdivision (c).

2003 Saturn Vue

6. On March 3, 2011, Leodies Rogers had his 2003 Saturn Vue towed to Quality Truck/Auto of Fresno for diagnosis due to a problem with the transmission. An employee named "Richard" looked at the vehicle and then recommended a "tear down" of the transmission. Mr. Rogers authorized the work by telephone.

7. Richard called Mr. Rogers on the telephone the following week and stated that the transmission needed to be "overhauled." Mr. Rogers authorized the work by telephone.

8. Mr. Rogers picked up his car from respondent's facility on March 21, 2011, paid for the repairs performed, and received a copy of Invoice No. 109252. The invoice contained the following information about Richard having obtained authorization for the "tear down" of the transmission:

AUTHORIZATION: BY: RICHARD DATE: 3/4/2011 TIME:
2:55:40 PM FROM: MR VERIFICATION: CU CALLED

And it contained the following information about his having obtained authorization for having the transmission "overhauled:"

² This registration is not identified in the caption for the Accusation. And while paragraph 73 of the Accusation alleges grounds for disciplining "the registration for all places of business operated in the state" by respondent, Automotive Repair Dealer Registration No. ARD 252551 is not specifically alleged as one of those registrations. Nonetheless, respondent stipulated at hearing to the existence of a factual and legal basis for disciplining that registration. Since such stipulation constitutes a judicial admission which cannot be contradicted, the parties' stipulation implicitly included an agreement to amend the Accusation to include the appropriate allegations about Automotive Repair Dealer Registration No. ARD 252551. (*Gonzales v. Pacific Greyhound Lines* (1950) 34 Cal.2d 749, 754-758; *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 48.)

AUTHORIZATION: BY: RICHARD DATE: 3/11/2011
TIME: 3:20:45 PM FROM: MR VERIFICATION: QC 559-
709-8731

No evidence of who "MR" is was introduced at hearing.

9. On May 27, 2011, Mr. Rogers filed a complaint against respondent's facility with the Bureau.

10. On August 2, 2011, William Kevin Nicks, a Program Representative II employed by the Bureau, visited respondent's facility and requested copies of all records pertaining to the repairs performed on Mr. Rogers's car. Respondent told Mr. Nicks that he did not have access to those records because he had recently moved, and Mr. Nicks agreed to return on a different date.

11. Mr. Nicks returned to respondent's facility on August 3, 8, 15, and 22, 2011, to obtain the records, but respondent had some excuse for not being able to provide them on each visit. On his last visit, Mr. Nicks gave respondent a written demand to produce the requested documents within 24 hours. Mr. Nicks never received any records from respondent.

2002 BMW 325CI

12. Elisa Anula brought her 2002 BMW 325CI to respondent's facility on August 11, 2011, for a diagnosis of problems she was having with the transmission.

13. An employee at respondent's facility told Ms. Anula the following week that her transmission needed to be rebuilt, and Ms. Anula authorized the repair.

14. A few days later, Ms. Anula was told that her car also needed a new computer, and she authorized the purchase.

15. On August 26, 2011, Ms. Anula picked up her car from respondent's facility, paid for the repairs, and was given a copy of Invoice No. 109550. The invoice stated that a "remanufactured transmission control module (TCM)" was installed and came with a one-year warranty. The invoice also stated that the other repairs performed were covered by a 60-month/150,000 mile limited warranty, but failed to disclose the full nature and extent of the warranty and describe all characteristics or properties covered by or excluded from the warranty, the manner in which respondent would perform under the warranty, and all conditions and limitations on the warranty, as required by California Code of Regulations, title 16, section 3376.

16. Ms. Anula subsequently had problems with the TCM, and brought her car back to respondent's facility. Respondent was unable to fix the problems.

17. On October 25, 2011, Mr. Nicks inspected the car, and determined that a used TCM had been installed contrary to the representation on Invoice No. 109550 that a "remanufactured" TCM was installed.

18. Mr. Nicks met with respondent to discuss the continuing problems Ms. Anula was having with her car's TCM. Respondent agreed that the problems were in fact related to the TCM, as opposed to the transmission, and explained that the TCM was not covered by a warranty.

2001 Pontiac Grand Prix

19. On October 11, 2011, Grace Franger had her 2001 Pontiac Grand Prix towed to respondent's facility to have the problems she had been experiencing with the transmission diagnosed. Later that day, an employee from respondent's facility called Ms. Franger on the telephone and advised that she would be charged a diagnostic fee, which she agreed to. Another employee called and told Ms. Franger that the transmission needed to be rebuilt, and Ms. Franger authorized the work.

20. A few days later, Ms. Franger picked up her car from respondent's facility, paid for the repairs, and received a copy of Invoice No. 109718. While the invoice stated that the transmission and torque converter that were replaced on the car were covered by a 60-month/150,000 mile limited warranty, the warranty failed to disclose the full nature and extent of the warranty and did not describe all the characteristics or properties covered by or excluded from the warranty, the manner in which respondent would perform under the warranty, or all of the conditions and limitations on the warranty, as required by California Code of Regulations, title 16, section 3376.

21. Ms. Franger returned her car to respondent's facility five days later because the transmission was slipping and her Antilock Braking System (ABS) light was on. Respondent inspected the car, found nothing wrong with the transmission, and said the problem was with a wheel bearing. Ms. Franger left without having any repairs done.

22. Ms. Franger filed a complaint against respondent with the Bureau in November 2011.

23. Mr. Nicks inspected Ms. Franger's car on January 19, 2012, and observed that the right front ABS sensor wiring harness was wrapped around the axle and the wiring had been pulled out of the ABS sensor, thereby causing the ABS light to go on. Later that day, Mr. Nicks contacted respondent and informed him of the results of the inspection. Respondent agreed to re-inspect the car in Mr. Nicks's presence.

24. Mr. Nicks returned to respondent's facility on February 7, 2012, and one of respondent's employees re-inspected Ms. Franger's car. The technician found that the ABS sensor wiring for the right front wheel was wrapped around the axle and concluded that occurred when respondent or one of his employees installed the transmission in the car.

