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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:

Case No. 77/11-63

13 **THE PEP BOYS MANNY MOE & JACK OF CALIFORNIA,**  
14 **dba PEP BOYS AUTO #634**  
15 **MICHAEL ODELL, PRESIDENT**  
16 **BRIAN D. ZUCKERMAN, SECRETARY**  
17 **BERNARD K. MCELROY, TREASURER**  
18 **1340 McHenry Avenue**  
**Modesto, CA 95350-5333**  
**Mailing Address:**  
**3111 W. Allegheny Avenue**  
**Philadelphia, PA 19132**  
**Automotive Repair Dealer Registration No. ARD 019389,**

**ACCUSATION**

19 **THE PEP BOYS MANNY MOE & JACK OF CALIFORNIA,**  
20 **dba PEP BOYS AUTO #668**  
21 **MICHAEL ODELL, PRESIDENT**  
22 **BRIAN D. ZUCKERMAN, SECRETARY**  
23 **BERNARD K. MCELROY, TREASURER**  
24 **693 W. Shaw Avenue**  
**Clovis, CA 93612-3215**  
**Mailing Address:**  
**3111 W. Allegheny Avenue**  
**Philadelphia, PA 19132**  
**Automotive Repair Dealer Registration No. ARD 106881,**

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1 THE PEP BOYS MANNY MOE & JACK OF CALIFORNIA,  
dba PEP BOYS AUTO #777

2 MICHAEL ODELL, PRESIDENT  
3 BRIAN D. ZUCKERMAN, SECRETARY  
4 BERNARD K. MCELROY, TREASURER

4490 W. Shaw Avenue  
Fresno, CA 93722-6210

Mailing Address:

5 3111 W. Allegheny Avenue  
6 Philadelphia, PA 19132  
Automotive Repair Dealer Registration No. ARD 150409,

7 and

8 THE PEP BOYS MANNY MOE & JACK OF CALIFORNIA,  
dba PEP BOYS AUTO #649

9 MICHAEL ODELL, PRESIDENT  
10 BRIAN D. ZUCKERMAN, SECRETARY  
11 BERNARD K. MCELROY, TREASURER

1207 W. Main Street  
Merced, CA 95340

Mailing Address:

12 3111 W. Allegheny Avenue  
13 Philadelphia, PA 19132  
Automotive Repair Dealer Registration No. ARD 019378

14 Respondents.

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16 Complainant alleges:

17 PARTIES/LICENSE INFORMATION

18 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity  
19 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

20 **Pep Boys Auto #634**

21 2. In or about 1972, the Director of Consumer Affairs ("Director") issued Automotive  
22 Repair Dealer Registration Number ARD 019389 ("Registration No. ARD 019389") to The Pep  
23 Boys Manny Moe & Jack of California ("Respondent"), doing business as Pep Boys Auto #634,  
24 with Michael Odell ("Odell") as president, Brian D. Zuckerman ("Zuckerman") as secretary, and  
25 Bernard K. Mcelroy ("Mcelroy") as treasurer. Respondent's registration was in full force and  
26 effect at all times relevant to the charges brought herein and will expire on May 31, 2013, unless  
27 renewed.

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1 obtained at some time after it is determined that the estimated price is insufficient and  
2 before the work not estimated is done or the parts not estimated are supplied. Written  
3 consent or authorization for an increase in the original estimated price may be  
4 provided by electronic mail or facsimile transmission from the customer. The bureau  
5 may specify in regulation the procedures to be followed by an automotive repair  
6 dealer when an authorization or consent for an increase in the original estimated price  
7 is provided by electronic mail or facsimile transmission. If that consent is oral, the  
8 dealer shall make a notation on the work order of the date, time, name of person  
9 authorizing the additional repairs and telephone number called, if any, together with a  
10 specification of the additional parts and labor and the total additional cost . . .

11 12. Code section 22, subdivision (a), states:

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

16 13. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes  
17 "registration" and "certificate."

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

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

23 . . . .

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

26 . . . .

27 (B) Each part supplied, in such a manner that the customer can  
28 understand what was purchased, and the price for each described part. The description  
of each part shall state whether the part was new, used, reconditioned, rebuilt, or an  
OEM crash part, or a non-OEM aftermarket crash part . . .

15. Regulation 3366 states:

(a) Except as provided in subsection (b) of this section, any automotive  
repair dealer that advertises or performs, directly or through a sublet contractor,  
automotive air conditioning work and uses the words service, inspection, diagnosis,  
top off, performance check or any expression or term of like meaning in any form of  
advertising or on a written estimate or invoice shall include and perform all of the  
following procedures as part of that air conditioning work:

(1) Exposed hoses, tubing and connections are examined for damage or  
leaks;

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1 (2) The compressor and clutch, when accessible, are examined for  
2 damage, missing bolts, missing hardware, broken housing and leaks;

3 (3) The compressor is rotated to determine if it is seized or locked up;

4 (4) Service ports are examined for missing caps, damaged threads and  
5 conformance with labeling;

6 (5) The condenser coil is examined for damage, restrictions or leaks;

7 (6) The expansion device, if accessible, is examined for physical damage  
8 or leaks;

9 (7) The accumulator receiver dryer and in-line filter have been checked  
10 for damage, missing or loose hardware or leaks;

