

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
Deputy Attorney General
4 State Bar No. 253959
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1188
6 Facsimile: (415) 703-5480
E-mail: Nicholas.Tsukamaki@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 79/14-88

12 **FORTUNA HOLDINGS, INC.**
13 **dba MEINEKE CAR CARE CENTER**
14 **VIVIAN C. YUNG, PRESIDENT**
15 **1525 Holiday Lane #B**
Fairfield, CA 94534

A C C U S A T I O N

16 **3336 N. Texas Street #J-305**
Fairfield, CA 94533

17 **Automotive Repair Dealer Registration No.**
18 **ARD 241176**

19 **Smog Check Station License No. RC 241176**

20 Respondent.

21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about September 20, 2005, the Bureau issued Automotive Repair Dealer
27 Registration Number ARD 241176 to Fortuna Holdings, Inc., dba Meineke Car Care Center,
28 Vivian C. Yung, President (Respondent). The Automotive Repair Dealer Registration was in full

1 force and effect at all times relevant to the charges brought herein and will expire on August 31,
2 2014, unless renewed.

3 3. On or about December 15, 2005, the Bureau issued Smog Check Station License
4 Number RC 241176 to Respondent. The Smog Check Station License was in full force and effect
5 at all times relevant to the charges brought herein and will expire on August 31, 2014, unless
6 renewed.

7 JURISDICTION

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

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

15 6. Section 118 of the Code states:

16 The suspension, expiration, or forfeiture by operation of law of a license issued by
17 a board in the department, or its suspension, forfeiture, or cancellation by order of
18 the board or by order of a court of law, or its surrender without the written consent
19 of the board, shall not, during any period in which it may be renewed, restored,
20 reissued, or reinstated, deprive the board of its authority to institute or continue a
disciplinary proceeding against the licensee upon any ground provided by law or to
enter an order suspending or revoking the license or otherwise taking disciplinary
action against the licensee on any such ground.

21 STATUTORY PROVISIONS

22 7. Section 9884.7 of the Code states, in pertinent part:

23 (a) The director, where the automotive repair dealer cannot show there was a bona
24 fide error, may refuse to validate, or may invalidate temporarily or permanently, the
25 registration of an automotive repair dealer for any of the following acts or
26 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.

27 ///

28

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

4 ...

5 (3) Failing or refusing to give to a customer a copy of any document requiring his or
6 her signature, as soon as the customer signs the document.

7 (4) Any other conduct which constitutes fraud.

8 ...

9 (6) Failure in any material respect to comply with the provisions of this chapter [the
10 Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted
11 pursuant to it.

12 ...

13 (c) Notwithstanding subdivision (b), the director may refuse to validate, or may
14 invalidate temporarily or permanently, the registration for all places of business
15 operated in this state by an automotive repair dealer upon a finding that the
16 automotive repair dealer has, or is, engaged in a course of repeated and willful
17 violations of this chapter, or regulations adopted pursuant to it.

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

21

22 8. Section 9884.9, subdivision (a) of the Code states, in pertinent part: "The automotive
23 repair dealer shall give to the customer a written estimated price for labor and parts necessary for
24 a specific job. . . ."

25 REGULATORY PROVISIONS

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

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

(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
estimated price for parts and labor for a specific job.

....

10. California Code of Regulations, title 16, section 3371 states, in pertinent part: "No
dealer shall publish, utter, or make or cause to be published, uttered, or made any false or

///

1 misleading statement or advertisement which is known to be false or misleading, or which by the
2 exercise of reasonable care should be known to be false or misleading. . . .”

3 11. California Code of Regulations, title 16, section 3373 states:

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

8 COSTS

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

15 UNDERCOVER OPERATION #1 – January 3-14, 2013

16
17 13. Between January 3 and 14, 2013, Bureau employees performed an undercover
18 operation at the subject facility using a 1990 Chevrolet. Prior to initiating the undercover
19 operation, Bureau personnel had inspected and documented the Chevrolet. The only repairs
20 needed for the vehicle to be safely driven were the replacement of the vehicle’s Exhaust Gas
21 Recirculation (EGR) valve and front brake pads.