25. Complainant did not introduce any evidence of the applicable standard of care respondent or his employee should have followed when installing the transmission on Ms. Franger's car to avoid the ABS sensor wiring from becoming wrapped around the axle. Nor was any evidence introduced of the applicable standard to be applied in determining whether respondent's or his employee's conduct constituted simple negligence or gross negligence. While Mr. Nicks opined that the wiring was improperly routed around the axle, he provided no factual basis for that opinion. (*Jennings v. Palomar Pomerado Health Systems* (2004) 114 Cal.App.4th 1108, 1117 [explaining that expert testimony that is "unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion . . ." is conclusory and inadmissible].)

The Bureau's 1995 Ford

26. An undercover operative working for the Bureau brought the Bureau's 1995 Ford into respondent's facility on November 17, 2011, and told the employee that the battery light was on and requested a diagnosis.³

27. Later that day, the employee told the undercover operative that there was a problem with the car's alternator and it needed to be replaced. The employee also stated that there was a defective fuse that needed to be replaced. The operative authorized the replacement of the alternator and defective fuse.

28. The following week, the undercover operative picked up her vehicle, paid for the new alternator and fuse, and was given a copy of Invoice No. [REDACTED]. The invoice failed to list, describe, and identify all repairs performed and each part supplied on the car. Specifically, there was no mention of the replacement of the defective fuse.

29. Respondent's employee made an untrue or misleading statement when he told the undercover operative that the alternator in the Bureau's 1995 Ford needed to be replaced. The truth of the matter was that the alternator was in good working condition, and the only repair needed to the car's charging system was the replacement of the defective fuse.

30. Respondent's employee falsely represented on Invoice No. [REDACTED] that the alternator on the car was not charging.

³ At hearing, respondent stipulated to the truth of the allegations in paragraphs 56 through 58 (the seventh, eighth, and ninth causes for discipline), 63 and 64 (the tenth and eleventh causes for discipline), and 70 through 73 (the twelfth, thirteenth, and fourteenth causes for discipline and "other matters") of the Accusation. As previously discussed, the parties' stipulation constitutes a judicial admission. (*Gonzales v. Pacific Greyhound Lines, supra*, 34 Cal.2d 749, 754-758.) "A judicial admission is a party's unequivocal concession of the truth of the matter, and removes the matter as an issue in the case." (*Gelfo v. Lockheed Martin Corp., supra*, 140 Cal.App.4th 34, 48.)

31. Respondent's employee made a false or misleading representation to the undercover operative as discussed in Factual Findings 29 and 30 in order to induce the operative to authorize and pay for an unnecessary repair.

The Bureau's 1997 Chevrolet

32. A Bureau employee documented the Bureau's 1997 Chevrolet by breaking the air conditioning compressor clutch coil ground wire below the diode connector, which prevented the air conditioning system from working properly.

33. On May 9, 2012, an undercover operative working with the Bureau brought the Bureau's 1997 Chevrolet to respondent's facility for diagnosis because the car was not blowing cold air when the air conditioner was turned on. Respondent's employee agreed to diagnose the problem and contact the operative.

34. Respondent committed gross negligence by failing to properly repair the air conditioning compressor electrical ground wire on the Bureau's 1997 Chevrolet in that he removed and/or discarded the in-line diodes that protects electrical components from voltage spikes, and stripped the wire of insulation, exposing bare wire, that was loosely twisted together, which connection failed when little pressure was applied to the wiring harness.

35. Respondent departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative by failing to record on the invoice the high and low side system operating pressures of the air conditioning system on the Bureau's 1997 Chevrolet, as required by California Code of Regulations, title 16, section 3366, subdivision (a)(15).

36. Respondent departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative by failing to record on the invoice the center air distribution outlet temperature of the air conditioning system, as required by California Code of Regulations, title 16, section 3366, subdivision (a)(16).

The Bureau's 2000 Toyota

37. A Bureau employee documented the Bureau's 2000 Toyota by making a small hole in the air conditioning condenser core, thereby allowing the refrigerant to drain from the air conditioning system and rendering the system inoperable.

38. On June 20, 2012, an undercover operative working with the Bureau brought the Bureau's 2000 Toyota into respondent's facility for diagnosis because the air conditioner was not blowing cold air. The operative handed respondent's employee a coupon for a free air conditioning system check that respondent posted on the internet.

39. Respondent represented on the coupon discussed in Factual Finding 38 that the inspection of the air conditioning system would be free. But respondent's employee charged the undercover operative for an air conditioning service and evaluation of the leak. The evaluation and examination of the condenser were required to be performed on the car pursuant to California Code of Regulations, title 16, section 3366, subdivision (a), and should have been included in the free service.

40. Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative by failing to record on the invoice the high and low side system operating pressures of the air conditioning system on the Bureau's 2000 Toyota, as required by California Code of Regulations, title 16, section 3366, subdivision (a)(15).

41. Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative by failing to record on the invoice the center air distribution outlet temperature of the air conditioning system, as required by California Code of Regulations, title 16, section 3366, subdivision (a)(16).

Other Matters

42. At hearing, respondent stipulated to the existence of a factual and legal basis for permanently invalidating Automotive Repair Dealer Registration No. ARD 262279 pursuant to Business and Professions Code section 9884.7, subdivision (c).

43. At hearing, respondent stipulated to the existence of a factual and legal basis for permanently invalidating Automotive Repair Dealer Registration No. ARD 255230 pursuant to Business and Professions Code section 9884.7, subdivision (c).

44. At hearing, respondent stipulated to the existence of both factual and legal basis for permanently invalidating Automotive Repair Dealer Registration No. ARD 252551 pursuant to Business and Professions Code section 9884.7, subdivision (c).

Factors in Aggravation, Mitigation, or Rehabilitation

45. Little evidence was introduced by or on behalf of respondent. As such, he failed to establish that he is capable of continuing to perform the duties of an automotive repair dealer in a manner consistent with public health, safety, and welfare, even on a restricted basis.