11 (8) The drive belt system has been checked for damaged or missing  
12 pulleys or tensioners and for proper belt routing, tension, alignment, excessive wear  
13 or cracking;

14 (9) The fan clutch has been examined for leakage, bearing wear and  
15 proper operation;

16 (10) The cooling fan has been checked for bent or missing blades;

17 (11) Accessible electrical connections have been examined for loose,  
18 burnt, broken or corroded parts;

19 (12) The refrigerant in use has been identified and checked for  
20 contamination;

21 (13) The system has been checked for leakage at a minimum of 50-PSI  
22 system pressure;

23 (14) The compressor clutch, blower motor and air control doors have  
24 been checked for proper operation;

25 (15) High and low side system operating pressures, as applicable, have  
26 been measured and recorded on the final invoice; and,

27 (16) The center air distribution outlet temperature has been measured and  
28 recorded on the final invoice.

(b) Whenever the automotive air conditioning work being advertised or performed does not involve opening the refrigerant portion of the air conditioning system, refrigerant evacuation, or full or partial refrigerant recharge, the procedures specified in subsection (a) need be performed only to the extent required by accepted trade standards.

16. Regulation 3371 states, in pertinent part:

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading . . .

1 17. Regulation 3372 states:

2 In determining whether any advertisement, statement, or representation is  
3 false or misleading, it shall be considered in its entirety as it would be read or heard  
4 by persons to whom it is designed to appeal. An advertisement, statement, or  
5 representation shall be considered to be false or misleading if it tends to deceive the  
6 public or impose upon credulous or ignorant persons.

7 18. Regulation 3373 states:

8 No automotive repair dealer or individual in charge shall, in filling out an  
9 estimate, invoice, or work order, or record required to be maintained by section  
10 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or  
11 information which will cause any such document to be false or misleading, or where  
12 the tendency or effect thereby would be to mislead or deceive customers, prospective  
13 customers, or the public.

14 **COST RECOVERY**

15 19. Code section 125.3 provides, in pertinent part, that a Board may request the  
16 administrative law judge to direct a licentiate found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case.

19 **PEP BOYS AUTO #634**

20 **“SECRET SHOPPER” OPERATION OF JULY 5, 2011**

21 20. On July 5, 2011, a representative of the Bureau, acting in an undercover capacity  
22 (“operator”), took the Bureau’s 2006 Lincoln Mark LT truck to Respondent’s facility, Pep Boys  
23 Auto #634. The operator requested Pep Boy’s “free” A/C (air conditioning) check on the vehicle,  
24 and presented Respondent’s employee with an internet advertisement from Pep Boys’ website,  
25 [www.pepboys.com](http://www.pepboys.com). Pep Boys was offering a “Free A/C check with coupon”. The employee had  
26 the operator sign a work order, but did not give him a copy. Later, the employee told the operator  
27 that there was no problem with the A/C system on the vehicle and that the A/C check was free of  
28 charge. The employee did not provide the operator with a written estimate or invoice for the A/C  
check.

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1 authorized the work. Tony had the operator sign a work order, but did not give him a copy. The  
2 operator left the facility.

3 24. At approximately 1335 hours that same day, the operator called the facility and spoke  
4 with Respondent's employee, "David". David told the operator that the A/C system did have  
5 Freon in it, but there was a problem in the electrical system. David stated that it would cost about  
6 \$40 to diagnose the problem. The operator authorized the diagnosis.

7 25. At approximately 1520 hours, the operator called the facility and spoke with Tony.  
8 Tony told the operator that the problem with the electrical system was due to a ground wire that  
9 was cut and that they were able to repair the problem. Later, the operator went to the facility to  
10 retrieve the vehicle, paid \$85.45 for the repairs, and received a copy of an invoice.

11 26. On October 5, 2011, the Bureau inspected the vehicle and found that Respondent's  
12 facility had failed to properly repair the A/C system, constituting gross negligence, and had  
13 departed from accepted trade standards in performing the A/C system check.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(False Advertising)**

16 27. Respondent's Registration No. ARD 019389 is subject to disciplinary action pursuant  
17 to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation  
18 3371 by publishing, uttering, or making, or causing to be published, uttered, or made false or  
19 misleading statements or advertisements which are known to be false or misleading, or which by  
20 the exercise of reasonable care should be known to be false or misleading, as follows:

21 Respondent represented on the advertisement/coupon, described in paragraph 23 above, that the  
22 A/C system check would be "free". In fact, the A/C system check on the Bureau's 1997  
23 Chevrolet truck was not "free" in that Respondent charged the operator for an A/C system leak  
24 evaluation and a diagnosis of the electrical system; i.e., the broken ground wire at the A/C  
25 compressor clutch coil. Both procedures were required to be performed on the vehicle as  
26 provided in Regulation 3366, subdivision (a), and should have been included in the "free" A/C  
27 system check.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 28. Respondent's Registration No. ARD 019389 is subject to disciplinary action pursuant  
4 to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement  
5 which it knew or in the exercise of reasonable care should have known to be untrue or  
6 misleading, as follows: Respondent's employee, Tony, represented to the operator during the  
7 "free A/C system check" on the Bureau's 1997 Chevrolet truck that the A/C system was "okay".  
8 In fact, the ground wire to the A/C compressor clutch coil was broken, preventing the A/C  
9 compressor from engaging.

