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

12 In the Matter of the Accusation Against:
13 **AAMCO TRANSMISSION**
JOE DAVID EWING, OWNER
14 **4231 McHenry Avenue, #A**
Modesto, CA 95356-1515
15 **Automotive Repair Dealer Reg. No. ARD 191830**
16 Respondent.

Case No. 77/14-42

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

- 20 1. Patrick Dorais (“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 15, 1996, the Director of Consumer Affairs (“Director”)
23 issued Automotive Repair Dealer Registration Number ARD 191830 to Joe David Ewing
24 (“Respondent”), owner of AAMCO Transmission. Respondent’s automotive repair dealer
25 registration was in full force and effect at all times relevant to the charges brought herein and will
26 expire on November 30, 2014, unless renewed.

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1 **JURISDICTION**

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

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

8 **STATUTORY AND REGULATORY PROVISIONS**

9 **(Statutory Provisions)**

10 5. Code section 9884.7 states, in pertinent part:

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

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

20

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

23 (4) Any other conduct that constitutes fraud.

24

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

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

6. Code section 9884.7, subdivision (c), states, in pertinent part, that the director may
suspend, revoke, or place on probation the registration for all places of business operated in this

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1 state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
2 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
3 automotive repair dealer.

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

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

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

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

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

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

(Regulatory Provisions)

11. California Code of Regulations, title 16, section ("Regulation") 3356 states, in
pertinent part:

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

.....

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

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

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

5 12. Regulation 3358 states:

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

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

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

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

12 13. Regulation 3361.1 states, in pertinent part:

13 The following minimum requirements specifying accepted trade
14 standards for good and workmanlike rebuilding of automatic transmissions are
intended to define terms that have caused confusion to the public and unfair
15 competition within the automotive repair industry . . . These minimum requirements
shall not be used to promote the sale of "rebuilt" automatic transmissions when a less
16 extensive and/or less costly repair is desired by the customer . . . All automotive
repair dealers engaged in the repair, sale, or installation of automatic transmissions in
17 vehicles covered under the Act shall be subject to the following minimum
requirements:

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

23

24 (3) All bands have been replaced with new or relined bands.

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

26

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

28 (C) All sealing rings

(D) Gaskets

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

14. Regulation 3373 states:

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 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 the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

COST RECOVERY

15. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to 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.

CONSUMER COMPLAINT (LINARES): 1999 CHEVROLET SUBURBAN

16. On or about January 4, 2012, Tito Linares' ("Linares") wife, Donna Linares, took their 1999 Chevrolet Suburban to Respondent's facility because the "4X4" light was going on and off and the vehicle was jerking during shifts or misfiring. Later, Linares received a call from Respondent's customer service manager, Tom Cervantes ("Cervantes"). Cervantes told Linares that the vehicle needed a complete tune-up at a total cost of \$790, which included, among other things, a transmission fluid change. Approximately 20 minutes later, Cervantes called Linares and told him that upon removing the oil pan, they found that the planetary gears were broken (the parts were allegedly in the bottom of the transmission pan). Linares authorized the facility to rebuild the transmission.

17. On or about January 6, 2012, Linares went to the facility to pick up the vehicle and was given a copy of Invoice No. 122878 in the amount of \$3,231.16. The invoice indicated that the vehicle had "engine oil leaks" and "poor engine performance" and that a computer scan had been completed, revealing two diagnostic trouble codes, a P0300 code (random misfire) and a

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1 P0463 code (fuel level sensor circuit-high voltage code). Linares noticed that the vehicle was still
2 exhibiting the same drivability problems.

3 18. On or about January 9, 2012, Linares returned the vehicle to the facility and told
4 Cervantes that he wanted the drivability problems fixed. Later, the facility called Linares and
5 informed him that the vehicle needed another tune-up at a cost between \$200 and \$300.

6 19. On or about January 10, 2012, Linares retrieved the vehicle from the facility. The
7 facility had performed the second tune-up free of charge.