Summary

46. Cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 for the reasons discussed in the Legal Conclusions below. Respondent failed to introduce any evidence demonstrating that he is capable of performing the duties of an

automotive repair dealer in a manner consistent with public health, safety, and welfare, even on a restricted basis, as discussed in Factual Finding 45. Therefore, his automotive repair dealer registration should be permanently invalidated.

Additionally, respondent stipulated to the existence of a factual and legal basis for permanently invalidating Automotive Repair Dealer Registration Nos. ARD 262279, ARD 255230, and ARD 252551 as discussed in Factual Findings 42 through 44, and each of those registrations should be revoked.

Costs of Investigation and Enforcement

47. Complainant alleged in the Accusation grounds for recovering its costs of investigation and enforcement pursuant to Business and Professions Code section 125.3. However, no evidence in support of those allegations was introduced at hearing. Therefore, there is no factual basis for awarding any costs, and none are awarded.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant has the burden of proving the allegations in the Accusation by a preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

Cause for Discipline

2003 Saturn Vue

2. An automotive repair dealer registration may be disciplined if the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer has failed in any material respect to comply with the provisions of the Automotive Repair Act or any regulations adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) Business and Professions Code section 9884.11 requires every automotive repair dealer to maintain records of all repairs performed and to make those records available for inspection upon request by the Bureau. Respondent failed to produce records of the repairs performed on Mr. Rogers's car to Mr. Nicks as discussed in Factual Findings 10 and 11. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that statute relates to Business and Professions Code section 9884.11.

3. California Code of Regulations, title 16, section 3353, subdivision (g)(3), requires an automotive repair dealer who accepts possession of a car that has been towed to his facility for repair and whose owner is not present but has provided oral authorization for those repairs to document such authorization as provided in subdivision (c). And California

Code of Regulations, title 16, section 3353, subdivision (c)(1), requires that oral authorization be documented on the work order and the invoice by writing the date, time, name of the person who authorized the repairs, the telephone number called, the specific repairs authorized, and the total estimated cost of the repairs. Respondent's employee did not properly document the name of the person who orally authorized the "tear down" and overhaul of the transmission on the 2003 Saturn Vue as discussed in Factual Finding 8. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that statute relates to California Code of Regulations, title 16, section 3353, subdivisions (c)(1) and (g)(3).

2002 BMW 325CI

4. An automotive repair dealer registration may be disciplined when the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer has made or authorized "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." (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) Respondent's employee made an untrue statement when he wrote on Invoice No. 109550 that a "remanufactured transmission control module (TCM)" had been installed on the 2002 BMW 325CI as discussed in Factual Findings 15 and 17. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

5. California Code of Regulations, title 16, section 3376 requires all warranties offered by an automotive repair dealer to disclose the full nature and extent of the warranty and describe all characteristics or properties covered by or excluded from the warranty, the manner in which they dealer would perform under the warranty, and all conditions and limitations on the warranty. Respondent's employee made an untrue or misleading statement by failing to include such information on Invoice No. 109550 as discussed in Factual Finding 15. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), based on the failure to disclose information about the warranty.

6. Respondent's employee did not make an untrue or misleading statement when he told Mr. Nicks that the TCM was not covered under the 60-month/150,000 mile limited warranty because it was covered under a one-year warrant as indicated on Invoice No. 109550. (Factual Finding 15.) Therefore, no cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), based on respondent's employee's statement to Mr. Nicks.

7. An automotive repair dealer registration may be disciplined when the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer has engaged in "any other conduct that constitutes fraud."

(Bus. & Prof. Code, § 9884.7, subd. (a)(4).) Respondent's employee committed fraud when he represented to Ms. Anula that a "remanufactured transmission control module" had been installed on her vehicle and charged her for that part as discussed in Factual Finding 15. The truth of the matter was that a used TCM was installed as discussed in Factual Finding 17. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

2001 Pontiac Grand Prix

8. Respondent's employee made an untrue or misleading statement by failing to disclose information about the warranty on Invoice No. 109718 as discussed in Factual Finding 20. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), based on the failure to disclose information about the warranty.

9. An automotive repair dealer registration may be disciplined when the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer has engaged in "conduct constituting gross negligence." (Bus. & Prof. Code, § 9884.7, subd. (a)(5).) As discussed in Factual Finding 25, complainant did not introduce any evidence of the applicable standard of care respondent or his employee should have followed when installing the transmission on Ms. Franger's car to avoid the ABS sensor wiring from becoming wrapped around the axle. (*Wheeler v. State Board of Forestry* (1983) 144 Cal.App.3d 522, 527-528 [reversing judgment denying writ of mandate and ordering trial court to issue a new order compelling the Board to vacate its decision and enter a new decision in favor of respondent because there was no evidence of the standard by which his conduct was to be measured].) Nor was any evidence introduced of the applicable standard to be applied in determining whether respondent's or his employee's conduct constituted simple negligence or gross negligence. While Mr. Nicks opined that the wiring was improperly routed around the axle, he provided no factual basis for that opinion. (*Jennings v. Palomar Pomerado Health Systems, supra*, 114 Cal.App.4th 1108, 1117.) Therefore, no cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(5).

The Bureau's 1995 Ford

10. Respondent's employee made an untrue statement when he told the undercover operative that there was a problem with the alternator on the Bureau's 1995 Ford. The truth of the matter was that the alternator was in good working condition, and the only repair needed to the car's charging system was the replacement of the defective fuse. (Factual Findings 27 and 29.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

11. Respondent's employee made an untrue statement when he represented on Invoice No. [REDACTED] that the alternator on the Bureau's 1995 Ford was not charging. The truth of the matter was that the alternator was in good working condition, and the only repair needed to the car's charging system was the replacement of the defective fuse. (Factual Findings 27, 29, and 30.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

12. For the reasons discussed in Legal Conclusions 10 and 11 and Factual Finding 31, respondent's employee committed fraud. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

13. California Code of Regulations, title 16, section 3356, subdivision (a)(2)(A), (B), requires that all service and repair work performed, and all parts supplied, be separately listed, described, and identified on the invoice. Respondent's employee failed to indicate on Invoice No. [REDACTED] that the defective fuse was replaced on the Bureau's 1995 Ford as discussed in Factual Finding 28. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that statute relates to California Code of Regulations, title 16, section 3356, subdivision (a)(2)(A), (B).