10 **FIFTH CAUSE FOR DISCIPLINE**

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

12 29. Respondent's Registration No. ARD 019389 is subject to disciplinary action pursuant  
13 to Code section 9884.7, subdivision (a)(3), in that Respondent's employee, Tony, failed to provide  
14 the operator with a copy of the work order.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Gross Negligence)**

17 30. Respondent's Registration No. ARD 019389 is subject to disciplinary action pursuant  
18 to Code section 9884.7, subdivision (a)(5), in that Respondent committed an act constituting  
19 gross negligence, as follows: Respondent failed to properly repair the A/C compressor electrical  
20 ground wire on the Bureau's 1997 Chevrolet truck in that Respondent removed and/or discarded  
21 the in-line diode (the in-line diode allows electrical current to flow in one direction and protects  
22 the electrical components from normal voltage spikes created during the clutch cycling  
23 sequences).

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(Departure from Trade Standards)**

26 31. Respondent's Registration No. ARD 019389 is subject to disciplinary action pursuant  
27 to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or

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1 disregarded accepted trade standards for good and workmanlike repair without the consent of the  
2 owner or the owner's duly authorized representative, in the following material respects:

3 a. Respondent failed to examine the broken ground wire at the A/C compressor clutch  
4 coil when performing the free A/C system check and/or the A/C system leak evaluation on the  
5 Bureau's 1997 Chevrolet truck.

6 b. Respondent failed to record on the invoice the high and low side system operating  
7 pressures of the A/C system on the Bureau's 1997 Chevrolet truck, as required by Regulation  
8 3366, subdivision (a)(15).

9 c. Respondent failed to record on the invoice the center air distribution outlet  
10 temperature of the AC system, as required by Regulation 3366, subdivision (a)(16).

11 **EIGHTH CAUSE FOR DISCIPLINE**

12 **(Violations of the Code)**

13 32. Respondent's Registration No. ARD 019389 is subject to disciplinary action pursuant  
14 to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section  
15 9884.9, subdivision (a), of that Code, in the following material respects: Respondent's employee,  
16 Tony, failed to provide the operator with written estimates for the "free A/C system" check and  
17 the A/C system leak evaluation on the Bureau's 1997 Chevrolet truck.

18 **UNDERCOVER OPERATION #2: 1996 TOYOTA CAMRY**

19 33. On October 27, 2011, a representative of the Bureau, acting in an undercover capacity  
20 ("operator"), took the Bureau's 1996 Toyota Camry to Respondent's facility, Pep Boys Auto  
21 #634. A small leak had been made in an area of the A/C condenser core on the Bureau-  
22 documented vehicle. The operator met with Respondent's employee, David Jimenez  
23 ("Jimenez"), and requested Pep Boys' "Fall Maintenance Package" on the vehicle. The operator  
24 provided Jimenez with a Pep Boys internet advertisement/coupon for "\$10 off" on a "Fall  
25 Maintenance Package", which included a "Free A/C Check". Jimenez inspected the vehicle's  
26 tires and looked underneath the hood. Jimenez had the operator sign a work order, but did not  
27 give him a copy. The operator went into the office with Jimenez. Jimenez typed certain  
28 information into a computer and explained some of the procedures the facility's technicians use

1 when servicing vehicles. The operator asked Jimenez if the free A/C check was part of the "Fall  
2 Maintenance Package". Jimenez said "yes", then asked the operator if he was having problems  
3 with the A/C compressor not coming on or if the air was not blowing cold. The operator told  
4 Jimenez that the A/C system did not seem to be working correctly. Jimenez told the operator that  
5 they would check the A/C system and give him a call. The operator left the facility.

6 34. At approximately 1445 hours that same day, Jimenez called the operator and told him  
7 that the A/C was not operating correctly. Jimenez stated that they would need to perform an A/C  
8 system leak evaluation on the vehicle, that they would add dye to the A/C system with refrigerant  
9 to locate the leak, and that the repair or service would cost an additional \$43.99. The operator  
10 asked Jimenez if the leak evaluation was part of the free A/C check. Jimenez said, "No, we just  
11 check the system's pressures and outlet temperatures with the free A/C check". The operator  
12 authorized the leak evaluation.

13 35. At approximately 1515 hours, Jimenez called the operator and told him that the  
14 vehicle had a leaking condenser and that both the condenser and accumulator needed replacement  
15 because moisture had entered the A/C system. Jimenez stated that they did not have the  
16 condenser in stock, that the part would have to be ordered, and that the A/C repairs would cost  
17 \$603. The operator asked Jimenez to note the information on the invoice because he needed to  
18 take the vehicle.

19 36. At approximately 1530 hours, the operator returned to the facility, paid the cashier  
20 \$170.57 for the repairs, and received a copy of a final invoice.

21 37. On October 28, 2011, the Bureau inspected the vehicle and found that Respondent's  
22 facility had departed from accepted trade standards in performing the A/C system check.

