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6 **BEFORE THE**
7 **DEPARTMENT OF CONSUMER AFFAIRS**
8 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 77/11-42

11 **JAMES MATHEW LIEDER**
12 **CUSTOM AUTOTECH PERFORMANCE**
13 **MUFFLER**
14 **464 N. Rogers**
15 **Clovis, CA 93612**
16 **Automotive Repair Dealer Registration No.**
17 **ARD 181690**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

18 FINDINGS OF FACT

19 1. On or about January 18, 2012, Complainant Sherry Mehl, in her official capacity as
20 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation
21 No. 77/11-42 against James Mathew Lieder, Custom Autotech Performance Muffler
22 (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

23 2. On a date uncertain in 1994, the Bureau of Automotive Repair (Bureau) issued
24 Automotive Repair Dealer Registration No. ARD 181690 to Respondent. The Automotive
25 Repair Dealer Registration expired on December 31, 2010, and has not been renewed.

26 3. On or about February 3, 2012, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. 77/11-42, Statement to Respondent, Notice of Defense,
28 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,

1 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
2 Code section 136, is required to be reported and maintained with the Bureau, which was and is:
3 464 N. Rogers, Clovis, California, 93612.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
6 124.

7 5. On or about March 2, 2012, the aforementioned documents were returned by the U.S.
8 Postal Service marked "No Mail Receptacle, Unable to Forward."

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

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
17 77/11-42.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Director after
24 having reviewed the proof of service dated February 3, 2012, signed by Tracy Cortez, and the
25 returned envelope, finds Respondent is in default. The Director will take action without further
26 hearing and, based on Accusation, No. 77/11-42, proof of service and on the Affidavit of Bureau
27 Representative Ronald R. Grasmick, finds that the allegations in Accusation are true.

28 10. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$3,920.10 as of March 5, 2012.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent James Mathew Lieder, Custom
3 Autotech Performance Muffler has subjected his Automotive Repair Dealer Registration No.
4 ARD 181690 to discipline.

5 2. The agency has jurisdiction to adjudicate this case by default.

6 3. The Director of Consumer Affairs is authorized to revoke Respondent's Automotive
7 Repair Dealer Registration based upon the following violations of the Business and Professions
8 Code alleged in the Accusation which are supported by the evidence contained in the affidavit of
9 Bureau Representative Ronald R. Grasmick in this case.:

- 10 a. Section 9884.7(a)(1) – Untrue or Misleading Statements
11 b. Section 9884.7(a)(4) – Fraud
12 c. Section 9884.7(a)(6) – Failure to Comply with Code & Regulations
13 d. Section 9884.7(a)(2) – Failure to Record Odometer Reading on Work Order

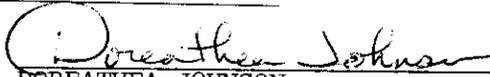
14 ORDER

15 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 181690,
16 heretofore issued to Respondent James Mathew Lieder, Custom Autotech Performance Muffler,
17 is revoked.

18 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
19 written motion requesting that the Decision be vacated and stating the grounds relied on within
20 seven (7) days after service of the Decision on Respondent. The motion should be sent to the
21 Bureau of Automotive Repair, ATTN: Tim Corcoran, 10220 Systems Parkway, Sacramento, CA
22 95827. The agency in its discretion may vacate the Decision and grant a hearing on a showing of
23 good cause, as defined in the statute.

24 This Decision shall become effective on April 27, 2012.

25 It is so ORDERED April 4, 2012

26 

27 DOREATHEA JOHNSON
28 Deputy Director, Legal Affairs
Department of Consumer Affairs

default decision_I.C.rtf
DOJ Matter ID:SA2011101737

Attachment:
Exhibit A: Accusation

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Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 KAREN R. DENVIR
Deputy Attorney General
4 State Bar No. 197268
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6 Telephone: (916) 324-5333
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.