Bureau's 1997 Chevrolet

14. As discussed in Factual Finding 34, respondent committed gross negligence by failing to properly repair the air conditioning compressor electrical ground wire on the Bureau's 1997 Chevrolet in that he removed and/or discarded the in-line diodes that protects electrical components from voltage spikes, and stripped the wire of insulation, exposing bare wire, that was loosely twisted together, which connection failed when little pressure was applied to the wiring harness. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(5).

15. An automotive repair dealer registration may be disciplined when the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer has willfully departed from or disregarding accepted trade standards for good and workmanlike repair in any material respect without the consent of the owner or the owner's duly authorized representative. (Bus. & Prof. Code, § 9884.7, subd. (a)(7).) As discussed in Factual Finding 35, respondent failed to record on the invoice the high and low side system operating pressures of the air conditioning system on the Bureau's 1997 Chevrolet, as required by California Code of Regulations, title 16, section 3366, subdivision (a)(15). Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(7).

16. As discussed in Factual Finding 36, respondent failed to record on the invoice the center air distribution outlet temperature of the air conditioning system, as required by California Code of Regulations, title 16, section 3366, subdivision (a)(16). Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(7).

Bureau's 2000 Toyota

17. California Code of Regulations, title 16, section 3371, provides: "No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading." Respondent violated that regulation as discussed in Factual Finding 39. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that statute relates to California Code of Regulations, title 16, section 3371.

18. As discussed in Factual Finding 40, respondent failed to record on the invoice the high and low side system operating pressures of the air conditioning system on the Bureau's 2000 Toyota, as required by California Code of Regulations, title 16, section 3366, subdivision (a)(15). Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(7).

19. As discussed in Factual Finding 41, respondent failed to record on the invoice the center air distribution outlet temperature of the air conditioning system, as required by California Code of Regulations, title 16, section 3366, subdivision (a)(16). Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 pursuant to Business and Professions Code section 9884.7, subdivision (a)(7).

Other Matters

20. Business and Professions Code section 9884.7, subdivision (c), provides that "the registration for all places of business operated in this state by an automotive repair dealer" may be disciplined "upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it." For the reasons discussed in Factual Finding 42, cause exists to discipline Automotive Repair Dealer Registration No. ARD 262279 pursuant to Business and Professions Code section 9884.7, subdivision (c).

21. For the reasons discussed in Factual Finding 43, cause exists to discipline Automotive Repair Dealer Registration No. ARD 255230 pursuant to Business and Professions Code section 9884.7, subdivision (c).

22. For the reasons discussed in Factual Finding 44, cause exists to discipline Automotive Repair Dealer Registration No. ARD 252551 pursuant to Business and Professions Code section 9884.7, subdivision (c).

Conclusion

23. Cause exists to discipline Automotive Repair Dealer Registration No. ARD 250674 for the reasons discussed in Legal Conclusions 2 through 5, 7, 8, and 10 through 19, individually and collectively. When all the evidence is considered, respondent failed to introduce evidence of his ability to perform the duties of an automotive repair dealer in a manner consistent with public health, safety, and welfare, even on a restricted basis, as discussed in Factual Findings 45 and 46. Therefore, Automotive Repair Dealer Registration No. ARD 250674 should be permanently invalidated. Automotive Repair Dealer Registration Nos. ARD 262279, ARD 255230, and ARD 252551 should be permanently invalidated for the reasons discussed in Legal Conclusions 20 through 22, respectively.

Award of Costs

24. Business and Professions Code section 125.3 states, in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[§]...[§]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits

of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.* at p. 45.)

25. There is no factual basis for awarding the Bureau any of its costs as discussed in Factual Finding 47, and none are awarded.

ORDER

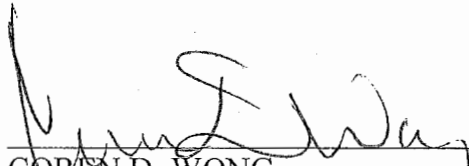
1. Automotive Repair Dealer Registration No. ARD 250674 issued to Arthur Robert Terrill, a.k.a. Art Terrill, a.k.a. Arthur Allen, a.k.a. Art Allen, dba Quality Truck/Auto of Fresno, is PERMANENTLY INVALIDATED.

2. Automotive Repair Dealer Registration No. ARD 255230 issued to Art Terrill dba AAMCO of Vista, is PERMANENTLY INVALIDATED.

3. Automotive Repair Dealer Registration No. ARD 262279 issued to Art Terrill dba AAMCO of San Diego, is PERMANENTLY INVALIDATED.

4. Automotive Repair Dealer Registration No. ARD 252551 issued to Art Terrill dba AAMCO Transmission, is PERMANENTLY INVALIDATED.

DATED: September 11, 2014


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
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. 77/14-14

13 **QUALITY TRUCK/AUTO OF FRESNO**
14 **ARTHUR R. TERRILL,**
aka ART TERRILL,
15 aka ARTHUR ALLEN,
aka ART ALLEN, Owner
16 1840 E. Saginaw
Fresno, CA 93726

ACCUSATION

17 Automotive Repair Dealer Reg. No. ARD 250674,

18 **AAMCO OF VISTA**
19 **ART TERRILL, OWNER**
1144 South Santa Fe
Vista, CA 92084

20 Automotive Repair Dealer Reg. No. ARD 255230,

21 and

22 **AAMCO OF SAN DIEGO**
23 **ART TERRILL, OWNER**
3905 Convoy Street
San Diego, CA 92111

24 Automotive Repair Dealer Reg. No. ARD 262279

25 Respondents.

26
27 ///

28 ///

1 Complainant alleges:

2 **PARTIES**

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

6 **Quality Truck/Auto of Fresno**

7 2. On or about May 30, 2007, the Director of Consumer Affairs ("Director") issued
8 Automotive Repair Dealer Registration Number ARD 250674 to Arthur R. Terrill, also known as
9 Art Terrill, Arthur Allen, and Art Allen ("Respondent"), owner of Quality Truck/Auto of Fresno.
10 Respondent's automotive repair dealer registration was in full force and effect at all times
11 relevant to the charges brought herein and will expire on May 31, 2014, unless renewed.