23 **NINTH CAUSE FOR DISCIPLINE**

24 **(False Advertising)**

25 38. Respondent's Registration No. ARD 019389 is subject to disciplinary action pursuant  
26 to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation  
27 3371 by publishing, uttering, or making, or causing to be published, uttered, or made false or  
28 misleading statements or advertisements which are known to be false or misleading, or which by

1 the exercise of reasonable care should be known to be false or misleading , as follows:

2 Respondent represented on the advertisement/coupon, described in paragraph 33 above, that the  
3 A/C system check would be "free". In fact, the A/C system check on the Bureau's 1996 Toyota  
4 Camry was not "free" in that Respondent charged the operator for an A/C system leak evaluation.  
5 The leak evaluation was required to be performed on the vehicle as provided in Regulation 3366,  
6 subdivision (a), and should have been included in the "free" A/C system check.

7 **TENTH CAUSE FOR DISCIPLINE**

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

9 39. Respondent's Registration No. ARD 019389 is subject to disciplinary action pursuant  
10 to Code section 9884.7, subdivision (a)(3), in that Respondent's employee, Jimenez, failed to  
11 provide the operator with a copy of the work order.

12 **ELEVENTH CAUSE FOR DISCIPLINE**

13 **(Departure from Trade Standards)**

14 40. Respondent's Registration No. 019389 is subject to disciplinary action pursuant to  
15 Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or  
16 disregarded accepted trade standards for good and workmanlike repair without the consent of the  
17 owner or the owner's duly authorized representative, in the following material respects:

18 a. Respondent failed to examine the condenser coil on the Bureau's 1996 Toyota Camry  
19 for damage or leaks when performing the "free A/C system check" on the vehicle.

20 b. Respondent failed to record on the invoice the high and low side system operating  
21 pressures of the A/C system on the Bureau's 1996 Toyota Camry, as required by Regulation  
22 3366, subdivision (a)(15).

23 c. Respondent failed to record on the invoice the center air distribution outlet  
24 temperature of the A/C system, as required by Regulation 3366, subdivision (a)(16).

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Code)**

3 41. Respondent's Registration No. ARD 019389 is subject to disciplinary action pursuant  
4 to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section  
5 9884.9, subdivision (a), of that Code in the following material respects:

6 a. Respondent's employee, Jimenez, failed to provide the operator with a written  
7 estimate for the Fall Maintenance Package on the Bureau's 1996 Toyota Camry.

8 b. Respondent failed to document on the final invoice the operator's authorization for  
9 the A/C system leak evaluation on the Bureau's 1996 Toyota Camry.

10 **PEP BOYS AUTO #668**

11 **"SECRET SHOPPER" OPERATION OF JULY 7, 2011**

12 42. On July 7, 2011, a representative of the Bureau, acting in an undercover capacity  
13 ("operator"), took the Bureau's 2006 Lincoln Mark LT truck to Respondent's facility, Pep Boys  
14 Auto #668. The operator requested Pep Boy's "free" A/C check on the vehicle and presented  
15 Respondent's service writer, "Antonio", with a Pep Boys internet advertisement/coupon for a  
16 "Free A/C check". Antonio had the operator sign a work order and gave him a copy. The  
17 operator left the facility. At approximately 1120 hours that same day, Antonio called the operator  
18 and told him that the A/C system was working properly. Later, the operator returned to the  
19 facility to retrieve the vehicle and received a copy of an invoice.

20 **THIRTEENTH CAUSE FOR DISCIPLINE**

21 **(Departure from Trade Standards)**

22 43. Respondent's Registration No. ARD 106881 is subject to disciplinary action pursuant  
23 to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or  
24 disregarded accepted trade standards for good and workmanlike repair without the consent of the  
25 owner or the owner's duly authorized representative, in the following material respects:

26 a. Respondent failed to record on the invoice the high and low side system operating  
27 pressures of the A/C system on the Bureau's 2006 Lincoln Mark LT truck, as required by  
28 Regulation 3366, subdivision (a)(15).

1           b.     Respondent failed to record on the invoice the center air distribution outlet  
2 temperature of the AC system, as required by Regulation 3366, subdivision (a)(16).

3                           **UNDERCOVER OPERATION #1: 1997 CHEVROLET TRUCK**

4           44.    On October 13, 2011, a representative of the Bureau, acting in an undercover capacity  
5 (“operator”), took the Bureau’s 1997 Chevrolet truck to Respondent’s facility, Pep Boys Auto  
6 #668. The A/C compressor clutch coil ground wire below the diode connector on the Bureau-  
7 documented vehicle was broken. The operator had a Pep Boys advertisement/coupon for a free  
8 A/C system check. The operator met with Respondent’s service writer, “Antonio”, and told him  
9 that the A/C system did not blow cold. The operator requested the free A/C system check on the  
10 vehicle and asked Antonio what was included in the service. Antonio stated that they would hook  
11 up the A/C gauges and check the pressure in the A/C system. Antonio then told the operator that  
12 since the A/C was not working, he was sure the system was empty. Antonio suggested that an  
13 A/C system leak evaluation be performed on the vehicle for \$38.99. The operator authorized the  
14 leak evaluation, signed and received a copy of a work order, and left the facility.

15           45.    At approximately 0945 hours that same day, Antonio called the operator and told him  
16 that the A/C compressor had no power. Antonio stated that he needed time to diagnose the  
17 electrical system to find the problem and that the electrical diagnosis would cost approximately  
18 \$101. Antonio also stated that the pressure in the A/C system was 80 psi in both the high and low  
19 sides and that the pressure should be at 100 psi. The operator authorized the electrical diagnosis.