22 14. On or about January 3, 2013, a Bureau undercover operator drove the Chevrolet to the
23 subject facility and spoke with an employee by the name of Eric. The operator requested that the
24 facility determine why the vehicle’s brake light was coming on and why the vehicle was running
25 rough. Eric generated some paperwork and asked the operator to sign it. The operator signed the
26 paperwork but did not receive a copy of what he had signed. Eric then told the operator that he
27 would contact him later with an update on the vehicle.

28 ///

1 15. On or about January 4, 2013, the operator called the facility and spoke with Eric
2 about the status of the Chevrolet. Eric informed the operator that the front brakes needed to be
3 replaced and the brake fluid needed to be flushed. Eric stated that the cost of the repairs was
4 \$533.70. The operator authorized the repairs and agreed to pay an additional \$118 to continue
5 further diagnosis.

6 16. On or about January 9, 2013, the operator spoke with Eric who told the operator that
7 the Chevrolet's Powertrain Control Module (PCM) needed to be replaced. The operator
8 authorized the replacement of the vehicle's PCM.

9 17. On or about January 10, 2013, the operator called the facility and spoke with Eric
10 about the status of the repairs. Eric told the operator that the vehicle drove fine and the idle
11 problems were gone and had been corrected.

12 18. On or about January 14, 2013, the operator returned to the facility to pick up the
13 Chevrolet. The operator spoke with Eric who informed the operator that the vehicle was working
14 okay. The operator paid Eric \$1,289.40 for the repairs and received invoice [REDACTED].

15 19. Upon re-inspection of the Chevrolet, a Bureau representative determined that the
16 vehicle still idled rough while in gear or neutral. The Bureau representative also determined that
17 the vehicle's EGR valve had not been replaced, but that the vehicle's Electronic Control Module
18 (ECM) and throttle body gasket had been replaced as invoiced. The replacement of the vehicle's
19 ECM and throttle body gasket was not necessary. The vehicle still ran rough at idle because the
20 defective EGR valve had not been replaced. The representative inspected the vehicle's brakes
21 and rotors and determined that the front brakes had been replaced and the front brake rotors
22 machined as invoiced. The front brake shoe outboard tabs, however, were not clinched to lock
23 the pads in place as per the manufacturer's procedures. Also, the front brake rotors were not in
24 need of machining.

25 20. Bureau personnel determined that Respondent's facility charged the operator \$789.49
26 in unnecessary parts and labor. The costs paid for these unnecessary parts and labor are shown in
27 Table #1 below.

28 ///

1 **TABLE #1**

2

Description	Parts Cost	Service/installation labor cost
Throttle body gasket	\$29.99	\$82.60
PCM	\$449.99	\$153.40
Machine brake rotors		\$32.00
Tax	\$41.51	
Total Parts	\$479.98	
Total Labor	\$268.00	
Total Fraud	\$789.49	

3
4
5
6
7
8
9
10

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Untrue and/or Misleading Statements)**

13 21. Respondent's registration is subject to discipline under section 9884.7, subdivisions
14 (a)(1) and/or (a)(6) of the Code and California Code of Regulations, title 16, sections 3371 and
15 3373, in that Respondent made or authorized statements that it knew or in the exercise of
16 reasonable care should have known to be untrue and/or misleading, as follows:

17 a. Respondent's employee told the Bureau's operator that the Chevrolet needed certain
18 parts and/or repairs that were not necessary.

19 b. Respondent's employee told the Bureau's operator that the Chevrolet drove fine and
20 the idle problems were gone when this was not true.