12 **AAMCO of Vista**

13 3. On or about June 19, 2008, the Director issued Automotive Repair Dealer
14 Registration Number ARD 255230 to Respondent, owner of AAMCO of Vista. Respondent's
15 automotive repair dealer registration expired on May 31, 2011.

16 **AAMCO of San Diego**

17 4. On or about June 17, 2010, the Director issued Automotive Repair Dealer
18 Registration Number ARD 262279 to Respondent, owner of AAMCO of San Diego.
19 Respondent's automotive repair dealer registration expired on June 30, 2011.

20 **JURISDICTION**

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

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

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

(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.

• • • •

(5) Conduct constituting gross negligence.

(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 . .

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

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

///

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

6 11. Code section 22, subdivision (a), states:

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

10 12. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes
11 "registration" and "certificate."

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

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

16

17 (g) Unusual Circumstances; Authorization Required. When the customer
18 is unable to deliver the motor vehicle to the dealer during business hours or if the
19 motor vehicle is towed to the dealer without the customer during business hours, and
the customer has requested the dealer to take possession of the motor vehicle for the
20 purpose of repairing or estimating the cost of repairing the motor vehicle, the dealer
shall not undertake the diagnosing or repairing of any malfunction of the motor
21 vehicle for compensation unless the dealer has complied with all of the following
conditions:

22

23 (3) The customer has given oral, written or electronic authorization to the
24 dealer to make the repairs and the dealer has documented the authorization as
provided in subsection (c) and Section 9884.9 of the Business and Professions Code .
..

25 14. Regulation 3356 states, in pertinent part:

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

28

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

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

5 (B) Each part supplied, in such a manner that the customer can
6 understand what was purchased, and the price for each described part . . .

7 15. Regulation 3358 states:

8 Each automotive repair dealer shall maintain legible copies of the
9 following records for not less than three years:

10 (a) All invoices relating to automotive repair including invoices received
11 from other sources for parts and/or labor.

12 (b) All written estimates pertaining to work performed.

13 (c) All work orders and/or contracts for repairs, parts and labor. All such
14 records shall be open for reasonable inspection and/or reproduction by the bureau or
15 other law enforcement officials during normal business hours.

16 16. Regulation 3366 states, in pertinent part:

17 (a) Except as provided in subsection (b) of this section, any automotive
18 repair dealer that advertises or performs, directly or through a sublet contractor,
19 automotive air conditioning work and uses the words service, inspection, diagnosis,
20 top off, performance check or any expression or term of like meaning in any form of
21 advertising or on a written estimate or invoice shall include and perform all of the
22 following procedures as part of that air conditioning work:

23 (1) Exposed hoses, tubing and connections are examined for damage or
24 leaks;

25 (2) The compressor and clutch, when accessible, are examined for
26 damage, missing bolts, missing hardware, broken housing and leaks;

27

28 (5) The condenser coil is examined for damage, restrictions or leaks;

. . . .

(11) Accessible electrical connections have been examined for loose,
burnt, broken or corroded parts;

(12) The refrigerant in use has been identified and checked for
contamination;

(13) The system has been checked for leakage at a minimum of 50-PSI
system pressure;

(14) The compressor clutch, blower motor and air control doors have
been checked for proper operation;

1 (15) High and low side system operating pressures, as applicable, have
been measured and recorded on the final invoice; and,

2 (16) The center air distribution outlet temperature has been measured and
3 recorded on the final invoice.

4 (b) Whenever the automotive air conditioning work being advertised or
performed does not involve opening the refrigerant portion of the air conditioning
5 system, refrigerant evacuation, or full or partial refrigerant recharge, the procedures
specified in subsection (a) need be performed only to the extent required by accepted
6 trade standards.

7 17. Regulation 3371 states, in pertinent part:

8 No dealer shall publish, utter, or make or cause to be published, uttered,
or made any false or misleading statement or advertisement which is known to be
9 false or misleading, or which by the exercise of reasonable care should be known to
be false or misleading . . .

10
11 18. Regulation 3372 states:

12 In determining whether any advertisement, statement, or representation is
false or misleading, it shall be considered in its entirety as it would be read or heard
13 by persons to whom it is designed to appeal. An advertisement, statement, or
representation shall be considered to be false or misleading if it tends to deceive the
14 public or impose upon credulous or ignorant persons.

15 19. Regulation 3373 states:

16 No automotive repair dealer or individual in charge shall, in filling out an
estimate, invoice, or work order, or record required to be maintained by section
17 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
information which will cause any such document to be false or misleading, or where
18 the tendency or effect thereby would be to mislead or deceive customers, prospective
customers, or the public.

19
20 20. Regulation 3375 states, in pertinent part, that for the purposes of this Act (the
21 Automotive Repair Act) and of these regulations the term "guarantee" and "warranty" have like
22 meanings.

23 21. Regulation 3376 states, in pertinent part:

24 All guarantees shall be in writing and a legible copy thereof shall be
delivered to the customer with the invoice itemizing the parts, components, and labor
25 represented to be covered by such guarantee. A guarantee shall be deemed false and
misleading unless it conspicuously and clearly discloses in writing the following:

26
27 ///

28 ///

1 (a) The nature and extent of the guarantee including a description of all
2 parts, characteristics or properties covered by or excluded from the guarantee, the
3 duration of the guarantee and what must be done by a claimant before the guarantor
4 will fulfill his obligation (such as returning the product and paying service or labor
5 charges).

6 (b) The manner in which the guarantor will perform. The guarantor shall
7 state all conditions and limitations and exactly what the guarantor will do under the
8 guarantee, such as repair, replacement or refund. If the guarantor or recipient of the
9 guarantee has an option as to what may satisfy the guarantee, this must be clearly
10 stated . . .

