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7

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

10
11 In the Matter of the Accusation Against:

Case No. *77/15-50*

12 **MARTIN GERARDO ISLAS VEGA -**
OWNER, D.B.A.
13 **VEGA'S TRANSMISSIONS**
14 **1697 Pomona Ave. #3**
San Jose, CA 95112

ACCUSATION

15 **Automotive Repair Dealer Registration No.**
ARD 194895

16
17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
22 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

23 **Automotive Repair Dealer Registration No. ARD 194895**

24 2. On or about October 14, 1997, the Bureau of Automotive Repair issued Automotive
25 Repair Dealer Registration Number ARD 194895 to Martin Gerardo Islas Vega - Owner, d.b.a.
26 Vega's Transmissions (Respondent). The Automotive Repair Dealer Registration expired on June
27 30, 2013, and has not been renewed.

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

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

6 ". . . .

7 "(4) Any other conduct which constitutes fraud.

8 ". . . .

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

11 ". . . .

12 "(8) Making false promises of a character likely to influence, persuade, or induce a
13 customer to authorize the repair, service, or maintenance of automobiles.

14 ". . . .

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

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

24 8. Section 9884.6(a) of the Code states:

25 "It is unlawful for any person to be an automotive repair dealer unless that person has
26 registered in accordance with this chapter [the Automotive Repair Act] and unless that
27 registration is currently valid."

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1 9. Section 9884.8 of the Code states:

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

12 10. California Code of Regulations, title 16, section 3361.1 provides, in pertinent part:

13 ". . . .

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

19 "(1) All internal and external parts, including case and housing, have been thoroughly
20 cleaned and inspected.

21 "(2) The valve body has been disassembled and thoroughly cleaned and inspected unless
22 otherwise specified by the manufacturer.

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

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

25 "(A) Lined friction plates

26 "(B) Internal and external seals including seals that are bonded to metal parts

27 "(C) All sealing rings

28 "(D) Gaskets

1 "(E) Organic media disposable type filters (if the transmission is so equipped)

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

5 "(6) The transmission's electronic components, if so equipped, have been inspected and
6 found to be functioning properly or have been replaced with new, rebuilt, or unimpaired
7 components that function properly.

8 "(7) The torque converter has been inspected and serviced in accordance with subsection (d)
9 of this regulation.

10 "(d) The torque converter is considered to be part of the automatic transmission and shall be
11 examined, cleaned, and made serviceable before the rebuilt, remanufactured or overhauled
12 transmission is installed. If the torque converter cannot be restored to a serviceable condition, then
13 the customer shall be so informed. With the customer's authorization, the converter shall be
14 replaced with a new, rebuilt, remanufactured, reconditioned, overhauled, or unimpaired used
15 torque converter. A torque converter shall not be represented as rebuilt, remanufactured,
16 reconditioned, or overhauled unless the torque converter shell has been opened, all components of
17 the overrunning clutch assembly have been inspected and replaced as required, all friction
18 materials have been replaced as required, all rotating parts have been examined and replaced as
19 required, the shell has been resealed, and the unit has been pressure tested."

20 11. California Code of Regulations, title 16, section 3356 provides:

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

23 "(1) The invoice shall show the automotive repair dealer's registration number and the
24 corresponding business name and address as shown in the Bureau's records. If the automotive
25 repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b)
26 of Section 3371 of this chapter.

27 "(2) The invoice shall separately list, describe and identify all of the following:
28

1 Bureau reviewed with Respondent the laws and regulations pertinent to the business of an
2 automotive repair dealer. Among other items, the Bureau representatives specifically covered (1)
3 untrue or misleading statements; and (2) describing all service work performed and parts supplied
4 on invoices. The Bureau representatives made Respondent an offer to conduct training sessions
5 for service personnel at Respondent's facility, and they informed Respondent that future
6 compliance would be confirmed by documented undercover vehicles and/or station inspections.

7 **UNDERCOVER OPERATION #1 (1997 CHEVROLET)**

8 14. On April 10, 2014, an operator drove a Bureau-documented 1997 Chevrolet to
9 Respondent's shop and requested a transmission inspection.