8 20. On or about January 17, 2012, Linares took the vehicle back to the facility due to the
9 same drivability problems. The facility told Linares that the vehicle needed a distributor
10 assembly at a cost of about \$290. Linares authorized the work. When Linares retrieved the
11 vehicle, he found that it was still exhibiting the same problems. Linares took the vehicle back to
12 the facility and took it on a test drive with one of Respondent's mechanics. The mechanic agreed
13 that the vehicle was still misfiring.

14 21. On or about March 20, 2012, Donna Linares took the vehicle to Steve's Chevrolet
15 ("Steve's") in Oakdale because it was shaking badly. Steve's informed Ms. Linares that the
16 distributor cap needed replacement at a cost of \$223.25. Ms. Linares had Steve's repair the
17 vehicle, which corrected the drivability problem.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Violations of Regulations)**

20 22. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
21 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivision
22 (a)(2)(A), in the following material respects:

23 a. Respondent failed to list, describe, or identify on Invoice No. 122878 the diagnostic
24 work that was performed on Linares' 1999 Chevrolet Suburban relating to the P0300 code, the
25 results of the diagnosis, or any justification for the ignition system repairs performed on the
26 vehicle.

27 b. Respondent failed to list, describe, or identify on Invoice No. 122878 the diagnostic
28 work or inspection that was performed on the vehicle after the transmission was removed and

1 disassembled, the results of the inspection, or any justification for the rebuilding of the
2 transmission.

3 **CONSUMER COMPLAINT (ARMENDARIZ): 1995 HONDA ODYSSEY**

4 23. On or about July 14, 2011, Constance Armendariz (“Armendariz”) took her 1995
5 Honda Odyssey to Respondent’s facility because it was leaking oil. The facility told Armendariz
6 that the transmission fluid was low and the engine had multiple oil leaks. Armendariz paid the
7 facility \$2,222.40 to repair the vehicle, including the replacement of the transmission with a used
8 unit and the replacement of an engine mount and transaxle mount, and was given a copy of
9 Invoice No. 122223.

10 24. On or about September 15, 2011, Armendariz had the vehicle towed to the facility
11 after the left ball joint became disconnected from the lower control arm, causing the left front
12 suspension to collapse. The facility charged Armendariz \$160.96 (parts and sales tax only) for
13 installing a new left side CV (constant velocity) axle and new left lower ball joint on the vehicle,
14 and provided her with a copy of Invoice No. 122452.

15 25. On or about September 20, 2011, Armendariz returned the vehicle to the facility due
16 to transmission leaks. The facility installed a second used transmission on the vehicle at no
17 charge, and provided Armendariz with a copy of Invoice No. 122475.

18 26. On or about December 6, 2011, Armendariz took the vehicle back to the facility
19 because it was still leaking fluid. The facility performed an AAMCO Multi Point Inspection on
20 the vehicle, and provided Armendariz with a copy of Invoice No. 122769. The invoice indicated
21 that the transmission fluid level was “ok” and the condition of the fluid was normal; however, the
22 engine oil level was low and there was a leak in the distributor.

23 27. On or about July 10, 2012, Armendariz filed a complaint with the Bureau.

24 28. On or about October 23, 2012, a representative of the Bureau made a field visit to the
25 facility and requested copies of their repair records on the vehicle. The representative was given
26 copies of various documents, but was not provided with the parts receipts for certain parts
27 installed on the vehicle, as set forth in subparagraph 29 (b) below.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Violations of the Code)**

3 29. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply with provisions of that Code in the
5 following material respects:

6 a. **Section 9884.9, subdivision (a)**: Respondent documented on Invoice No. 122452
7 that on September 15, 2011, Armendariz had authorized \$150 in additional repairs on her 1995
8 Honda Odyssey, but failed to specify the work that was authorized on the vehicle, the
9 replacement of the lower left ball joint and left side CV axle. Further, Respondent failed to obtain
10 or document on Invoice No. 122475 Armendariz's authorization for the installation of the second
11 used transmission on the vehicle.

