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9 **BEFORE THE**
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. 77/15-15

13 **LOLA HENRIETTA MARKS,**
14 **PRESIDENT; JERRY L. MARKS,**
15 **SECRETARY/TREASURER; MOTOR**
16 **MEISTER INC., DOING BUSINESS AS**
MOTOR MEISTER INC.
12217 Woodruff Ave.
Downey, CA 90241

A C C U S A T I O N

17 **Automotive Repair Registration No. ARD**
18 **197177**

19 Respondent.

20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about November 18, 1997, the Bureau of Automotive Repair issued
25 Automotive Repair Registration Number ARD 197177 to Lola Henrietta Marks, President; Jerry
26 L. Marks, Secretary/Treasurer; Motor Meister Inc., doing business as Motor Meister, Inc.
27 (Respondent). The Automotive Repair Registration was in full force and effect at all times
28 relevant to the charges brought herein and will expire on November 30, 2014, unless renewed.

1 **JURISDICTION**

2 3. This Accusation is brought before the Director of Consumer Affairs (Director) for the
3 Bureau of Automotive Repair, under the authority of the following laws. All section references
4 are to the Business and Professions Code unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed with
7 a disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

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

13 6. Section 9884.22 of the Code states:

14 “(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny
15 at any time any registration required by this article on any of the grounds for disciplinary action
16 provided in this article. The proceedings under this article shall be conducted in accordance with
17 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
18 Code, and the director shall have all the powers granted therein.

19 “. . .”

20 **STATUTORY PROVISIONS**

21 7. Section 22 of the Code states:

22 “(a) ‘Board’ as used in any provisions of this Code, refers to the board in which the
23 administration of the provision is vested, and unless otherwise expressly provided, shall include
24 ‘bureau,’ ‘commission,’ ‘committee,’ ‘department,’ ‘division,’ ‘examining committee,’ ‘program,’ and
25 ‘agency.’

26 “(b) Whenever the regulatory program of a board that is subject to review by the Joint
27 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2
28

1 (commencing with Section 473), is taken over by the department, that program shall be designated
2 as a "bureau."

3 8. Section 23.7 of the Code states:

4 "Unless otherwise expressly provided, 'license' means license, certificate, registration, or
5 other means to engage in a business or profession regulated by this code or referred to in Section
6 1000 or 3600."

7 9. Section 9884.7 of the Code states:

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

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

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

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

20 "(4) Any other conduct that constitutes fraud.

21 "(5) Conduct constituting gross negligence.

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

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

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

1 “(9) Having repair work done by someone other than the dealer or his or her employees
2 without the knowledge or consent of the customer unless the dealer can demonstrate that the
3 customer could not reasonably have been notified.

4 “(10) Conviction of a violation of Section 551 of the Penal Code.

5 “... .

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

10 10. Section 9884.8 of the Code states:

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

21 11. Section 9884.9 of the Code states:

22 “(a) The automotive repair dealer shall give to the customer a written estimated price for
23 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
24 before authorization to proceed is obtained from the customer. No charge shall be made for work
25 done or parts supplied in excess of the estimated price without the oral or written consent of the
26 customer that shall be obtained at some time after it is determined that the estimated price is
27 insufficient and before the work not estimated is done or the parts not estimated are supplied.
28 Written consent or authorization for an increase in the original estimated price may be provided by

1 electronic mail or facsimile transmission from the customer. The bureau may specify in regulation
2 the procedures to be followed by an automotive repair dealer if an authorization or consent for an
3 increase in the original estimated price is provided by electronic mail or facsimile transmission. If
4 that consent is oral, the dealer shall make a notation on the work order of the date, time, name of
5 person authorizing the additional repairs and telephone number called, if any, together with a
6 specification of the additional parts and labor and the total additional cost, and shall do either of
7 the following:

8 "(1) Make a notation on the invoice of the same facts set forth in the notation on the work
9 order .

10 "(2) Upon completion of the repairs, obtain the customer's signature or initials to an
11 acknowledgment of notice and consent, if there is an oral consent of the customer to additional
12 repairs, in the following language:

13 "I acknowledge notice and oral approval of an increase in the original estimated price.

14 _____
15 (signature or initials)"

16 "Nothing in this section shall be construed as requiring an automotive repair dealer to give a
17 written estimated price if the dealer does not agree to perform the requested repair.