20           46.    At approximately 1211 hours, Antonio called the operator and informed him that they  
21 had located the problem with the vehicle. Antonio told the operator that the problem was due to a  
22 broken ground wire and that they would perform the necessary repairs, for total repair costs on  
23 the vehicle of \$170. The operator authorized the repairs.

24           47.    At approximately 1430 hours, the operator went to the facility to retrieve the vehicle,  
25 paid \$171.70 for the repairs, and received a copy of an invoice. The invoice indicated that the  
26 technician who performed the inspection of the A/C system found there was no power to the  
27 compressor.

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1 48. On October 14, 2011, the Bureau inspected the vehicle and found that Respondent's  
2 facility had departed from accepted trade standards in performing the A/C system check.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

4 **(False Advertising)**

5 49. Respondent's Registration No. ARD 106881 is subject to disciplinary action pursuant  
6 to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation  
7 3371 by publishing, uttering, or making, or causing to be published, uttered, or made false or  
8 misleading statements or advertisements which are known to be false or misleading, or which by  
9 the exercise of reasonable care should be known to be false or misleading, as follows:

10 Respondent represented on the advertisement/coupon, described in paragraph 44 above, that the  
11 A/C system check would be "free". In fact, the A/C system check on the Bureau's 1997  
12 Chevrolet truck was not "free" in that Respondent charged the operator for a diagnosis of the  
13 electrical system; i.e., the broken ground wire at the A/C compressor clutch coil. The electrical  
14 system diagnosis was required to be performed on the vehicle as provided in Regulation 3366,  
15 subdivision (a), and should have been included in the "free" A/C system check.

16 **FIFTEENTH CAUSE FOR DISCIPLINE**

17 **(Departure from Trade Standards)**

18 50. Respondent's Registration No. ARD 106881 is subject to disciplinary action pursuant  
19 to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or  
20 disregarded accepted trade standards for good and workmanlike repair without the consent of the  
21 owner or the owner's duly authorized representative, in the following material respects:

22 a. Respondent failed to examine the broken ground wire at the A/C compressor clutch  
23 coil when performing the free A/C system check on the Bureau's 1997 Chevrolet truck.

24 b. Respondent failed to record on the invoice the high and low side system operating  
25 pressures of the A/C system on the Bureau's 1997 Chevrolet truck, as required by Regulation  
26 3366, subdivision (a)(15).

27 c. Respondent failed to record on the invoice the center air distribution outlet  
28 temperature of the AC system, as required by Regulation 3366, subdivision (a)(16).

1 UNDERCOVER OPERATION #2: 1996 TOYOTA CAMRY

2 51. On October 31, 2011, a representative of the Bureau, acting in an undercover capacity  
3 (“operator”), took the Bureau’s 1996 Toyota Camry to Respondent’s facility, Pep Boys Auto  
4 #668. A small leak had been made in an area of the A/C condenser core on the Bureau-  
5 documented vehicle. The operator told Respondent’s employee, "Sal", that he was interested in  
6 the advertised “Fall Maintenance Package” and requested an estimate for the service. The  
7 operator presented Sal with a Pep Boys internet advertisement/coupon for “\$10 off” on a “Fall  
8 Maintenance Package”, which included a “Free A/C Check”. Sal and the operator walked out to  
9 the vehicle. Sal raised the vehicle's hood and inspected under the hood. Later, Sal told the  
10 operator that the Fall Maintenance Package was \$49.99 with the \$10 off coupon. The operator  
11 asked Sal if the A/C system would be checked as part of the Fall Maintenance Package. Sal told  
12 the operator that the A/C system pressures and temperatures would be checked. Sal stated that if  
13 they discovered a problem, they would have to perform a leak check. The operator told Sal that  
14 he had just purchased the vehicle and was advised the A/C system may not be working properly.  
15 The operator also stated that he wanted to make sure the A/C system was checked at no charge as  
16 described on the coupon. Sal assured the operator that the system would be checked at no charge.  
17 The operator signed and received a copy of a work order and left the facility.

18 52. At approximately 1615 hours that same day, Sal called the operator and told him that  
19 the A/C system was inoperative due to a hole in the A/C condenser and recommended replacing  
20 the condenser. Sal also recommended replacing the receiver/drier at the same time. Sal stated  
21 that the repairs would cost \$800. The operator told Sal that he did not have the money and  
22 advised Sal to note the information on the invoice.

23 53. At approximately 1620 hours, the operator returned to the facility to retrieve the  
24 vehicle, paid the facility \$54.52, and received a copy of a final invoice.

25 54. On November 1, 2011, the Bureau inspected the vehicle and found that Respondent’s  
26 facility had departed from accepted trade standards in performing the A/C system check.

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1 **SIXTEENTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 55. Respondent's Registration No. ARD 106881 is subject to disciplinary action pursuant  
4 to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or  
5 disregarded accepted trade standards for good and workmanlike repair without the consent of the  
6 owner or the owner's duly authorized representative, in the following material respects:

7 a. Respondent failed to record on the invoice the high and low side system operating  
8 pressures of the A/C system on the Bureau's 1996 Toyota Camry, as required by Regulation  
9 3366, subdivision (a)(15).

10 b. Respondent failed to record on the invoice the center air distribution outlet  
11 temperature of the A/C system, as required by Regulation 3366, subdivision (a)(16).