12 b. **Section 9884.11**: Respondent failed to maintain a copy of the parts receipts for the
13 used transmission installed on Armendariz's 1995 Honda Odyssey as described on Invoice No.
14 122223 and the parts receipt for the used transmission installed on the vehicle on or about
15 September 20, 2011, or failed to make those records available for inspection by the Bureau.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violations of the Code)**

18 30. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
19 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivisions
20 (a)(2)(A) and (B) in the following material respects:

21 a. **Subdivision (a)(2)(A)**: Respondent charged Armendariz on Invoice No. 122223 for
22 a new rear main engine seal, a new oil pan gasket set, and a new front/right engine mount, but
23 failed to list, describe or identify the related repairs performed on her 1995 Honda Odyssey, the
24 replacement of the seal, gaskets and engine mount on the vehicle. Further, Respondent charged
25 Armendariz on Invoice No. 122452 for a new left side CV axle and left lower ball joint, but failed
26 to list, describe or identify the related repairs, the replacement of those parts on the vehicle.

27 b. **Subdivision (a)(2)(A) and (B)**: Respondent failed to state on Invoice No. 122475
28 that a used transmission had been installed in Armendariz's 1995 Honda Odyssey.

1 vehicle needed a complete overhaul. In fact, the only repairs needed on the vehicle to restore the
2 proper functioning of the transmission were the removal of the transmission, case cover and side
3 cover and the replacement of the 4th gear clutch shaft, some seals and gaskets, and transmission
4 fluid; the transmission was not in need of a complete overhaul. Further, none of the bearings
5 were worn or in need of replacement.

6 b. Respondent represented on the invoice that the transmission on the Bureau's 1996
7 Pontiac had been rebuilt. In fact, the transmission had not been rebuilt as required by Regulation
8 3361.1, as set forth in paragraph 39 below.

9 c. Respondent represented on the invoice that a new band was installed in the Bureau's
10 1996 Pontiac. In fact, none of the bands in the transmission had been replaced, as set forth in
11 paragraph 39 below.

12 d. Respondent represented on the invoice that a new bearing kit was installed in the
13 Bureau's 1996 Pontiac. In fact, the drive sprocket bearing, the parking gear thrust bearing, and
14 the thrust bearing assembly had not been replaced on the vehicle.

15 e. Respondent represented on the invoice that the price for the teardown estimate,
16 including the removal, dismantling, inspection, reassembly, and reinstallation of the transmission
17 in the Bureau's 1996 Pontiac vehicle, was \$450, yet recorded on that same document that the
18 operator had authorized the tear down estimate at a cost of \$650.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Failure to Provide Customer with Copy of Signed Document)**

21 37. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
22 subdivision (a)(3), in that Respondent's customer service manager, Cervantes, failed to provide
23 the operator with a copy of the work order.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 38. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(4), in that Respondent committed acts that constitute fraud, as follows:

5 a. Respondent's customer service manager, Cervantes, made false or misleading
6 statements to the operator regarding the transmission in the Bureau's 1996 Pontiac, as set forth in
7 paragraph 36 (a) above, in order to induce the operator to authorize unnecessary repairs on the
8 vehicle, then sold the operator unnecessary repairs, including the installation of a new assembly
9 kit, an exchange rebuilt torque converter, a new modulator, a new band, a new shift kit, a new
10 bearing kit, a new reverse drum, and a new differential sun, and the rebuilding of the
11 transmission.

12 b. Respondent obtained payment from the operator for rebuilding the transmission in the
13 Bureau's 1996 Pontiac. In fact, the transmission had not been rebuilt as required by Regulation
14 3361.1, as set forth in paragraph 39 below.