18 "(b) The automotive repair dealer shall include with the written estimated price a statement
19 of any automotive repair service that, if required to be done, will be done by someone other than
20 the dealer or his or her employees. No service shall be done by other than the dealer or his or her
21 employees without the consent of the customer, unless the customer cannot reasonably be notified.
22 The dealer shall be responsible, in any case, for any service in the same manner as if the dealer or
23 his or her employees had done the service.

24 "(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto
25 body or collision repairs, shall provide an itemized written estimate for all parts and labor to the
26 customer. The estimate shall describe labor and parts separately and shall identify each part,
27 indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part
28 shall be identified on the written estimate and the written estimate shall indicate whether the crash

1 part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer
2 aftermarket crash part.

3 "(d) A customer may designate another person to authorize work or parts supplied in excess
4 of the estimated price, if the designation is made in writing at the time that the initial authorization
5 to proceed is signed by the customer. The bureau may specify in regulation the form and content
6 of a designation and the procedures to be followed by the automotive repair dealer in recording the
7 designation. For the purposes of this section, a designee shall not be the automotive repair dealer
8 providing repair services or an insurer involved in a claim that includes the motor vehicle being
9 repaired, or an employee or agent or a person acting on behalf of the dealer or insurer."

10 12. Section 9884.10 of the Code states:

11 "Upon request of the customer at the time the work order is taken, the automotive repair
12 dealer shall return replaced parts to the customer at the time of the completion of the work
13 excepting such parts as may be exempt because of size, weight, or other similar factors from this
14 requirement by regulations of the department and excepting such parts as the automotive repair
15 dealer is required to return to the manufacturer or distributor under a warranty arrangement. If
16 such parts must be returned to the manufacturer or distributor, the dealer at the time the work
17 order is taken shall offer to show, and upon acceptance of such offer or request shall show, such
18 parts to the customer upon completion of the work, except that the dealer shall not be required to
19 show a replaced part when no charge is being made for the replacement part."

20 13. Section 9884.11 of the Code states that "[e]ach automotive repair dealer shall maintain
21 any records that are required by regulations adopted to carry out this chapter [the Automotive
22 Repair 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 **REGULATORY PROVISIONS**

25 14. California Code of Regulations, title 16, section 3353, states:

26 "No work for compensation shall be commenced and no charges shall accrue without
27 specific authorization from the customer in accordance with the following requirements:

28 "...

1 "(d) Estimated Price to Tear Down, Inspect, Report and Reassemble. For purposes of this
2 article, to "tear down" shall mean to disassemble, and "teardown" shall mean the act of
3 disassembly. If it is necessary to tear down a vehicle component in order to prepare a written
4 estimated price for required repair, the dealer shall first give the customer a written estimated price
5 for the teardown. This price shall include the cost of reassembly of the component. The estimated
6 price shall also include the cost of parts and necessary labor to replace items such as gaskets, seals
7 and O rings that are normally destroyed by teardown of the component. If the act of teardown
8 might prevent the restoration of the component to its former condition, the dealer shall write that
9 information on the work order containing the teardown estimate before the work order is signed
10 by the customer.

11 "The repair dealer shall notify the customer orally and conspicuously in writing on the
12 teardown estimate the maximum time it will take the repair dealer to reassemble the vehicle or the
13 vehicle component in the event the customer elects not to proceed with the repair or maintenance
14 of the vehicle and shall reassemble the vehicle within that time period if the customer elects not to
15 proceed with the repair or maintenance. The maximum time shall be counted from the date of
16 authorization of teardown.

17 "After the teardown has been performed, the dealer shall prepare a written estimated price
18 for labor and parts necessary for the required repair. All parts required for such repair shall be
19 listed on the estimate. The dealer shall then obtain the customer's authorization for either repair or
20 reassembly before any further work is done.

21 ". . . ."

22 15. California Code of Regulations, title 16, section 3355, states:

23 "Those parts and components that are replaced and that are sold on an exchange basis are
24 exempt from the provisions of Section 9884.10 of the Act requiring the return of replaced parts to
25 the customer, provided the customer is informed that said parts are not returnable orally and by
26 written record on the work order and invoice. When a request is made before the work is started,
27 the dealer shall provide a reasonable opportunity to the customer to inspect the part."