12 **SEVENTEENTH CAUSE FOR DISCIPLINE**

13 **(Violations of Regulations)**

14 56. Respondent's Registration No. ARD 106881 is subject to disciplinary action pursuant  
15 to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation  
16 3356, subdivision (a)(2)(B), in a material respect, as follows: Respondent failed to list, describe,  
17 or identify on the invoice all parts supplied on the Bureau's 1996 Toyota Camry, specifically, the  
18 installation of a leak detecting dye in the A/C system of the vehicle.

19 **PEP BOYS AUTO #777**

20 **UNDERCOVER OPERATION #1: 1997 CHEVROLET TRUCK**

21 57. On September 30, 2011, a representative of the Bureau, acting in an undercover  
22 capacity ("operator"), took the Bureau's 1997 Chevrolet truck to Respondent's facility, Pep Boys  
23 Auto #777. The A/C compressor clutch coil ground wire below the diode connector on the  
24 Bureau-documented vehicle was broken. The operator had a Pep Boys advertisement/coupon for  
25 "\$10 off" on a "Fall Maintenance Package", which included a "Free A/C Check". The operator  
26 told Respondent's service writer, "Mikey", the A/C system did not blow cold and requested the  
27 free A/C system check on the vehicle. The operator signed and received a copy of a work order  
28 and left the facility.



1 system diagnosis was required to be performed on the vehicle as provided in Regulation 3366,  
2 subdivision (a), and should have been included in the "free" A/C system check.

3 **NINETEENTH CAUSE FOR DISCIPLINE**

4 **(Gross Negligence)**

5 62. Respondent's Registration No. ARD 150409 is subject to disciplinary action pursuant  
6 to Code section 9884.7, subdivision (a)(5), in that Respondent committed an act constituting  
7 gross negligence, as follows: Respondent removed the underhood fuse block cover on the  
8 Bureau's 1997 Chevrolet truck and installed it in the wrong location of the vehicle (the fuse block  
9 cover was placed next to the fuse block on the powertrain control module), leaving the underhood  
10 fuses and the electrical system exposed to dirt and moisture.

11 **TWENTIETH CAUSE FOR DISCIPLINE**

12 **(Departure from Trade Standards)**

13 63. Respondent's Registration No. ARD 150409 is subject to disciplinary action pursuant  
14 to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or  
15 disregarded accepted trade standards for good and workmanlike repair without the consent of the  
16 owner or the owner's duly authorized representative, in a material respect, as follows:  
17 Respondent failed to examine the broken ground wire at the A/C compressor clutch coil when  
18 performing the free A/C system check on the Bureau's 1997 Chevrolet truck.

19 **UNDERCOVER OPERATION #2: 1998 TOYOTA CAMRY**

20 64. On October 31, 2011, a representative of the Bureau, acting in an undercover capacity  
21 ("operator"), took the Bureau's 1998 Toyota Camry to Respondent's facility, Pep Boys Auto  
22 #777. A small hole had been made in the A/C condenser core on the Bureau-documented vehicle.  
23 The operator told Respondent's service writer, "Raul", he was interested in the advertised "Fall  
24 Maintenance Package" and requested an estimate for the service. The operator presented Raul  
25 with a Pep Boys internet advertisement/coupon for "\$10 off" on a "Fall Maintenance Package",  
26 which included a "Free A/C Check". Raul and the operator walked out to the vehicle. Raul  
27 raised the vehicle's hood and inspected under the hood. Raul told the operator that the Fall  
28 Maintenance Package would cost approximately \$63.29. Later, the operator told Raul that he had

1 just purchased the vehicle and that the A/C system needed to be checked because he had been  
2 advised that it was not working correctly. The operator asked Raul if the A/C system would be  
3 checked at no charge as stated on the Fall Maintenance Package. Raul stated that the A/C system  
4 would be checked at no charge. The operator signed and received a copy of an estimate and left  
5 the facility.

6 65. At approximately 1140 hours that same day, the operator called the facility and spoke  
7 with Raul. Raul informed the operator that the A/C was not working correctly due to leak in the  
8 system and recommended performing a system leak check to determine the cause of the leak.  
9 Raul told the operator that it would cost an additional \$44 to perform the leak check. The  
10 operator authorized the work.

11 66. At approximately 1320 hours, the operator contacted Raul. Raul advised the operator  
12 that the A/C leak was caused by a hole in the A/C condenser, which needed replacement. Raul  
13 recommended replacing the receiver driver at the same time due to contamination. Raul told the  
14 operator that it would cost approximately \$800 to replace the parts. Raul also recommended  
15 replacing the A/C belt due to weather cracking. The operator told Raul that he could not afford to  
16 have the A/C system repaired and advised him to note the proposed repairs on the invoice.

17 67. At approximately 1350 hours, the operator returned to the facility to retrieve the  
18 vehicle, paid the facility \$108.87, and received a copy of a final invoice. Later, another  
19 representative of the Bureau took photographs of Respondent's advertising signs that were posted  
20 at its facility. Respondent was offering, among other things, a "Free A/C check".

21 68. On November 8, 2011, the Bureau inspected the vehicle using the invoice for  
22 comparison. The Bureau found that Respondent's facility had departed from accepted trade  
23 standards in performing the A/C system check and had made a false or misleading statement on  
24 the invoice regarding the condition of the A/C belt on the vehicle.