10 15. The 1997 Chevrolet had been documented by the Bureau to create a transmission
11 symptom that can be readily diagnosed and repaired. Specifically, the 2-3 shift solenoid of the
12 transmission was rendered inoperative. With the 2-3 shift solenoid inoperative, the vehicle
13 operates in "failsafe" mode, and a diagnostic trouble code is stored in the Vehicle Control Module
14 that identifies the condition (as a fault in the 2-3 shift solenoid). The Malfunction Indicator Lamp
15 on the vehicle's instrument panel illuminates; an automotive repair dealer may discover the
16 source of the problem using a tester to retrieve the diagnostic trouble code. The 2-3 shift solenoid
17 is then readily accessible by removing the transmission oil pan.

18 16. In response to the operator's request for a transmission inspection, a mechanic from
19 Respondent's shop test-drove the 1997 Chevrolet with the operator. The mechanic told the
20 operator that the transmission was not shifting gears properly and that further diagnosis was
21 needed.

22 17. The operator authorized the further diagnosis, and the mechanic filled out a pink, un-
23 numbered document with the heading "Estimate and Invoice #[___]." The operator signed the
24 document. The document indicated an estimated cost of repairs in the amount of \$1,200. The
25 mechanic informed the operator that the transmission repairs would result in a better-than-new
26 transmission.

27 18. Later that day, the operator called Respondent's shop and spoke with a male that
28 identified himself as "Jerry." Jerry explained that they had determined that the source of the

1 problem was an internal electrical short. Jerry informed the operator that he could "patch" the
2 problem, meaning just repair the shifting problem, or that they could rebuild the transmission.
3 The operator stated that he wanted the transmission to work right, and Jerry recommended
4 rebuilding the transmission. Jerry stated that he would install heavy duty parts, and he estimated
5 the rebuild to cost \$1,100. The operator agreed, and Jerry requested the operator provide a \$600
6 deposit.

7 19. The operator then returned to Respondent's shop and spoke to Jerry, who was actually
8 Respondent. The operator provided Respondent \$500 instead of \$600, stating that \$500 was all
9 the money the operator had available. Respondent provided the operator a white, un-numbered
10 document entitled "Estimate and Invoice #[____]" as a receipt. The document showed the \$500
11 deposit and stated (in Spanish) "reconstruir trasmission," meaning "rebuild transmission."

12 20. On April 16, 2014, Respondent called to inform the operator that the vehicle was
13 ready. Respondent told the operator that they had repaired several electrical shorts.

14 21. The operator then returned to Respondent's shop to pick up the 1997 Chevrolet.
15 Respondent explained that due to an electrical voltage surge/ variance, the inside of the
16 transmission had been burned/damaged. The operator paid the \$600 balance that was remaining
17 on the \$1100 estimate, and Respondent provided the operator with another white, un-numbered
18 document entitled "Estimate and Invoice #[____]." This document also stated "reconstruir
19 trasmission" in a slightly different location than the prior "Estimate and Invoice #[____]." The
20 operator re-took possession of the vehicle.

21 22. None of the "Estimate and Invoice #[____]" documents provided to the operator
22 contained Respondent's automotive repair dealer registration number or the 1997 Chevrolet's
23 odometer reading. None of them separately listed parts that were supplied or contained any
24 description of any parts supplied (or stated whether such parts were new, used, reconditioned,
25 rebuilt, OEM crash parts, or OEM aftermarket crash parts). None of them included any subtotals
26 or indications regarding the amount of sales tax charged, if any.

27 23. The Bureau then re-inspected the 1997 Chevrolet. The Bureau discovered that
28 Respondent did not rebuild the transmission. Respondent painted the existing transmission case

1 silver (externally) and freshly painted blue the existing torque converter. Respondent did not even
2 disassemble the transmission. Respondent only replaced four solenoids, all of which were readily
3 accessible without disassembling the transmission. Respondent replaced the inoperative 2-3 shift
4 solenoid, and Respondent also (needlessly) replaced the 1-2 shift solenoid, the 3-2 shift solenoid,
5 and the torque converter clutch pulse width modulation solenoid.