21 c. Respondent's employee listed on the invoice for the repairs to the Chevrolet certain
22 parts and repairs that were unnecessary.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Failure to Provide Customer with Written Estimate)**

25 22. Respondent's registration is subject to discipline under section 9884.7, subdivisions
26 (a)(3) and/or (a)(6), and/or section 9884.9, subdivision (a) of the Code and California Code of
27 Regulations, title 16, section 3353, subdivision (a), in that Respondent failed to provide the
28

1 Bureau's operator with a written estimated price for parts and labor for the work to be done on the
2 Chevrolet.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 23. Respondent's registration is subject to discipline under section 9884.7, subdivisions
6 (a)(4) and/or (a)(6) of the Code in that Respondent committed acts constituting fraud by accepting
7 payment for the installation of an Electronic Control Module and a throttle body gasket and the
8 machining of the Chevrolet's front brake rotors, even though those parts were not in need of
9 replacement or repair.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Accepted Trade Standards)**

12 24. Respondent's registration is subject to discipline under section 9884.7, subdivisions
13 (a)(7) and/or (a)(6) of the Code in that Respondent willfully departed from and/or disregarded
14 accepted trade standards for good and workmanlike repair in that Respondent (1) failed to replace
15 the vehicle's Exhaust Gas Recirculation valve; and (2) failed to clinch the front brake pad
16 outboard tabs to lock the pads in place as per the manufacturer's procedures.

17 **UNDERCOVER OPERATION #2 – April 9-10, 2013**

18 25. Between April 9 and 10, 2013, Bureau employees performed an undercover operation
19 at the subject facility using a 2000 Chevrolet. Prior to initiating the undercover operation, Bureau
20 personnel had inspected and documented the Chevrolet. A Bureau representative removed the
21 vehicle's fuel pressure regulator and installed a marked fuel pressure regulator that he had
22 modified to lower the fuel pressure 20 pounds per square inch (PSI) below specifications, making
23 the fuel pressure 40 PSI with the key on engine off. This condition caused the vehicle's
24 malfunction indicator light (MIL) to turn on. The only repair needed to correct the MIL "on"
25 condition was the replacement of the fuel pressure regulator.
26

27 26. On or about April 9, 2013, a Bureau undercover operator drove the Chevrolet to the
28 subject facility and spoke with an employee named David. The operator requested that the

1 facility determine why the vehicle's check engine light was on. David generated some paperwork
2 and asked the operator to sign it. The operator signed the paperwork but did not receive a copy of
3 what he had signed. David then told the operator that he would contact him later with an update
4 on the vehicle.

5 27. Later in the day on April 9, 2013, the operator called the facility and spoke with an
6 employee named Eric about the status of the repairs to the Chevrolet. Eric informed the operator
7 that the vehicle's fuel filter and fuel pump needed replacement, and that the cost of these two
8 items was \$938.08. The operator authorized these repairs.

9 28. Later in the day on April 9, 2013, the operator called the facility and spoke with an
10 employee named Eric who told the operator that the vehicle was ready to be picked up. The
11 operator asked Eric if the vehicle's fuel pressure was okay now. Eric informed the operator that
12 the fuel pressure had been tested and found to be okay.

13 29. On or about April 10, 2013, the operator returned to the facility to pick up the
14 Chevrolet. The operator paid the facility \$938.08 for the repairs and received invoice [REDACTED]

15 30. Upon re-inspection of the Chevrolet, a Bureau representative determined that the
16 vehicle's fuel pressure was still below specification at 40 PSI. Initially, the representative noticed
17 that the vehicle's MIL was no longer illuminated. After driving the vehicle for five miles,
18 however, the representative noticed that the MIL illuminated. The representative inspected the
19 fuel return line and found that the line had not been accessed, which is necessary to properly
20 diagnose the fuel supply system. The representative also removed the fuel tank and determined
21 that the fuel pump and fuel filter had been replaced as invoiced. The vehicle's previous fuel
22 pump and fuel filter were new, in good working condition, and did not need replacing.

23 31. Bureau personnel determined that Respondent's facility charged the operator \$938.08
24 in unnecessary parts and labor. The costs paid for these unnecessary parts and labor are shown in
25 Table #2 below.