### **TWENTY-FIRST CAUSE FOR DISCIPLINE**

#### **(False Advertising)**

25  
26  
27 69. Respondent's Registration No. ARD 150409 is subject to disciplinary action pursuant  
28 to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation

1 3371 by publishing, uttering, or making, or causing to be published, uttered, or made false or  
2 misleading statements or advertisements which are known to be false or misleading, or which by  
3 the exercise of reasonable care should be known to be false or misleading , as follows:

4 Respondent represented on the advertisement/coupon, described in paragraph 64 above, and the  
5 advertising signs posted at its facility that the A/C system check would be "free". In fact, the A/C  
6 system check on the Bureau's 1998 Toyota Camry was not "free" in that Respondent charged the  
7 operator for an A/C system leak evaluation. The A/C system leak evaluation was required to be  
8 performed on the vehicle as provided in Regulation 3366, subdivision (a), and should have been  
9 included in the "free" A/C system check.

10 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 70. Respondent's Registration No. ARD 150409 is subject to disciplinary action pursuant  
13 to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement  
14 which it knew or in the exercise of reasonable care should have known to be untrue or  
15 misleading, as follows: Respondent represented on the invoice that the A/C belt on the Bureau's  
16 1998 Toyota Camry was weather-cracked. In fact, the A/C and power steering drive belts were in  
17 good, serviceable condition without cracking, checking, or blemishes, and were not in need of  
18 replacement at the time the vehicle was taken to Respondent's facility.

19 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

20 **(Departure from Trade Standards)**

21 71. Respondent's Registration No. ARD 150409 is subject to disciplinary action pursuant  
22 to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or  
23 disregarded accepted trade standards for good and workmanlike repair without the consent of the  
24 owner or the owner's duly authorized representative, in the following material respects:

25 a. Respondent failed to examine the condenser coil on the Bureau's 1998 Toyota Camry  
26 for damage or leaks when performing the "free A/C system check" on the vehicle.

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28 ///

1 b. Respondent failed to record on the invoice the high and low side system operating  
2 pressures of the A/C system on the Bureau's 1998 Toyota Camry, as required by Regulation  
3 3366, subdivision (a)(15).

4 c. Respondent failed to record on the invoice the center air distribution outlet  
5 temperature of the A/C system, as required by Regulation 3366, subdivision (a)(16).

6 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

7 **(Violations of the Code)**

8 72. Respondent's Registration No. ARD 150409 is subject to disciplinary action pursuant  
9 to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section  
10 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent failed to  
11 document on the final invoice the operator's authorization for the A/C system leak evaluation on  
12 the Bureau's 1998 Toyota Camry.

13 **PEP BOYS AUTO #649**

14 **UNDERCOVER OPERATION #1: 1997 CHEVROLET TRUCK**

15 73. On September 22, 2011, a representative of the Bureau, acting in an undercover  
16 capacity ("operator"), took the Bureau's 1997 Chevrolet truck to Respondent's facility, Pep Boys  
17 Auto #649. The A/C compressor clutch coil ground wire below the diode connector on the  
18 Bureau-documented vehicle was broken. The operator had a Pep Boys advertisement/coupon for  
19 "\$10 off" on a "Fall Maintenance Package", which included a "Free A/C System Check". The  
20 operator met with Respondent's assistant manager, Cory Hooker ("Hooker"), and requested the  
21 "Free A/C System Check" on the vehicle. Hooker told the operator that the service would take a  
22 few minutes and that if the refrigerant in the vehicle was low, they would charge the operator  
23 \$39.95 to refill the system and add a leak detecting dye. Hooker had the operator sign an  
24 electronic signature pad, but did not provide him with a work order or estimate for the A/C  
25 system check. Later, Hooker informed the operator that the vehicle had Freon, but there was an  
26 electrical problem with the A/C system. Hooker told the operator that his technician needed time  
27 to diagnose the problem and that the diagnosis would cost \$48.50. The operator authorized the  
28 work and left the facility.



1 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 77. Respondent's Registration No. ARD 019378 is subject to disciplinary action pursuant  
4 to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or  
5 disregarded accepted trade standards for good and workmanlike repair without the consent of the  
6 owner or the owner's duly authorized representative, in the following material respects:

7 a. Respondent failed to examine the broken ground wire at the A/C compressor clutch  
8 coil when performing the free A/C system check on the Bureau's 1997 Chevrolet truck.

9 b. Respondent stripped the insulation from the A/C compressor clutch coil ground wire  
10 to expose the bare wire, then loosely twisted the two ends together to form a connection (the  
11 Bureau found during their inspection of the vehicle that this connection failed when minimal  
12 pressure was applied to the wiring harness).

13 c. Respondent failed to record on the invoice the high and low side system operating  
14 pressures of the A/C system on the Bureau's 1997 Chevrolet truck, as required by Regulation  
15 3366, subdivision (a)(15).

16 d. Respondent failed to record on the invoice the center air distribution outlet  
17 temperature of the AC system, as required by Regulation 3366, subdivision (a)(16).