15 c. Respondent obtained payment from the operator for installing a new band in the
16 transmission of the Bureau's 1996 Pontiac. In fact, none of the bands in the transmission had
17 been replaced, as set forth in paragraph 39 below.

18 d. Respondent obtained payment from the operator for installing a new bearing kit in the
19 transmission of the Bureau's 1996 Pontiac. In fact, the drive sprocket bearing, the parking gear
20 thrust bearing, and the thrust bearing assembly had not been replaced on the vehicle.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Departure from Trade Standards)**

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

27 a. Respondent failed to replace the O-ring seals for the park pawl actuator guide, the B
28 shift solenoid, the TCC-PWM solenoid, the TCC solenoid, and the case side cover gasket, the

1 three bands, and the external case cover gasket in the transmission of the Bureau's 1996 Pontiac,
2 as required by Regulation 3361.1.

3 b. Respondent replaced the 3rd clutch piston inner lip seal with a square cut seal instead
4 of a lip seal, causing the third gear clutch assembly to fail an air check.

5 c. Respondent replaced the reverse reaction drum and the final drive sun gear in the
6 transmission when, in fact, those hard parts were in good condition, were not impaired, defective,
7 or substantially worn, and/or were not in need of replacement at the time the vehicle was taken to
8 Respondent's facility.

9 **EIGHTH CAUSE FOR DISCIPLINE**

10 **(Violations of the Code)**

11 40. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
12 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
13 that Code in a material respect, as follows: Respondent's customer service manager, Cervantes,
14 failed to provide the operator with a written estimate for the diagnostic check on the Bureau's
15 1996 Pontiac.

16 **CONSUMER COMPLAINT (MOJABI): 2010 MAZDA 5**

17 41. On or about August 21, 2012, Shahzad Mojabi ("Mojabi") took her 2010 Mazda 5 to
18 Respondent's facility for diagnosis because the "check engine" light was illuminated.
19 Approximately two hours later, Mojabi was informed that a part had been replaced on the vehicle;
20 however, the check engine light was still on and additional repairs were needed to resolve the
21 problem. Mojabi declined the additional repairs and left the facility.

22 42. On or about August 23, 2012, Mojabi filed a complaint with the Bureau.

23 43. On or about September 20, 2012, Mojabi provided the Bureau with copies of various
24 documents which she had received from the facility, including Quotation Sheet No. 123708 and
25 Invoice No. 123708. The invoice indicated that a mass air flow (MAF) sensor and air filter had
26 been installed in the vehicle.

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1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 48. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivision
5 (a)(2)(A), in the following material respects:

6 a. Respondent charged Mojabi \$90 in labor on Invoice No. 123708 for a "C D S" on her
7 2010 Mazda 5 without identifying or describing the repair work or providing an explanation of
8 the term "C D S".

9 b. Respondent failed to list, describe or identify on Invoice No. 123708 the diagnostic
10 work that was performed on Mojabi's 2010 Mazda 5, the results of the diagnosis, or any
11 justification for replacing the MAF sensor on the vehicle.

12 **UNDERCOVER OPERATION #2: 1998 TOYOTA**

13 49. On November 28, 2012, a representative of the Bureau, acting in an undercover
14 capacity ("operator"), took the Bureau's 1998 Toyota to Respondent's facility. The coolant
15 temperature sensor on the Bureau-documented vehicle was defective. The operator told
16 Cervantes that the check engine light was on and asked him if they would take a look at the
17 vehicle. Cervantes had the operator sign a "write up" sheet or work order, but did not provide
18 him with a copy. The operator left the facility.

19 50. At approximately 3:05 p.m., Cervantes called the operator and told him that they
20 found one code (diagnostic trouble code) stored in the vehicle's on-board computer, indicating an
21 engine coolant temperature sensor malfunction. Cervantes stated that they needed to perform a
22 diagnosis on the vehicle at a cost of \$90, which would include checking the wiring and
23 connectors at the computer and testing the sensor. The operator authorized the work.