6 24. Having not rebuilt the transmission, Respondent failed to replace many of the internal
7 parts that must be replaced in a transmission rebuild. Respondent did not replace any of the 1997
8 Chevrolet's 22 friction plates, did not replace the 2-4 band, and did not replace any of the 17
9 rubber square cut and lip seals or 3 metal clad seals. Respondent did not replace any of the 6
10 solid Teflon sealing rings or 3 angle cut Teflon sealing rings, did not replace any of the vehicle's 4
11 gaskets, and did not replace the 1997 Chevrolet's organic media disposable type filter. Finally,
12 having failed to even disassemble the transmission, Respondent did not clean and inspect all
13 internal parts of the transmission and did not clean and inspect the valve body.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Delinquent Registration)**

16 25. Respondent is subject to disciplinary action under Code section 9884.7(a)(6) in
17 conjunction with section 9884.6(a) in that Respondent operated as an automotive repair dealer
18 without a current, valid registration issued by the Bureau. Respondent's automotive repair dealer
19 registration expired in June 2013, nearly one year before Respondent performed work on the
20 Bureau's 1997 Chevrolet. The circumstances are more fully described above in "Parties" and in
21 "Undercover Operation #1 (1997 Chevrolet)."

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Untrue or Misleading Statements)**

24 26. Respondent is subject to disciplinary action under Code section 9884.7(a)(1) in that
25 Respondent made or authorized a statement, by any method or means, that was untrue or
26 misleading and which was known, or which by the exercise of reasonable care should have been
27 known, to be untrue or misleading. Specifically, Respondent wrote (in Spanish) on two of the
28 "Estimate and Invoice #[]" documents provided to the operator, "Reconstruir trasmission,"

1 meaning "rebuild transmission." This represented that Respondent would rebuild (for the first
2 document) and had rebuilt (for the second document) the transmission of the 1997 Chevrolet.
3 Respondent did not rebuild or even disassemble the transmission.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(False Promises)**

6 27. Respondent is subject to disciplinary action under Code section 9884.7(a)(8) in that
7 Respondent made false promises of a character likely to influence, persuade, or induce a customer
8 to authorize the repair, service, or maintenance of an automobile. Specifically, Respondent told
9 the operator that Respondent would use heavy duty parts in rebuilding the transmission.
10 Respondent replaced four solenoids, did not rebuild the transmission, and did not even
11 disassemble the transmission, let alone use heavy duty parts.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Conduct Constituting Fraud)**

14 28. Respondent is subject to disciplinary action under Code section 9884.7(a)(4) in that
15 Respondent engaged in conduct constituting fraud. Specifically, Respondent agreed to rebuild the
16 transmission of the 1997 Chevrolet, invoiced the operator for rebuilding the transmission, and
17 accepted full payment for rebuilding the transmission, but Respondent did not rebuild the
18 transmission. Respondent painted external parts of the existing transmission, changed out a few
19 solenoids, and returned the vehicle to the operator as if the transmission had been entirely rebuilt.
20 The circumstances are more fully described above in "Undercover Operation #1 (1997
21 Chevrolet)."

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Work Order Lacking Odometer Information)**

24 29. Respondent is subject to disciplinary action under Code section 9884.7(a)(2) in that
25 Respondent caused the operator to sign a work order that did not contain the automobile's
26 odometer reading at the time of repair. The circumstances are described above in "Undercover
27 Operation #1 (1997 Chevrolet)."

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Insufficient Invoice)**

3 31. Respondent is subject to disciplinary action under Code section 9884.7(a)(6) in
4 conjunction with California Code of Regulations, title 16, section 3356, in that Respondent failed
5 to provide the operator an invoice containing required elements. Specifically, as regard the
6 various "Estimate and Invoice #[]" documents provided to the operator:

- 7 A. The documents failed to include Respondent's automotive repair dealer
8 registration number.
- 9 B. The documents failed to list the parts supplied, with prices for each.
- 10 C. The documents failed to provide a description of the parts supplied, including
11 whether each part was new, used, reconditioned, rebuilt, an OEM crash part, or
12 a non-OEM aftermarket crash part.
- 13 D. The documents failed to include a subtotal for all service and repair work.
- 14 E. The documents failed to include a subtotal for all parts supplied.
- 15 F. The documents failed to list any sales tax charged.
- 16 G. In the alternative, Respondent's automotive repair dealer registration is subject
17 to discipline under Code section 9884.7(a)(6), in conjunction with section
18 9884.8, in that Respondent failed to provide the operator with any invoice at all.