26 ///

27 ///

28 ///

TABLE #2

Description	Parts Cost	Service/installation labor cost
Remove install fuel pump	\$453.40	\$413.00
Fuel filter	\$29.99	
Tax	\$41.69	
Total Parts	\$483.39	
Total Labor	\$413.00	
Total Fraud	\$938.08	

FIFTH CAUSE FOR DISCIPLINE

(Untrue and/or Misleading Statements)

32. Respondent's registration is subject to discipline under section 9884.7, subdivisions (a)(1) and/or (a)(6) of the Code and California Code of Regulations, title 16, sections 3371 and 3373, in that Respondent made or authorized statements that it knew or in the exercise of reasonable care should have known to be untrue and/or misleading, as follows:

a. Respondent's employee told the Bureau's operator that the Chevrolet needed certain parts and/or repairs that were not necessary.

b. Respondent's employee told the Bureau's operator that the Chevrolet's fuel pressure was okay when this was not true.

c. Respondent's employee listed on the invoice for the repairs to the Chevrolet certain parts and/or repairs that were unnecessary.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Provide Customer with Written Estimate)

33. Respondent's registration is subject to discipline under section 9884.7, subdivisions (a)(3) and/or (a)(6), and/or section 9884.9, subdivision (a) of the Code and California Code of

///

1 Regulations, title 16, section 3353, subdivision (a), in that Respondent failed to provide the
2 Bureau's operator with a written estimated price for parts and labor for the work to be done on the
3 Chevrolet.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 34. Respondent's registration is subject to discipline under section 9884.7, subdivisions
7 (a)(4) and/or (a)(6) of the Code in that Respondent committed acts constituting fraud by accepting
8 payment for the installation of a fuel pump and a fuel filter, even though those parts were not in
9 need of replacement.

10 **EIGHTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Accepted Trade Standards)**

12 35. Respondent's registration is subject to discipline under section 9884.7, subdivisions
13 (a)(7) and/or (a)(6) of the Code in that Respondent willfully departed from and/or disregarded
14 accepted trade standards for good and workmanlike repair in that Respondent (1) failed to correct
15 the Chevrolet's fuel pressure problem; and (2) failed to access the Chevrolet's fuel return line in
16 order to properly diagnose the vehicle's fuel supply system.

17
18 **UNDERCOVER OPERATION #3 – April 24-May 7, 2013**

19 36. Between April 24 and May 7, 2013, Bureau employees performed an undercover
20 operation at the subject facility using a 1993 Honda. Prior to initiating the undercover operation,
21 Bureau personnel had inspected and documented the Honda. A Bureau representative removed
22 the vehicle's engine valve cover and misadjusted both of the number four cylinder exhaust valves.
23 This condition created a misfire on cylinder number four, resulting in a noticeable rough running
24 engine, especially at idle. The only repair needed to correct the vehicle's engine misfire condition
25 was the adjustment of the number four cylinder exhaust valves.

26 37. On or about April 24, 2013, a Bureau undercover operator drove the Honda to the
27 subject facility and spoke with an employee named Eric. The operator requested that the facility
28 determine why the vehicle's engine was running rough. Eric generated some paperwork and

1 asked the operator to sign it. The operator signed the paperwork but did not receive a copy of
2 what he had signed. Eric then told the operator that he would contact him later with an update on
3 the vehicle.

4 38. Later in the day on April 24, 2013, Eric left a message on the operator's cell phone
5 stating that the facility recommended replacing the ignition wires, spark plugs, and the distributor.
6 According to Eric, the cost to replace these items would be \$848.73.

7 39. On or about April 25, 2013, the operator called the facility to get an update on the
8 status of the repairs to the Honda. An employee named David told the operator that the vehicle's
9 spark plugs, spark plug wires, and distributor needed to be replaced, and that the cost to replace
10 these items would be about \$890. The operator asked David if that was all the vehicle needed, to
11 which David replied "yes." The operator then authorized the repairs.

12 40. On or about April 29, 2013, the operator called the facility and spoke with an
13 employee named Eric regarding the status of the Honda. Eric informed the operator that the
14 facility had replaced the recommended parts and the vehicle was still running rough. Eric now
15 recommended removing the vehicle's cylinder head and sending it to a machine shop and
16 replacing the gaskets. Eric said that the cost would be around \$1,600. The operator later
17 authorized these repairs.

18 41. On or about April 30, 2013, Eric left a message on the operator's cell phone stating
19 that the vehicle's cylinder head was under "spec," could not be machined, was "shot," and needed
20 to be replaced. Eric stated that the new cost to replace the cylinder head would be \$2,851.95.
21 The operator later authorized the replacement of the cylinder head.