11 COST RECOVERY

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

16 CONSUMER COMPLAINT (ROGERS): 2003 SATURN VUE

17 23. On or about March 3, 2011, Leodies Rogers ("Rogers") had his 2003 Saturn Vue
18 towed to Respondent's facility located in Fresno, California, for diagnosis due to a problem with
19 the transmission. Respondent's employee, "Richard", checked the vehicle, then recommended a
20 tear down of the transmission at a cost of \$935.00. Rogers authorized the teardown by telephone.

21 24. On or about March 11, 2011, Richard called Rogers and indicated that the
22 transmission needed to be overhauled at a cost of \$3,715.82. Rogers authorized the work.

23 25. On or about March 21, 2011, Rogers went to the facility to pick up the vehicle, paid
24 \$3,715.82 for the repairs, and was given a copy of Invoice No. 109252. The invoice indicated
25 that the transmission repairs, including the installation of a transmission control module, were
26 covered by a 60 month/150,000 mile limited warranty.

27 26. On and between March 28, 2011 and April 28, 2011, Rogers returned the vehicle to
28 the facility on at least three occasions because the "check engine" light was illuminated. The
facility attempted to repair the vehicle, but the problem with the check engine light persisted.

27 27. On or about May 16, 2011, Rogers took the vehicle to Michael Automotive Center
28 ("MAC") located in Fresno for diagnosis. MAC determined that there was an internal

///

malfunction inside the transmission and recommended that Rogers return the vehicle to Respondent's facility to have the problem repaired under warranty.

28. On or about May 25, 2011, Rogers took the vehicle back to Respondent's facility for repair. Respondent told Rogers that the problem was with the computer and not the transmission and that the computer would not be covered under the warranty.

29. On or about May 27, 2011, Rogers filed a complaint with the Bureau.

30. On August 2, 2011, a Bureau representative went to the facility and requested copies of Respondent's repair records on the vehicle, including all repair orders, invoices, and parts receipts. Respondent claimed that the records were in a corner surrounded by transmissions and that he "could not get to them". The representative told Respondent that he would return later. On and between August 3, 2011, and August 22, 2011, the representative made four additional visits to the facility to obtain the records. Respondent never provided the records to the Bureau.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

31. Respondent's Automotive Repair Dealer Registration Number ARD 250674 ("Registration No. ARD 250674") is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.11 of that Code, in the following material respects: Respondent failed to maintain all records pertaining to the repairs performed on Rogers' 2003 Saturn Vue, or failed to make those records available for inspection by the Bureau.

SECOND CAUSE FOR DISCIPLINE

(Violations of Regulations)

32. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3353, subdivision (g)(3), in a material respect, as follows: Respondent recorded on Invoice No. 109252 the additional repairs that were authorized on the 2003 Saturn Vue, including the teardown of the vehicle and the rebuilding of the transmission, but failed to state the name of the person who authorized the repairs (Rogers).

CONSUMER COMPLAINT (ANULA): 2002 BMW 325CI

33. On or about August 11, 2011, Elisa Anula ("Anula") took her 2002 BMW 325CI to Respondent's facility located in Fresno, California, due to problems with the transmission. Anula signed and received a copy of a written estimate in the amount of \$89.95 for a diagnosis of the vehicle.

34. On or about August 15, 2011, Anula called the facility to check on the status of the vehicle. Respondent told Anula that there was an internal problem in the transmission and that it needed to be rebuilt at an estimated cost between \$3,000.00 and \$4,000.00. Anula told Respondent that she would discuss the matter with her fiancé. Later that same day, Anula called Respondent and declined the repairs. Respondent told Anula that he had already removed the transmission from the vehicle and had torn it apart. Respondent stated that it would cost \$800.00 to reassemble the transmission or \$3,337.00 to rebuild the component. Anula told Respondent that she would call him back. Later, Anula telephoned Respondent and authorized the repairs.

35. On or about August 17, 2011, Respondent called Anula and told her that the vehicle needed a computer at an additional cost of \$800.00. Anula told Respondent that she would not pay him more than \$3,500.00 for the repairs. Respondent assured Anula that the work would not exceed \$3,500.00.

36. On or about August 26, 2011, Anula went to the facility to pick up the vehicle, paid \$3,500 for the repairs, and was given a copy of Invoice No. 109550. The invoice stated that the remanufactured transmission and exchange remanufactured torque converter were covered by a 60 month/150,000 mile limited warranty, that the warranty included "failure in workmanship or installed component as listed" on the repair order, and that the computer, the remanufactured transmission control module ("TCM"), was "warranted for 1 year". Anula left the facility.

37. On or about October 4, 2011, the "check engine" light came on in the vehicle and the transmission began exhibiting the same problems that it had prior to the repairs.

38. On or about October 6, 2011, Anula returned the vehicle to the facility.

39. On or about October 12, 2011, Anula went to the facility to pick up the vehicle after the warranty repairs were completed.

1 40. On or about October 17, 2011, the check engine light came back on in the vehicle and
2 Anula was still experiencing the same problems with the transmission.

3 41. On or about October 25, 2011, a Bureau representative inspected the vehicle using
4 Invoice No. 109550 as a reference. The representative determined that a used TCM had been
5 installed in the vehicle.

6 42. On or about December 17, 2011, the representative went to the facility and met with
7 Respondent. Respondent told the representative that the problems with the vehicle were related
8 to the TCM and not the transmission and that the TCM was not covered under the warranty.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 43. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant
12 to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
13 which he knew or in the exercise of reasonable care should have known to be untrue or
14 misleading, as follows:

15 a. Respondent represented on Invoice No. 109550 that a remanufactured TCM was
16 installed in Anula's 2002 BMW 325CI when, in fact, a used TCM was installed in the vehicle.

17 b. Respondent represented on Invoice No. 109550 that the repairs listed on the invoice
18 were covered by a 60 month/150,000 mile limited warranty, but failed to disclose the full nature
19 and extent of the warranty, a description of all characteristics or properties covered by or
20 excluded from the warranty, the manner in which Respondent would perform under the warranty,
21 and/or all conditions and limitations on the warranty, as required by Regulation 3376.