24 51. On November 29, 2012, at approximately 10:09 a.m., Cervantes called the operator
25 and told him that the coolant temperature sensor was faulty. Cervantes stated that it would cost a
26 total of \$179.94 to replace the part and that the \$90 diagnostic fee would be included in the price.
27 The operator authorized the repair.

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UNDERCOVER OPERATION #3: 2001 CHEVROLET

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2 57. On February 6, 2013, an employee of the Bureau, acting in an undercover capacity
3 ("operator"), took the Bureau's 2001 Chevrolet to Respondent's facility. The 4th gear clutch shaft
4 in the Bureau-documented vehicle was defective, preventing the transmission from shifting to 4th
5 gear. The operator met with Cervantes and informed him that there was an issue or problem with
6 the vehicle when shifting into high gear. Cervantes asked the operator for her contact
7 information, then had her sign certain paperwork. Cervantes told the operator that it would cost
8 \$49.95 to perform a diagnostic check on the vehicle. The operator was not given a written
9 estimate for the diagnosis or a copy of the paperwork. The operator left the facility.

10 58. At approximately 1:55 p.m. that same day, Cervantes called the operator and
11 informed her that they were unable to confirm the transmission problem. Cervantes asked the
12 operator if she could describe when or under what conditions she was experiencing the problem.
13 The operator told Cervantes that she noticed the problem when driving on the freeway. Cervantes
14 asked the operator to leave the vehicle overnight so that they could check it in the morning when
15 it (the vehicle) was cold. Cervantes also stated that he would have "Joe" drive the vehicle on the
16 freeway.

17 59. On February 7, 2013, the operator called the facility and spoke with Cervantes.
18 Cervantes told the operator that they were able to duplicate the transmission shift condition, and
19 that the problem existed between the 3rd to 4th shift and was internal to the transmission.
20 Cervantes stated that they would have to perform an "RDI", which would cost \$650. The
21 operator asked Cervantes what "RDI" meant. Cervantes told the operator that they would remove
22 and tear down the transmission to see what was wrong with the unit and that if her transmission
23 needed to be overhauled, she could expect to pay about \$2,400 to \$2,500 for the repairs.
24 Cervantes also told the operator that if she approved the transmission overhaul, the \$650 would
25 be included in the price. The operator authorized the tear down.

26 60. On February 8, 2013, the operator called the facility to check on the status of the
27 vehicle. Cervantes told the operator that the 4th gear shaft was damaged and that the transmission

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1 would need to be rebuilt, which included a shift kit, retainer kit, and other components.

2 Cervantes stated that it would cost a total of \$2,503.44 for the repairs.

3 61. On February 12, 2013, the operator returned to the facility to retrieve the vehicle, paid
4 Cervantes \$2,587.67 in cash, and received a copy of Invoice No. [REDACTED]

5 62. On March 1, 2013, and March 5, 2013, the Bureau inspected the vehicle using the
6 invoice for comparison. The Bureau found that the facility replaced the 4th clutch shaft, which
7 corrected the malfunction of the transmission; however, the facility performed unnecessary
8 repairs, failed to perform certain repairs as invoiced, and failed to rebuild the transmission as
9 required by Regulation 3361.

10 **FOURTEENTH CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

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

15 a. Respondent's customer service manager, Cervantes, represented to the operator that
16 the 4th gear shaft on the Bureau's 2001 Chevrolet was damaged and that the transmission would
17 need to be rebuilt, which included a shift kit, retainer kit, and other components. In fact, the only
18 repairs needed on the vehicle to restore the proper functioning of the transmission were the
19 removal of the transmission, case cover and side cover and the replacement of the 4th gear clutch
20 shaft, some seals and gaskets, and transmission fluid; the transmission was not in need of a
21 complete overhaul.

22 b. Respondent represented on the invoice that the transmission on the Bureau's 2001
23 Chevrolet had been rebuilt. In fact, the transmission had not been rebuilt as required by
24 Regulation 3361.1, as set forth in paragraph 66 below.

