

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

In the Matter of the Accusation Against:

**AAMCO TRANSMISSION; JOE DAVID  
EWING; OWNER**

4231 McHenry Avenue, #A  
Modesto, CA 95356

Automotive Repair Dealer Reg. No. ARD  
191830

Respondent.

Case No. 77/14-42

OAH No. 2014090239

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective February 26, 2016.

DATED: January 11, 2016

  
\_\_\_\_\_  
TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
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Supervising Deputy Attorney General  
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8  
9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
**STATE OF CALIFORNIA**

11  
12 In the Matter of the Accusation Against:

Case No. 77/14-42

13 **AAMCO TRANSMISSION; JOE DAVID**  
**EWING; OWNER**  
14 **4231 MCHENRY AVENUE, #A**  
**MODESTO, CA 95356-1515**

OAH No. 2014090239

15 **Automotive Repair Dealer Reg. No. ARD**  
16 **191830**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

17 Respondent.

18  
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He  
23 brought this action solely in his official capacity and is represented in this matter by Kamala D.  
24 Harris, Attorney General of the State of California, by Geoffrey S. Allen, Deputy Attorney  
25 General.  
26  
27  
28



1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in the  
3 Accusation.

4 10. Respondent agrees that his Registration is subject to discipline and he agrees to be  
5 bound by the Director's imposition of discipline as set forth in the Disciplinary Order below.

6 CONTINGENCY

7 11. This stipulation shall be subject to approval by the Director or the Director's designee.  
8 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau may  
9 communicate directly with the Director and staff of the Department of Consumer Affairs  
10 regarding this stipulation and settlement, without notice to or participation by Respondent. By  
11 signing the stipulation, Respondent understands and agrees that he may not withdraw his  
12 agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon  
13 it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated  
14 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall  
15 be inadmissible in any legal action between the parties, and the Director shall not be disqualified  
16 from further action by having considered this matter.

17 12. The parties understand and agree that Portable Document Format (PDF) and facsimile  
18 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format  
19 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

20 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
21 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
22 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
23 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
24 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
25 writing executed by an authorized representative of each of the parties.

26 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
27 the Director may, without further notice or formal proceeding, issue and enter the following  
28 Disciplinary Order:

DISCIPLINARY ORDER

1  
2 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 191830  
3 issued to Respondent AAMCO Transmission; Joe David Ewing; Owner is revoked.

4 1. The revocation of Respondent's License and the acceptance of the revoked License  
5 by the Bureau shall constitute the imposition of discipline against Respondent. This stipulation  
6 constitutes a record of the discipline and shall become a part of Respondent's license history with  
7 the Bureau.

8 2. Respondent shall lose all rights and privileges as an Automotive Repair Dealer in  
9 California as of the effective date of the Bureau's Decision and Order.

10 3. Respondent shall cause to be delivered to the Bureau his pocket license and, if one  
11 was issued, his wall certificate on or before the effective date of the Decision and Order.

12 4. If Respondent ever files an application for licensure or a petition for reinstatement in  
13 the State of California, the Bureau shall treat it as a new application for licensure. Respondent  
14 must comply with all the laws, regulations and procedures for licensure in effect at the time the  
15 application or petition is filed, and all of the charges and allegations contained in Accusation  
16 77/14-42 shall be deemed to be true, correct and admitted by Respondent when the Bureau  
17 determines whether to grant or deny the petition.

18 5. Respondent shall pay the Bureau its costs of investigation and enforcement in the  
19 amount of \$77,360.10 prior to filing an application for a new license or a petition for  
20 reinstatement.