22 42. On or about May 7, 2013, the operator returned to the facility to pick up the Honda.
23 While at the facility, the operator met with Eric who told the operator that the facility had
24 adjusted the vehicle's valves and road-tested the vehicle, and that the vehicle was running fine.
25 The operator paid Eric \$2,851.93 for the repairs and received invoice [REDACTED].

26 43. Upon re-inspection of the Honda, a Bureau representative determined that the
27 vehicle's distributor, distributor cap, rotor, spark plugs, and spark plug wires had been replaced as
28 invoiced. The replacement of the distributor, distributor cap, rotor, spark plugs, and spark plug

wires, however, was not necessary. Invoice [REDACTED] states: "Found weak spark on cylinder #4 caused by faulty distributor." This statement is not true, in that the vehicle's distributor was in good working condition and not in need of replacement. Invoice [REDACTED] also states: "Recommend replacing ignition wires and spark plugs with a new distributor (complete unit)." This repair was not needed to correct the engine misfire condition. Invoice [REDACTED] states: "Remove cylinder head and send out to machine shop for valve job." This operation was not needed to correct the vehicle's engine misfire condition. Invoice [REDACTED] further states: "Cylinder head assembly (rebuilt)." A cylinder head assembly was not needed to correct the vehicle's engine misfire condition. The Bureau representative determined that a new cylinder head gasket had been installed in the vehicle. The installation of a cylinder head gasket was not necessary.

44. Bureau personnel determined that Respondent's facility charged the operator \$719.51 in unnecessary parts and labor. The costs paid for these unnecessary parts and labor are shown in Table #3 below.

TABLE #3

Description	Parts Cost	Service/installation labor cost
Distributor	\$419.73	\$118.00
Ignition wires	\$100.56	
Spark plugs (4)	\$33.44	
Tax	\$47.78	
Total Parts	\$553.73	
Total Labor	\$118.00	
Total Fraud	\$719.51	

NINTH CAUSE FOR DISCIPLINE

(Untrue and/or Misleading Statements)

45. Respondent's registration is subject to discipline under section 9884.7, subdivisions (a)(1) and/or (a)(6) of the Code and California Code of Regulations, title 16, sections 3371 and

1 3373, in that Respondent made or authorized statements that it knew or in the exercise of
2 reasonable care should have known to be untrue and/or misleading, as follows:

3 a. Respondent's employee told the Bureau's operator that the Honda needed certain
4 parts and/or repairs that were not necessary.

5 b. Respondent's employee listed on the invoice for the repairs to the Honda certain parts
6 and/or repairs that were unnecessary.

7 **TENTH CAUSE FOR DISCIPLINE**

8 **(Failure to Provide Customer with Written Estimate)**

9 46. Respondent's registration is subject to discipline under section 9884.7, subdivisions
10 (a)(3) and/or (a)(6), and/or section 9884.9, subdivision (a) of the Code and California Code of
11 Regulations, title 16, section 3353, subdivision (a), in that Respondent failed to provide the
12 Bureau's operator with a written estimated price for parts and labor for the work to be done on the
13 Honda.

14 **ELEVENTH CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 47. Respondent's registration is subject to discipline under section 9884.7, subdivisions
17 (a)(4) and/or (a)(6) of the Code in that Respondent committed acts constituting fraud by accepting
18 payment for the installation of a distributor, ignition wires, and spark plugs, even though those
19 parts were not in need of replacement.

20 **TWELFTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Accepted Trade Standards)**

22 48. Respondent's registration is subject to discipline under section 9884.7, subdivisions
23 (a)(7) and/or (a)(6) of the Code in that Respondent willfully departed from and/or disregarded
24 accepted trade standards for good and workmanlike repair in that Respondent failed to properly
25 correct the Honda's engine misfire condition.

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

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 241176 issued to Fortuna Holdings, Inc., dba Meineke Car Care Center, Vivian C. Yung, President (Respondent);
2. Revoking or suspending Smog Check Station License Number RC 241176 issued to Respondent;
3. Ordering Respondent to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3;
4. Taking such other and further action as deemed necessary and proper.

DATED: January 24, 2014


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

SF2013406446