77/11-42

13 **CUSTOM AUTOTECH PERFORMANCE MUFFLER**
464 N. Rogers
14 Clovis, CA 93612
JAMES MATHEW LIEDER, OWNER
Automotive Repair Dealer Registration No. ARD
15 181690

ACCUSATION

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
21 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

22 **Automotive Repair Dealer Registration**

23 2. On a date uncertain in 1994, the Bureau issued Automotive Repair Dealer
24 Registration Number ARD 181690 ("registration") to James Mathew Lieder ("Respondent"),
25 doing business as Custom Autotech Performance Muffler. The registration expired on December
26 31, 2010, and has not been renewed.

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1 STATUTORY PROVISIONS

2 3. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
3 part:

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

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

13 (2) Causing or allowing a customer to sign any work order that does not
14 state the repairs requested by the customer or the automobile's odometer reading at
15 the time of the repair

16 (4) Any other conduct that constitutes fraud.

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

19 (b) Except as provided for in subdivision (c), if an automotive repair
20 dealer operates more than one place of business in this state, the director pursuant to
21 subdivision (a) shall only suspend, revoke, or place on probation the registration of
22 the specific place of business which has violated any of the provisions of this chapter.
23 This violation, or action by the director, shall not affect in any manner the right of the
24 automotive repair dealer to operate his or her other places of business.

25 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
26 place on probation the registration for all places of business operated in this state by
27 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
28 engaged in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it.

4. Code section 9884.8 states:

All work done by an automotive repair dealer, including all warranty
work, shall be recorded on an invoice and shall describe all service work done and
parts supplied. Service work and parts shall be listed separately on the invoice, which
shall also state separately the subtotal prices for service work and for parts, not
including sales tax, and shall state separately the sales tax, if any, applicable to each.
If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state
that fact. If a part of a component system is composed of new and used, rebuilt or
reconditioned parts, that invoice shall clearly state that fact. The invoice shall include
a statement indicating whether any crash parts are original equipment manufacturer
crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy
of the invoice shall be given to the customer and one copy shall be retained by the
automotive repair dealer.

1 5. Code section 9884.9 states, in pertinent part:

2 (a) The automotive repair dealer shall give to the customer a written
3 estimated price for labor and parts necessary for a specific job. No work shall be
4 done and no charges shall accrue before authorization to proceed is obtained from the
5 customer. No charge shall be made for work done or parts supplied in excess of the
6 estimated price without the oral or written consent of the customer that shall be
7 obtained at some time after it is determined that the estimated price is insufficient and
8 before the work not estimated is done or the parts not estimated are supplied. Written
9 consent or authorization for an increase in the original estimated price may be
10 provided by electronic mail or facsimile transmission from the customer. The bureau
11 may specify in regulation the procedures to be followed by an automotive repair
12 dealer when an authorization or consent for an increase in the original estimated price
13 is provided by electronic mail or facsimile transmission. If that consent is oral, the
14 dealer shall make a notation on the work order of the date, time, name of person
15 authorizing the additional repairs and telephone number called, if any, together with a
16 specification of the additional parts and labor and the total additional cost . . .

17 (c) In addition to subdivisions (a) and (b), an automotive repair dealer,
18 when doing auto body or collision repairs, shall provide an itemized written estimate
19 for all parts and labor to the customer. The estimate shall describe labor and parts
20 separately and shall identify each part, indicating whether the replacement part is
21 new, used, rebuilt, or reconditioned. Each crash part shall be identified on the written
22 estimate and the written estimate shall indicate whether the crash part is an original
23 equipment manufacturer crash part or a nonoriginal equipment manufacturer
24 aftermarket crash part.

25 6. Code section 9884.11, states:

26 Each automotive repair dealer shall maintain any records that are required
27 by regulations adopted to carry out this chapter. Those records shall be open for
28 reasonable inspection by the chief or other law enforcement officials. All of those
records shall be maintained for at least three years.

7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
proceeding against an automotive repair dealer or to render a decision invalidating a registration
temporarily or permanently.

8. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
"commission," "committee," "department," "division," "examining committee," "program," and
"agency." "License" includes certificate, registration or other means to engage in a business or
profession regulated by the Code.

