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

In the Matter of the Accusation Against:

**JR S AUTOMOTIVE & TIRE SERVICE;
JUAN M. RODRIGUEZ, PARTNER;
ESTHER H. RODRIGUEZ, PARTNER
32606 RD 124
Visalia, CA 93291
Automotive Repair Dealer Registration No.
ARD 181220**

Respondent.

Case No. 77/13-72

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 5, 2013, Complainant John Wallauch, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 77/13-72 against JR S Automotive & Tire Service; Juan M. Rodriguez, Partner; Esther H. Rodriguez, Partner (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

1 2. On or about November 17, 1994, the Bureau of Automotive Repair (Bureau) issued
2 Automotive Repair Dealer Registration No. ARD 181220 to Respondent. The Automotive
3 Repair Dealer Registration expired on November 30, 2011, and has not been renewed.

4 3. On or about June 18, 2013, Respondent was served by Certified and First Class Mail
5 copies of the Accusation No. 77/13-72, Statement to Respondent, Notice of Defense, Request for
6 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
7 Respondent's address of record which, pursuant to Business and Professions Code section 136, is
8 required to be reported and maintained with the Bureau. Respondent's address of record was and
9 is:

10 32606 RD 124
11 Visalia, CA 93291.

12 4. Service of the Accusation was effective as a matter of law under the provisions of
13 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
14 124.

15 5. On or about July 6, 2013, the aforementioned documents were returned by the U.S.
16 Postal Service marked "Unclaimed."

17 6. Government Code section 11506 states, in pertinent part:

18 (c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts
20 of the accusation not expressly admitted. Failure to file a notice of defense shall
21 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
22 may nevertheless grant a hearing.

23 7. Respondent failed to file a Notice of Defense within 15 days after service upon them
24 of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No.
25 77/13-72.

26 8. California Government Code section 11520 states, in pertinent part:

27 (a) If the respondent either fails to file a notice of defense or to appear at the
28 hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

1 f. **Section 9884.9, subdivision (a):** Respondent's partner, Juan Rodriguez, failed to
2 provide Lopez with a written estimate for the diagnosis of her 1998 Chevrolet Blazer.

3 ORDER

4 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 181220,
5 heretofore issued to Respondent JR S Automotive & Tire Service; Juan M. Rodriguez, Partner;
6 Esther H. Rodriguez, Partner, is revoked.

7 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
8 written motion requesting that the Decision be vacated and stating the grounds relied on within
9 seven (7) days after service of the Decision on Respondent. The motion should be sent to the
10 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho
11 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on
12 a showing of good cause, as defined in the statute.

13 This Decision shall become effective on NOV 20 2013.

14 It is so ORDERED November 1, 2013

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18 _____
DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

19 JRS DEFAULT2.DOC
20 DOJ Matter ID:SA2012108007

21 Attachment:
22 Exhibit A: Accusation
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Exhibit A

Accusation

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Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 KENT D. HARRIS
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **JR S AUTOMOTIVE & TIRE SERVICE**
13 **JUAN M. RODRIGUEZ, PARTNER**
14 **ESTHER H. RODRIGUEZ, PARTNER**
32606 Road 124
Visalia, CA 93291
15 Automotive Repair Dealer Reg. No. ARD 181220
16 Respondent.

Case No. *77/13-72*

ACCUSATION

18 Complainant alleges:

19 **PARTIES**

- 20 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity
21 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
22 2. On or about November 17, 1994, the Director of Consumer Affairs ("Director")
23 issued Automotive Repair Dealer Registration Number ARD 181220 ("registration") to JR S
24 Automotive & Tire Service ("Respondent"), with Juan M. Rodriguez and Esther H. Rodriguez as
25 partners. Respondent's registration expired on November 30, 2010, but was renewed on July 19,
26 2011. Respondent's registration expired on November 30, 2011, and has not been renewed.

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1 consent or authorization for an increase in the original estimated price may be
2 provided by electronic mail or facsimile transmission from the customer. The bureau
3 may specify in regulation the procedures to be followed by an automotive repair
4 dealer when an authorization or consent for an increase in the original estimated price
5 is provided by electronic mail or facsimile transmission. If that consent is oral, the
6 dealer shall make a notation on the work order of the date, time, name of person
7 authorizing the additional repairs and telephone number called, if any, together with a
8 specification of the additional parts and labor and the total additional cost . . .

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

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

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

16 11. California Code of Regulations, title 16, section 3371.1 states, in pertinent part:

17 A person shall be deemed to be an automotive repair dealer as defined by
18 subdivision (a) of section 9880.1 of the Business and Professions Code when such
19 person:

20 (a) Solicits or advertises the repair of motor vehicles by telephone
21 directory, newspaper, periodical, airwave transmission, printed handbill, printed
22 business card, printed poster, or painted or electric sign, and repairs motor vehicles,
23 or

24 (b) maintains an establishment for the repair of motor vehicles where
25 within or outside the establishment is a sign, poster, or other representation which
26 might reasonably lead a member of the public to believe that such establishment
27 performs the repair of motor vehicles, or

28 (c) holds a retail sellers permit when such permit has been acquired for
the purpose of, or has been used for, obtaining parts for the repair of motor vehicles,
or

(d) holds himself or herself out to the public as an automotive repair
dealer and receives a motor vehicle from the public and transmits or renders control
of the motor vehicle to another for repair.