19 **UNDERCOVER OPERATION #2 (1995 CHEVROLET)**

20 32. On August 4, 2014, an operator drove a Bureau-documented 1995 Chevrolet to
21 Respondent's shop and requested diagnosis of an improperly operating automatic transmission.

22 33. The 1995 Chevrolet had been documented to have a transmission symptom that can
23 be readily diagnosed and repaired. Specifically, the 2-3 shift solenoid of the transmission was
24 rendered inoperative. With the 2-3 shift solenoid inoperative, the vehicle operates in "failsafe"
25 mode, and a diagnostic trouble code is stored in the Powertrain Control Module that identifies the
26 fault (as a fault within the 2-3 shift solenoid). An automotive repair dealer may discover the
27 problem by retrieving the diagnostic trouble code with a tester. The 2-3 shift solenoid is then
28 readily accessible by removing the transmission pan.

1 34. In response to the operator's request for diagnosis, Respondent offered to test-drive
2 the vehicle. The operator agreed and accompanied Respondent. Respondent informed the
3 operator that the transmission appeared to be "stuck" in third gear and was not shifting.

4 35. Respondent asked the operator if the operator wanted Respondent to repair the
5 transmission or rebuild it. Respondent stated that he could not provide the same guarantee if he
6 repaired the transmission and that, if merely repaired, the transmission would probably have the
7 same problem in a couple of weeks. Respondent stated that if he rebuilt the transmission, he
8 would install heavy duty parts and would replace all of the internal parts. The operator stated that
9 he wanted the transmission repaired properly. Respondent indicated that he would rebuild it.

10 36. Respondent prepared a \$1,000 estimate/work order, and the operator signed it. The
11 document stated (in Spanish) "reconstruir trasmission," which means "rebuild transmission."
12 Respondent informed the operator that Respondent would install "Corvette pistons" and requested
13 a \$500 deposit, which the operator paid.

14 37. On August 6, 2014, Respondent called the operator and told him the vehicle was
15 ready. Respondent told the operator he had rebuilt the transmission and replaced all of the
16 internal parts.

17 38. The operator returned to Respondent's shop to pick up the vehicle. The operator
18 asked what repairs Respondent had made. Respondent stated he had replaced all of the discs,
19 switches, sensors, seals, bands, turbine, and had installed a "shift kit." Respondent told the
20 operator that the discs Respondent had installed were bigger and were heavy duty. The operator
21 paid the remaining \$500 due. Respondent obtained the prior written estimate/work order from the
22 operator and wrote "Pagado," meaning "Paid," on it. Respondent then returned the document to
23 the operator, and the operator reclaimed the 1995 Chevrolet.

24 39. This document, upon which Respondent had written "Pagado," was the only
25 document Respondent provided as an invoice. It was un-numbered. It did not contain
26 Respondent's automotive repair dealer registration number or the 1995 Chevrolet's odometer
27 reading. It did not separately list parts that were supplied and did not contain any description of
28 any parts supplied (or state whether such parts were new, used, reconditioned, rebuilt, OEM crash

1 parts, or OEM aftermarket crash parts). It did not include any subtotals or an indication regarding
2 the amount of sales tax charged, if any.

3 40. The Bureau then re-inspected the 1995 Chevrolet. None of the vehicle's pistons had
4 been replaced with pistons from a Corvette or otherwise. The transmission had been
5 disassembled or at least partially disassembled but not rebuilt. The existing transmission case had
6 been freshly painted silver (externally), and the torque converter had been freshly painted blue.
7 The torque converter similarly had not been rebuilt.