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1 COST RECOVERY

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

6 CONSUMER COMPLAINT NO. 1 (GONSALVES)

7 10. On or about December 8, 2009, Michael Gonsalves ("consumer") drove his 1924
8 Model T sedan to Respondent's facility. The consumer wanted Respondent to perform various
9 repairs and modifications to the vehicle. The repairs/modifications were to be completed by
10 April 1, 2010. Respondent told the consumer the cost of repairs would be \$35,000 and allowed
11 the consumer to make payments in the amount of \$5,000 each, to be paid in full before the
12 vehicle was completed. The consumer paid Respondent \$30,000. Respondent disassembled the
13 vehicle; however, no further work was performed. The consumer attempted to retrieve his
14 vehicle and get a refund; however, Respondent could not be located at the shop and would not
15 return telephone calls. On or about July 19, 2010, the consumer filed a complaint with the
16 Bureau.

17 11. The Bureau made numerous attempts, by telephone, email, and regular visits to
18 Respondent's facility; however, Respondent failed to cooperate with the Bureau regarding this
19 complaint.

20 FIRST CAUSE FOR DISCIPLINE

21 (Untrue or Misleading Statements)

22 12. Respondent has subjected his registration to discipline pursuant to Code section
23 9884.7, subdivision (a)(1), in that on or about December 8, 2009, Respondent made statements
24 which he knew or which by exercise of reasonable care he should have known were untrue or
25 misleading, by representing to the consumer that he would perform the repairs to the vehicle and
26 that the vehicle would be completed by April 1, 2010. As of August, 2010, the consumer still did
27 not have possession of his vehicle.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 13. Respondent has subjected his registration to discipline under Code section 9884.7,
4 subdivision (a)(4), in that between December 2009 and April 2010, Respondent accepted
5 payment of \$30,000; however, as of August 2010, the consumer's vehicle had not been returned
6 to the consumer because Respondent refused to do so.

7 **THIRD CAUSE FOR DISCIPLINE**

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

9 14. Respondent has subjected his registration to discipline pursuant to Code section
10 9884.7, subdivision (a)(6), in that on or about December 8, 2009, Respondent failed to comply
11 with the following sections of that code:

12 a. **Section 9884.9, subdivision (a):** Respondent failed to provide the consumer with a
13 written estimated price for the tear down, inspection, and reassembly of the consumer's vehicle.

14 b. **Section 9884.9, subdivision (c):** Respondent failed to provide the consumer with an
15 estimate for parts and labor documenting parts as new, used, rebuilt, reconditioned, OEM or non-
16 OEM aftermarket crash parts.

17 c. **Section 9884.11:** Respondent failed to provide the Bureau with invoices, estimates,
18 and/or parts receipts regarding the repair of the consumer's vehicle.

19 **FOURTH CAUSE FOR DISCIPLINE**

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

21 15. Respondent has subjected his registration to discipline pursuant to Code section
22 9884.7, subdivision (a)(6), in that Respondent failed to comply with California Code of
23 Regulations, title 16, section 3356, subdivision (a)(1), by failing to show his business name on his
24 invoice as is reflected in the Bureau's records; instead, Respondent used the name "Central
25 Valley Street Rods".

26 **CONSUMER COMPLAINT NO. 2 (GRISSOM)**

27 16. In or about March, 2010, Travis Grissom ("consumer") paid Respondent
28 approximately \$70,000 to install an engine and make other modifications to his 1972 Buick

1 Riviera. Respondent told the consumer the vehicle would be done in four weeks; however, as of
2 August 2010, Respondent still had possession of the vehicle. On or about August 17, 2010, the
3 consumer filed a complaint with the Bureau.

4 17. The Bureau made numerous attempts, by telephone, email, and regular visits to
5 Respondent's facility; however, Respondent failed to cooperate with the Bureau regarding this
6 complaint.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Failure to Record Odometer Reading on Work Order)**

9 18. Respondent has subjected his registration to discipline pursuant to Code section
10 9884.7, subdivision (a)(2), in that Respondent failed to record the vehicle's current odometer
11 reading on the work order.