25 c. Respondent represented on the invoice that an exchange rebuilt torque converter was
26 installed in the Bureau's 2001 Chevrolet. In fact, the existing torque converter was opened,
27 inspected, and reinstalled on the vehicle.

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1 d. Respondent represented on the invoice that two new bands were installed in the
2 Bureau's 2001 Chevrolet. In fact, only one band was installed in the vehicle.

3 e. Respondent represented on the invoice that the price for the teardown estimate,
4 including the removal, dismantling, inspection, reassembly, and reinstallation of the transmission
5 in the Bureau's 2001 Chevrolet, was \$450, yet recorded on that same document that the operator
6 had authorized the tear down estimate at a cost of \$650.

7 **FIFTEENTH CAUSE FOR DISCIPLINE**

8 **(Failure to Provide Customer with Copy of Signed Document)**

9 64. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
10 subdivision (a)(3), in that Respondent's customer service manager, Cervantes, failed to provide
11 the operator with a copy of the paperwork or documentation, identified in paragraph 57 above.

12 **SIXTEENTH CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 65. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
15 subdivision (a)(4), in that Respondent committed acts that constitute fraud, as follows:

16 a. Respondent's customer service manager, Cervantes, made false or misleading
17 statements to the operator regarding the transmission in the Bureau's 2001 Chevrolet, as set forth
18 in paragraph 63 (a) above, in order to induce the operator to authorize unnecessary repairs on the
19 vehicle, then sold the operator unnecessary repairs, including the installation of a new assembly
20 kit, an exchange rebuilt torque converter, two bands, a new shift kit, a new pressure control
21 solenoid, and a used input piston, and the rebuilding of the transmission.

22 b. Respondent obtained payment from the operator for rebuilding the transmission in the
23 Bureau's 2001 Chevrolet. In fact, the transmission had not been rebuilt as required by Regulation
24 3361.1, as set forth in paragraph 66 below.

25 c. Respondent obtained payment from the operator for installing an exchange rebuilt
26 torque converter in the Bureau's 2001 Chevrolet. In fact, the existing torque converter was
27 opened, inspected, and reinstalled on the vehicle.

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1 d. Respondent obtained payment from the operator for installing two new bands in the
2 Bureau's 2001 Chevrolet. In fact, only one band was installed in the vehicle.

3 **SEVENTEENTH CAUSE FOR DISCIPLINE**

4 **(Departure from Trade Standards)**

5 66. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
6 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
7 standards for good and workmanlike repair without the consent of the owner or the owner's duly
8 authorized representative, in a material respect, as follows: Respondent failed to replace the side
9 cover gasket, three turbine shaft oil sealing rings, the 2-1 manual band, the reverse band, the park
10 pawl actuator guide O-ring, the manual shaft seal, and the vehicle speed sensor O-ring in the
11 transmission of the Bureau's 2001 Chevrolet, as required by Regulation 3361.1.

12 **EIGHTEENTH CAUSE FOR DISCIPLINE**

13 **(Violations of the Code)**

14 67. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
15 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
16 that Code in a material respect, as follows: Respondent's customer service manager, Cervantes,
17 failed to provide the operator with a written estimate for the diagnostic check on the Bureau's
18 2001 Chevrolet.

19 **OTHER MATTERS**

20 68. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
21 or place on probation the registration for all places of business operated in this state by
22 Respondent Joe David Ewing, owner of AAMCO Transmission, upon a finding that Respondent
23 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
24 pertaining to an automotive repair dealer.

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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 191830, issued to Joe David Ewing, owner of AAMCO Transmission;
- 2. Revoking or suspending any other automotive repair dealer registration issued in the name of Joe David Ewing;
- 3. Ordering Joe David Ewing, owner of AAMCO Transmission, 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: February 29, 2014 Patrick Dorais

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