21 ///

22 ///

23 ///

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED:

7/9/15

JOE DAVID EWING; OWNER  
AAMCO TRANSMISSION  
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs

Dated:

7/9/15

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
DIANN SOKOLOFF  
Supervising Deputy Attorney General

GEOFFREY S. ALLEN  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Accusation No. 77/14-42**

1 KAMALA D. HARRIS  
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2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 GEOFFREY S. ALLEN  
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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**

12 In the Matter of the Accusation Against:

13 **AAMCO TRANSMISSION**  
14 **JOE DAVID EWING, OWNER**  
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**

17  
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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28 ///



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  
following records for not less than three years:

7 (a) All invoices relating to automotive repair including invoices received  
8 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:

18 . . . .  
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 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 4<sup>th</sup> 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 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 3<sup>rd</sup> 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 44. On or about September 26, 2012, a representative of the Bureau inspected the vehicle  
2 and verified that a MAF sensor had, in fact, been installed. That same day, the representative  
3 went to the facility and requested copies of their repair records on the vehicle.

4 45. On or about September 30, 2012, the representative received copies of various  
5 documents from the facility, including a work order, numbered 123708, showing that Mojabi had  
6 authorized an "external diagnostic" on the vehicle. The form also included a handwritten  
7 notation, "Needs C-D-S \$90 . . ."

8 46. On or about October 23, 2012, the representative returned to the facility and met with  
9 Respondent. The representative informed Respondent that the Bureau had not received copies of  
10 any parts invoices. Respondent provided the representative with copies of the parts receipts for  
11 the MAF sensor and air filter. Later, the representative spoke with Gerado Bravo ("Bravo"), who  
12 performed the diagnosis and repair of the vehicle. The representative asked Bravo if he could  
13 explain his diagnosis relating to the replacement of the MAF sensor. Bravo reviewed the  
14 inspection sheet and verified that there was no documentation regarding his diagnosis.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Violations of the Code)**

17 47. Respondent is subject to disciplinary action pursuant to Code section 9884.7,  
18 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of  
19 that Code in a material respect, as follows: Respondent provided Mojabi with a written estimate,  
20 Quotation Sheet No. 123708, for a "C D S" on her 2010 Mazda 5 at a cost of \$90, but failed to  
21 describe the specific job to be performed on the vehicle or provide an explanation of the term  
22 "C D S".

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1 52. At approximately 2:42 p.m., the operator returned to the facility to retrieve the  
2 vehicle, paid Cervantes \$183, and received a copy of an invoice. The invoice indicated that an  
3 "AAMCO multi point check" had been performed on the vehicle.

4 53. On December 6, 2012, the Bureau inspected the vehicle and found that the facility  
5 had replaced the defective engine coolant temperature sensor.

6 **ELEVENTH CAUSE FOR DISCIPLINE**

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

8 54. Respondent is subject to disciplinary action pursuant to Code section 9884.7,  
9 subdivision (a)(3), in that Respondent's customer service manager, Cervantes, failed to provide  
10 the operator with a copy of the "write up" sheet or work order.

11 **TWELFTH CAUSE FOR DISCIPLINE**

12 **(Violations of the Code)**

13 55. Respondent is subject to disciplinary action pursuant to Code section 9884.7,  
14 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of  
15 that Code in a material respect, as follows: Respondent's customer service manager, Cervantes,  
16 failed to provide the operator with a written estimate for the AAMCO multi-point check on the  
17 Bureau's 1998 Toyota or the inspection relating to the illuminated check engine light.

18 **THIRTEENTH CAUSE FOR DISCIPLINE**

19 **(Violations of Regulations)**

20 56. 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 a material respect, as follows: Respondent failed to list, describe or identify on the  
23 invoice the diagnostic work that was performed on the Bureau's 1998 Toyota, specifically, the  
24 checking of the wiring and connectors at the computer and the testing of the coolant temperature  
25 sensor, or the results of the diagnosis.

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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 4<sup>th</sup> gear clutch shaft  
4 in the Bureau-documented vehicle was defective, preventing the transmission from shifting to 4<sup>th</sup>  
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 3<sup>rd</sup> to 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> 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 20, 2014

*Patrick Dorais*

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