12 **SIXTH CAUSE FOR DISCIPLINE**

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

14 19. Respondent has subjected his registration to discipline pursuant to Code section
15 9884.7, subdivision (a)(6), in that in or about March 2010, Respondent failed to comply with the
16 following sections of that code:

17 a. **Section 9884.9, subdivision (a):**

18 i. Respondent failed to provide the consumer with a written estimated price for
19 parts and labor for a specific job.

20 ii. Respondent failed to obtain the consumer's consent to change the method of
21 repair regarding the windshield washer motor.

22 b. **Section 9884.11:** Respondent failed to provide the Bureau with invoices, estimates,
23 and/or parts receipts regarding the repair of the consumer's vehicle.

24 **SEVENTH CAUSE FOR DISCIPLINE**

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

26 20. Respondent has subjected his registration to discipline pursuant to Code section
27 9884.7, subdivision (a)(6), in that Respondent failed to comply with California Code of
28 Regulations, title 16, section 3356, subdivision (a)(1), by failing to show his business name on his

1 invoice as is reflected in the Bureau's records; instead, Respondent used the name "Central
2 Valley Street Rods".

3 **CONSUMER COMPLAINT NO. 3 (MELTON)**

4 21. On or about December 17, 2010, Tom Melton ("consumer") spoke with Respondent
5 and Respondent agreed to perform body modifications to the consumer's 1930 Model A. On or
6 about December 21, 2010, the consumer towed his vehicle to Respondent's shop and paid
7 Respondent \$8,500 toward the repairs. After several weeks, the consumer told Respondent not to
8 perform any further work on the vehicle and that he wanted to pick up the vehicle. Respondent
9 would not release the consumer's vehicle. On or about April 21, 2011, the consumer filed a
10 complaint with the Bureau.

11 22. The Bureau made numerous attempts, by telephone, email, and regular visits to
12 Respondent's facility; however, Respondent failed to cooperate with the Bureau regarding this
13 complaint.

14 **EIGHTH CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 23. Respondent has subjected his registration to discipline pursuant to Code section
17 9884.7, subdivision (a)(1), in that on or about December 21, 2010, Respondent made statements
18 which he knew or which by exercise of reasonable care he should have known were untrue or
19 misleading, by representing to the consumer that the repairs to the vehicle would be completed
20 within four weeks; however, as of April 21, 2011, the consumer still did not have possession of
21 his vehicle.

22 **NINTH CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 24. Respondent has subjected his registration to discipline under Code section 9884.7,
25 subdivision (a)(4), in that between December 21, 2010, and April 21, 2011, Respondent accepted
26 payment of \$8,500 to modify the vehicle; however, as of April 21, 2011, Respondent continued
27 refusing and is still refusing to return the consumer's vehicle to the consumer.

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1 TENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Code)

3 25. Respondent has subjected his registration to discipline pursuant to Code section
4 9884.7, subdivision (a)(6), in that on or about December 21, 2010, Respondent failed to comply
5 with the following sections of that code:

6 a. **Section 9884.9, subdivision (a):** Respondent failed to provide the consumer with a
7 written estimated price for parts and labor for a specific job.

8 b. **Section 9884.11:** Respondent failed to provide the Bureau with invoices, estimates,
9 and/or parts receipts regarding the repair of the consumer's vehicle.

10 OTHER MATTERS

11 26. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
12 or permanently or refuse to validate, the registrations for all places of business operated in this
13 state by James Mathew Lieder, upon a finding that he has, or is, engaged in a course of repeated
14 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

15 PRAYER

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

18 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
19 Registration Number ARD 181690, issued to James Mathew Lieder doing business as Custom
20 Autotech Performance Muffler;

21 2. Revoking, suspending, or placing on probation any other automotive repair dealer
22 registration issued to James Mathew Lieder;

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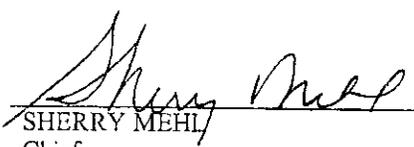
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3. Ordering James Mathew Lieder to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 1/18/12



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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