22 c. Respondent represented to the Bureau representative that the TCM installed in
23 Annula's 2002 BMW 325CI was not covered under the 60 month/150,000 mile limited warranty.
24 In fact, the TCM was covered under the warranty for 1 year, as set forth on Invoice No. 109550.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 44. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant
28 to Code section 9884.7, subdivision(a)(4), in that Respondent committed an act constituting

1 fraud, as follows: Respondent obtained payment from Anula for installing a remanufactured
2 TCM in her 2002 BMW 325CI when, in fact, a used TCM was installed in the vehicle.

3 **CONSUMER COMPLAINT (FRANGER): 2001 PONTIAC GRAND PRIX**

4 45. On or about October 11, 2011, Grace Franger ("Franger") had her 2001 Pontiac
5 Grand Prix towed to Respondent's facility located in Fresno, California, to have the transmission
6 diagnosed. Respondent's employee, "Richard", told Franger by telephone that the diagnostic fee
7 would be \$29.95, which Franger authorized. Later that same day, Respondent's employee,
8 "Robyn", called Franger and told her that the transmission needed to be rebuilt at cost of
9 \$2,551.50. Franger authorized the work.

10 46. On or about October 14, 2011, Franger went to the facility to pick up the vehicle, paid
11 \$2,654.85 for the repairs, and received a copy of Invoice No.109718. The invoice stated that the
12 transmission and torque converter would be covered under a 60 month/150,000 limited warranty.

13 47. On or about October 20, 2011, Franger returned the vehicle to the facility for the five
14 day check. Franger told Respondent that the transmission was slipping and that her ABS (Anti-
15 Lock Braking System) light was on. Respondent had his technician(s) recheck the vehicle, but
16 they could not duplicate the slipping problem. Franger told Respondent that the vehicle was not
17 operating properly. Respondent insisted that the transmission was "good" and that the problem
18 was with a bearing.

19 48. In or about November 2011, Franger filed a complaint with the Bureau.

20 49. On or about January 19, 2012, a representative of the Bureau inspected the vehicle
21 and observed that the right front ABS sensor wiring harness was wrapped around the axle and the
22 wiring had been pulled out of the ABS sensor. That same day, the representative went to the
23 facility and informed Respondent of the results of his inspection. Respondent agreed to recheck
24 the vehicle in the representative's presence.

25 50. On or about February 7, 2012, the representative returned to the facility and met with
26 Respondent. The vehicle was raised on a hoist and inspected. Respondent's technician found
27 that the ABS sensor wiring for the right front wheel was wrapped around the axle and that the
28 damage had occurred when the transmission was installed in the vehicle. After discussing the

1 findings with the representative, Respondent denied responsibility for the damage to the ABS
2 sensor wiring harness and refused to replace the ABS sensor under warranty.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 51. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant
6 to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement
7 which he knew or in the exercise of reasonable care should have known to be untrue or
8 misleading, as follows: Respondent represented on Invoice No. 109718 that the transmission
9 repairs on Franger's 2001 Pontiac Grand Prix were covered by a 60 month/150,000 mile limited
10 warranty, but failed to disclose the full nature and extent of the warranty, a description of all
11 characteristics or properties covered by or excluded from the warranty, the manner in which
12 Respondent would perform under the warranty, and/or all conditions and limitations on the
13 warranty, as required by Regulation 3376.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(Gross Negligence)**

16 52. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant
17 to Code section 9884.7, subdivision (a)(5), in that Respondent committed acts constituting gross
18 negligence as follows: Respondent failed to properly route and reconnect the ABS sensor during
19 the removal, rebuilding, and reinstallation of the transmission on Franger's 2001 Pontiac Grand
20 Prix, causing the right front ABS sensor wiring harness to become wrapped around the axle and
21 the wiring to be pulled out of the ABS sensor. As a consequence thereof, the ABS system no
22 longer operates, compromising the safety of the occupants/driver.

23 **UNDERCOVER OPERATION #1: 1995 FORD**

24 53. On November 17, 2011, an undercover operator with the Bureau ("operator") took the
25 Bureau's 1995 Ford to Respondent's facility located in Fresno, California. A defective fuse had
26 been installed in the Bureau-documented vehicle, preventing the charging system from
27 functioning. The operator told Respondent's employee, "Richard", that the battery light was on
28 in the vehicle and requested a diagnosis. The operator signed and received a copy of a written

1 estimate in the amount of \$29.95 for an "external diagnostic", then left the facility.

2 54. At approximately 1500 hours that same day, Richard called the operator and told her
3 that there was a problem with the vehicle's alternator and that it would cost \$508.27 to replace the
4 part. The operator told Richard that she would need to speak with her husband first and would
5 call him back. At approximately 1545 hours, the operator called Richard and authorized the
6 work.

7 55. On November 18, 2011, the operator returned to the facility to pick up the vehicle,
8 paid \$537 for the repairs, and was given a copy of Invoice No. [REDACTED]. Later that same day, the
9 Bureau inspected the vehicle using Invoice No. [REDACTED] for comparison. The Bureau found that
10 the defective fuse had been replaced on the vehicle, although that repair had not been listed on the
11 invoice, and that the facility had performed an unnecessary repair, as set forth below.

12 SEVENTH CAUSE FOR DISCIPLINE

13 (Untrue or Misleading Statements)

14 56. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant
15 to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
16 which he knew or in the exercise of reasonable care should have known to be untrue or
17 misleading, as follows:

18 a. Respondent's employee, Richard, represented to the operator that there was a
19 problem with the alternator on the Bureau's 1995 Ford. In fact, the alternator was in good
20 working condition at the time the vehicle was taken to Respondent's facility. Further, the only
21 repair needed on the vehicle's charging system was the replacement of the defective fuse.

22 b. Respondent falsely represented on Invoice No. [REDACTED] that the alternator on the
23 Bureau's 1995 Ford was not charging.