18 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

19 **(Violations of the Code)**

20 78. Respondent's Registration No. ARD 019378 is subject to disciplinary action pursuant  
21 to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section  
22 9884.9, subdivision (a), of that Code in the following material respects: Respondent's assistant  
23 manager, Hooker, failed to provide the operator with a written estimate for the "free A/C system  
24 check" on the Bureau's 1997 Chevrolet truck.

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1 Hooker stated that he would give the operator a call later. At approximately 1530 hours, Hooker  
2 called the operator and told him that the A/C system had no or very little Freon, which indicated  
3 that the system had a leak. Hooker stated that they needed to perform an A/C leak evaluation,  
4 which would cost \$43. The operator authorized the service. At approximately 1610 hours, the  
5 operator returned to the facility to check on the status of the vehicle. Respondent's service  
6 advisor, Luis Montalvo ("Montalvo"), told the operator that Hooker had gone to lunch, but had  
7 prepared an estimate for the A/C problem. Montalvo stated that the condenser was leaking, and  
8 took the operator into the shop area. Montalvo had the technician show the operator where the  
9 leak was located on the condenser. Montalvo stated that they did not have the condenser in stock,  
10 that the part would have to be ordered, and that it would cost a total of \$292.39 for the A/C  
11 repairs. The operator asked Montalvo to make a note on the invoice as to what the vehicle needed  
12 and he would bring the vehicle back for the repairs. The operator paid Montalvo \$106.75 and  
13 received copies of the work order and a final invoice.

14 81. On October 27, 2011, the Bureau inspected the vehicle using the invoice for  
15 comparison. The Bureau found that Respondent's facility had departed from accepted trade  
16 standards in performing the A/C system check, failed to repair the vehicle as invoiced, and had  
17 made a false or misleading statement on the invoice regarding the condition of the rear brakes on  
18 the vehicle.

19 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

20 **(False Advertising)**

21 82. Respondent's Registration No. ARD 019378 is subject to disciplinary action pursuant  
22 to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation  
23 3371 by publishing, uttering, or making, or causing to be published, uttered, or made false or  
24 misleading statements or advertisements which are known to be false or misleading, or which by  
25 the exercise of reasonable care should be known to be false or misleading, as follows:  
26 Respondent represented on the advertisement/coupon, described in paragraph 79 above, that the  
27 A/C system check would be "free". In fact, the A/C system check on the Bureau's 1998 Toyota  
28 Camry was not "free" in that Respondent charged the operator for an A/C system leak evaluation.

1 The A/C system leak evaluation was required to be performed on the vehicle as provided in  
2 Regulation 3366, subdivision (a), and should have been included in the "free" A/C system check.

3 **THIRTIETH CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 83. Respondent's Registration No. ARD 019378 is subject to disciplinary action pursuant  
6 to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements  
7 which it knew or in the exercise of reasonable care should have known to be untrue or  
8 misleading, as follows:

9 a. Respondent's assistant manager, Hooker, represented to the operator that the rear  
10 brake pads on the Bureau's 1998 Toyota Camry were "paper thin". In fact, the rear brake pads  
11 were within manufacturer's specifications, had no defects, and were not in need of replacement at  
12 the time the vehicle was taken to Respondent's facility.

13 b. Respondent represented on the invoice that the rear brake pads on the Bureau's 1998  
14 Toyota Camry were low and recommended replacing the rear brake pads and machining the rear  
15 brake rotors. In fact, the rear brake pads were not in need of replacement, as set forth in  
16 subparagraph (a) above. Further, the rear brake rotors were in good, serviceable condition and  
17 had no scoring, blemishes, or other defects, were within manufacturer's specifications, and were  
18 not in need of machining at the time the vehicle was taken to Respondent's facility.

19 c. Respondent represented on the invoice that a leak detection dye had been added to the  
20 A/C system on the Bureau's 1998 Toyota Camry. In fact, a leak detection dye had not been added  
21 to the system.

22 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

24 84. Respondent's Registration No. ARD 019378 is subject to disciplinary action pursuant  
25 to Code section 9884.7, subdivision (a)(3), in that Respondent's assistant manager, Hooker, failed  
26 to provide the operator with a copy of the work order as soon as the operator signed the  
27 document.

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1 PRAYER

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

4 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
5 019389, issued to The Pep Boys Manny Moe & Jack of California, doing business as Pep Boys  
6 Auto #634;

7 2. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
8 106881, issued to The Pep Boys Manny Moe & Jack of California, doing business as Pep Boys  
9 Auto #668;

10 3. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
11 150409, issued to The Pep Boys Manny Moe & Jack of California, doing business as Pep Boys  
12 Auto #777;

13 4. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
14 019378, issued to The Pep Boys Manny Moe & Jack of California, doing business as Pep Boys  
15 Auto #649;

16 5. Revoking or suspending any other automotive repair dealer registration issued to The  
17 Pep Boys Manny Moe & Jack of California;

18 6. Ordering The Pep Boys Manny Moe & Jack of California, doing business as Pep  
19 Boys Auto #634, Pep Boys Auto #668, Pep Boys Auto #777, and Pep Boys Auto #649, to pay the  
20 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this  
21 case, pursuant to Business and Professions Code section 125.3;

22 7. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: JUNE 20, 2012

  
25 JOHN WALLAUCH  
26 Chief  
27 Bureau of Automotive Repair  
28 Department of Consumer Affairs  
State of California  
Complainant

SA2012104671