8 41. Respondent failed to replace multiple items that must be replaced in a transmission
9 rebuild. Respondent had not replaced 16 of the friction plates (four out of the five clutch packs).
10 Respondent had not replaced the 1995 Chevrolet's 2-4 band, had not replaced any of the 17 rubber
11 square cut and lip seals, and had not replaced 2 of the 3 metal clad seals. Finally, Respondent had
12 not replaced any of the 9 Teflon sealing rings or any of the 1995 Chevrolet's 4 gaskets.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Delinquent Registration)**

15 42. Respondent is subject to disciplinary action under Code section 9884.7(a)(6) in
16 conjunction with section 9884.6(a) in that Respondent operated as an automotive repair dealer
17 without a current, valid registration issued by the Bureau. Respondent's automotive repair dealer
18 registration expired in June 2013, more than one year before Respondent performed work on the
19 Bureau's 1995 Chevrolet. The circumstances are more fully described above in "Parties" and in
20 "Undercover Operation #2 (1995 Chevrolet)."

21 **NINTH CAUSE FOR DISCIPLINE**

22 **(Untrue or Misleading Statements)**

23 43. Respondent is subject to disciplinary action under Code section 9884.7(a)(1) in that
24 Respondent made or authorized a statement, by any method or means, that was untrue or
25 misleading and which was known, or which by the exercise of reasonable care should have been
26 known, to be untrue or misleading. Specifically:

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1 E. Respondent was required to replace all gaskets prior to indicating that the
2 transmission was rebuilt, but none of the 1995 Chevrolet's 4 gaskets were
3 replaced.

4 **FOURTEENTH CAUSE FOR DISCIPLINE**

5 **(Insufficient Invoice)**

6 48. Respondent is subject to disciplinary action under Code section 9884.7(a)(6) in
7 conjunction with California Code of Regulations, title 16, section 3356, in that Respondent failed
8 to provide the operator an invoice containing required elements. Specifically, with regard to the
9 only document provided to the operator that was arguably an invoice (on which Respondent wrote
10 "Pagado"):

- 11 A. The document did not contain Respondent's automotive repair dealer
12 registration number.
- 13 B. The document did not separately describe each part supplied (including whether
14 the part was new, used, reconditioned, rebuilt, an OEM crash part, or a non-
15 OEM aftermarket crash part), as well as the price for each part.
- 16 C. The document did not list a subtotal for service and repair work performed and
17 a subtotal for all parts supplied.
- 18 D. The document did not indicate the applicable sales tax, if any.
- 19 E. In the alternative, Respondent's automotive repair dealer registration is subject
20 to discipline under Code section 9884.7(a)(6), in conjunction with section
21 9884.8, in that Respondent failed to provide the operator with any invoice at all.

22 **DISCIPLINE CONSIDERATIONS**

23 49. To determine the degree of discipline, if any, to be imposed, Complainant alleges that
24 on or about November 5, 2012, the Bureau issued Citation # C2013-0311 to Respondent for
25 operating as an automotive repair dealer without a current, valid registration. That citation is now
26 final and is incorporated herein as if fully set forth.

27 50. To determine the degree of discipline, if any, to be imposed, Complainant alleges that
28 on or about September 5, 2013, the Bureau issued Citation # C2014-0152 to Respondent for

1 operating as an automotive repair dealer without a current, valid registration. That citation is now
2 final and is incorporated herein as if fully set forth.

3 **PRAYER**

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

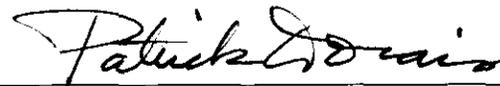
6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
7 194895, issued to Martin Gerardo Islas Vega - Owner, d.b.a. Vega's Transmissions;

8 2. Revoking, suspending, or placing on probation any other automotive repair dealer
9 registration issued to Martin Gerardo Islas Vega;

10 3. Ordering Martin Gerardo Islas Vega to pay the Bureau of Automotive Repair the
11 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
12 Professions Code section 125.3;

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

14
15
16 DATED: April 24, 2015



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

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