24 EIGHTH CAUSE FOR DISCIPLINE

25 (Fraud)

26 57. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant
27 to Code section 9884.7, subdivision(a)(4), in that Respondent's employee, Richard, made a false
28 or misleading representation to the operator regarding the Bureau's 1995 Ford, as set forth in

1 subparagraph 56 (a) above, in order to induce the operator to purchase an unnecessary repair on
2 the vehicle, then sold the operator an unnecessary repair, the replacement of the alternator.

3 **NINTH CAUSE FOR DISCIPLINE**

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

5 58. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant
6 to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation
7 3356, subdivisions (a)(2)(A) and (B), in a material respect as follows: Respondent failed to list,
8 describe or identify on Invoice No. [REDACTED] all repairs performed and each part supplied on the
9 Bureau's 1995 Ford, specifically, the replacement of the defective fuse.

10 **UNDERCOVER OPERATION #2: 1997 CHEVROLET**

11 59. On May 9, 2012, E.G., an undercover operator ("operator") with the Bureau, took the
12 Bureau's 1997 Chevrolet to Respondent's facility located in Fresno, California. The air
13 conditioning ("A/C") compressor clutch coil ground wire below the diode connector on the
14 Bureau-documented vehicle was broken, preventing the A/C system from operating. L.P.,
15 another operator, met with E.G. at the facility (the operators were posing as grandmother and
16 granddaughter). E.G. and L.P. were greeted by Respondent's employee, "Edward". L.P. told
17 Edward that the A/C on the Bureau's vehicle was not blowing cold air, then handed him a
18 coupon for a "Free A/C Check" that Respondent was advertising on the internet. E.G. signed and
19 received a copy of a written estimate for a free A/C check, then she and L.P. left the facility.

20 60. At approximately 1515 hours that same day, Edward called L.P. and told her that
21 there was an electrical problem with the vehicle, but it was not with the A/C system, that it would
22 take one to two hours to check the electrical system, and that the work would cost \$89.95. L.P.
23 told Edward that she would need to discuss it with her grandmother and would call him back. At
24 approximately 1530 hours, L.P. called Edward and authorized the diagnosis.

25 61. On May 10, 2012, at approximately 1000 hours, Edward called L.P. and informed her
26 that there was an electrical short to the A/C clutch. Edward stated that the diagnosis and repair
27 would cost a total of \$125. L.P. told Edward that she would call him back. At approximately
28 1015 hours, L.P. called Edward and authorized the work. At approximately 1400 hours, E.G. and

1 L.P. went to the facility to retrieve the vehicle. E.G. met with a man, who identified himself as
2 "Art". E.G. paid Art \$126 in cash and was given a copy of an invoice.

3 62. On May 14, 2012, the Bureau inspected the vehicle and found that the broken ground
4 wire to the A/C compressor had been repaired; however, the facility had failed to properly
5 perform the work, constituting gross negligence.

6 **TENTH CAUSE FOR DISCIPLINE**

7 **(Gross Negligence)**

8 63. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant
9 to Code section 9884.7, subdivision (a)(5), in that Respondent committed an act constituting
10 gross negligence, as follows: Respondent failed to properly repair the A/C compressor electrical
11 ground wire on the Bureau's 1997 Chevrolet truck in that Respondent removed and/or discarded
12 the in-line diode that protects the electrical components from voltage spikes, and stripped the wire
13 of insulation, exposing bare wire, that was loosely twisted together, which connection failed when
14 little pressure was applied to the wiring harness.

15 **ELEVENTH CAUSE FOR DISCIPLINE**

16 **(Departure from Trade Standards)**

17 64. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant
18 to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or
19 disregarded accepted trade standards for good and workmanlike repair without the consent of the
20 owner or the owner's duly authorized representative, in the following material respects:

21 a. Respondent failed to record on the invoice the high and low side system operating
22 pressures of the A/C system on the Bureau's 1997 Chevrolet truck, as required by Regulation
23 3366, subdivision (a)(15).

24 b. Respondent failed to record on the invoice the center air distribution outlet
25 temperature of the AC system, as required by Regulation 3366, subdivision (a)(16).

26 ///

27 ///

28 ///

1

2

9

4

7

21

25

26

27

1 3371 by publishing, uttering, or making, or causing to be published, uttered, or made false or
2 misleading statements or advertisements which are known to be false or misleading, or which by
3 the exercise of reasonable care should be known to be false or misleading, as follows:

4 Respondent represented on the advertisement/coupon, described in paragraph 65 above, that the
5 A/C check would be "free". In fact, the A/C system check on the Bureau's 2000 Toyota was not
6 "free" in that Respondent charged the operator for an A/C service or evaluation of the leak on the
7 vehicle. The leak evaluation and examination of the condenser were required to be performed on
8 the vehicle as provided in Regulation 3366, subdivision (a), and should have been included in the
9 "free" A/C system check.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 71. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant
13 to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement
14 which he knew or in the exercise of reasonable care should have known to be untrue or
15 misleading, as follows: Respondent represented on the invoice that the refrigerant on the
16 Bureau's 2000 Toyota met manufacturer's specifications. In fact, the A/C system was empty of
17 refrigerant at the time the vehicle was taken to Respondent's facility.

18 **FOURTEENTH CAUSE FOR DISCIPLINE**

19 **(Departure from Trade Standards)**

20 72. Respondent's Registration No. ARD 250674 is subject to disciplinary action pursuant
21 to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or
22 disregarded accepted trade standards for good and workmanlike repair without the consent of the
23 owner or the owner's duly authorized representative, in the following material respects:

24 a. Respondent failed to record on the invoice the high and low side system operating
25 pressures of the A/C system on the Bureau's 2000 Toyota, as required by Regulation 3366,
26 subdivision (a)(15).

27 b. Respondent failed to record on the invoice the center air distribution outlet
28 temperature of the AC system, as required by Regulation 3366, subdivision (a)(16).

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8

9

10
11

12
13
14

15
16
17
18

19
20
21
22

23

24

25

26

27


28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED

: August 30, 2013



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

SA2013109274