A person will be deemed to be holding himself or herself out to the public
as an automotive repair dealer within the meaning of subdivision (d) above when
such person solicits such business in a manner which might reasonably lead the
public to believe that such person is an automotive repair dealer, or when the person
receiving the service is billed on such person's own invoice.

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1 a. Section 9884.6, subdivision (a): On and between December 28, 2010, and January
2 2011, Respondent acted in the capacity of an automotive repair dealer while its registration was
3 expired and invalid.

4 b. Section 9884.9, subdivision (a): Respondent's partner, Juan Rodriguez, failed to
5 provide Huang with a written estimate for the diagnosis or repair of her 1995 Buick LeSabre.

6 **CONSUMER COMPLAINT (LOPEZ): 1993 CHEVROLET PICKUP**

7 18. On or about December 20, 2010, Frank Lopez ("Lopez") took his 1993 Chevrolet
8 pickup to Respondent's facility for diagnosis due to a problem with the starter; the engine was
9 also running rough. Lopez authorized the facility to repair the vehicle and paid them \$850.

10 Lopez was not given a written estimate. The facility replaced the starter, then informed Lopez
11 that the engine had two dead cylinders. Later, the cylinder heads were removed and sent to a
12 machine shop. Respondent's facility told Lopez that the work would be completed in 2 weeks.

13 19. On or about April 12, 2011, Lopez filed a complaint with the Bureau, indicating
14 that the repairs still had not been completed.

15 20. On or about April 28, 2011, a representative of the Bureau went to the facility and
16 discussed the complaint with Rodriguez. The representative informed Rodriguez that the
17 facility's registration was delinquent and that he was prohibited from performing automotive
18 repairs for compensation until the required fees were paid and the registration was valid.
19 Rodriguez agreed to pay the registration fees and complete the repairs to the vehicle.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Code)**

22 21. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
23 subdivision (a)(6), in that Respondent failed to comply with provisions of that Code in the
24 following material respects:

25 a. Section 9884.6, subdivision (a): On and between December 20, 2010, and April
26 2011, Respondent acted in the capacity of an automotive repair dealer while its registration was
27 expired and invalid.

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1 b. Section 9884.9, subdivision (a): Respondent's partner, Juan Rodriguez, failed to
2 provide Lopez with a written estimate for the repair of her 1993 Chevrolet pickup.

3 **CONSUMER COMPLAINT (SANCHEZ): 1995 HONDA ACCORD**

4 22. On or about October 3, 2011, Maria Sanchez ("Sanchez") took her 1995 Honda
5 Accord to Respondent's facility for diagnosis of a transmission/clutch problem. Rodriguez told
6 Sanchez that he could perform the diagnosis, but did not provide her with a written estimate.
7 Sanchez left the vehicle at the facility.

8 23. On or about October 10, 2011, Sanchez returned to the facility. Rodriguez told
9 Sanchez that the vehicle needed a clutch and a front axle shaft assembly, and gave her a verbal
10 estimate of \$470.00 for the repairs, including the installation of 2 used front tires. Sanchez paid
11 Rodriguez \$470.00 in advance for the repairs. Rodriguez did not provide Sanchez with a receipt
12 or a written estimate.

13 24. On and between October 18 and October 22, 2011, Sanchez made various calls to
14 the facility, but no one answered the phone. Later, Sanchez went to the facility and found that the
15 business was closed.

16 25. On or about October 24, 2011, Sanchez returned to the facility and met with
17 officer(s) of the Tulare County Sheriff's Department, who assisted her in having the vehicle
18 towed to another repair facility. Sanchez found that Respondent's facility had placed the
19 transmission, old clutch parts, and the front axle shaft in the trunk of the vehicle.

20 26. On or about November 24, 2011, Sanchez filed a complaint with the Bureau.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Code)**

23 27. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
24 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
25 that Code in the following material respects: Respondent's partner, Juan Rodriguez, failed to
26 provide Sanchez with written estimates for the diagnosis of the transmission/clutch problem and
27 the replacement of the clutch, front axle shaft assembly, and two front tires on her 1995 Honda
28 Accord.

1 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
2 automotive repair dealer.

3 PRAAYER

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

- 6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
7 181220, issued to JR S Automotive & Tire Service;
- 8 2. Revoking or suspending any other automotive repair dealer registration issued to JR S
9 Automotive & Tire Service;
- 10 3. Ordering JR S Automotive & Tire Service to pay the Director of Consumer Affairs
11 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
12 Professions Code section 125.3;
- 13 4. Taking such other and further action as deemed necessary and proper.

14
15 DATED: June 5-2013


16 JOHN WALLAUCH
17 Chief
18 Bureau of Automotive Repair
19 Department of Consumer Affairs
20 State of California
21 Complainant

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