28 16. California Code of Regulations, title 16, section 3356, states:

1 Marks, Jr.; Marks, Jr. told him they had a 3.9-liter piston kit ready for his engine. Marks, Jr. told
2 him that the labor would be the same but the kit could cost an additional \$1,995.00. Leung
3 needed pistons and four days later, agreed to the terms.

4 22. He asked Pike to pick up his vehicle. She told him that before they could pick it up,
5 he needed to sign a storage agreement. Leung chose the option that cost \$149.00 per month. He
6 asked that Respondent prepare two estimates: one for a stock rebuild with replacement pistons,
7 and the second with the big bore kit.

8 23. The next day, Respondent sent a transport to pick up Leung's vehicle. The engine
9 was boxed, shrink-wrapped, and put on a pallet. Leung was told that he would get an estimate
10 after they picked up the vehicle and examined the components.

11 24. When Leung delivered the vehicle, Respondent provided him with a different estimate.
12 The price was for \$4,625.00, \$630.00 more than what was advertised on eBay. There were
13 additional charges for inspections, "External Parts Prepping and Installation Process," "Inspect
14 Carfax Report," and "Hot Run and Dial In Process." This estimate did not include the pistons or
15 big bore kit. The eBay advertisement did not state that the service is a teardown or a rebuild, or
16 that the teardown would cost an additional \$500.00 above the "rebuild" price. These charges were
17 not disclosed on eBay. In fact, Respondent used this "rebuild" estimate to obtain Leung's
18 authorization to perform a "teardown" inspection of the engine and not for a "rebuilt" or
19 "remanufactured" engine.

20 25. Leung accepted and signed the new estimate. He was led to believe that the new
21 estimate was for the basic cost of rebuilding the engine. He was never told that the rebuild
22 estimate was actually a teardown estimate or that they would not begin the rebuild until after the
23 teardown was completed.

24 26. Jerry later spoke with Leung about the status of his vehicle. The cost rose from
25 \$3,995.00 to \$14,416.60. When Leung asked Marks Jr. to see the engine assembly area, he was
26 refused. Marks Jr. told him that the repairs would take six months to a year. Marks Jr. told him
27 that there were only two engine assemblers and that was why the process takes that long.

28

1 exercise of reasonable care should have known to be untrue or misleading. The violation includes
2 the following:

3 35. Respondent advertised a rebuilt engine on eBay for \$3,995.00. After Leung delivered
4 his engine and vehicle to Respondent, Respondent asked him to sign an estimate that increased the
5 amount to \$4,625.00. In fact and in truth, as Respondent well knew, the consumer was lead to
6 believe that they are receiving an engine rebuild, when in fact and in truth, as Respondent well
7 knew, they are just getting a teardown inspection with additional "external" or "chassis"
8 preparation and inspection charges. The additional inspections are designed to result in additional,
9 unsuspected charges. The final cost was substantially higher to rebuild the engine

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 36. Complainant re-alleges and incorporates by reference the allegations set forth above in
13 paragraphs 19-35.

14 37. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
15 (a)(4), in that Respondent committed acts which constitute fraud. Respondent agreed to rebuild
16 an engine for \$3,995.00. In fact and in truth, as Respondent well knew, Respondent was just
17 going to provide a teardown inspection with additional "external" or "chassis" preparation and
18 inspection charges. The additional inspections are designed to result in additional, unsuspected
19 charges Respondent intended to induce Leung to rely on his misrepresentation. Leung reasonably
20 relied on Respondent's representation that he would rebuild the engine for \$3,995.00. As a result,
21 the final cost to Leung was substantially higher to rebuild the engine.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(False Promise)**

24 38. Complainant re-alleges and incorporates by reference the allegations set forth above in
25 paragraphs 19-37.

26 39. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
27 (a)(8), in that Respondent made a false promise of a character likely to influence, persuade, or
28 induce a customer to authorize the repair, service, or maintenance of an automobile. Respondent

1 agreed to rebuild an engine for \$3,995.00. In fact and in truth, as Respondent well knew,
2 Respondent was just going to provide a teardown inspection with additional "external" or
3 "chassis" preparation and inspection charges. The additional inspections are designed to result in
4 additional, unsuspected charges.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Violation of Estimate and Authorization Requirements)**

7 40. Complainant re-alleges and incorporates by reference the allegations set forth above in
8 paragraphs 19-39.

9 41. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
10 (a)(6) in conjunction with Code section 9884.9 and the Regulations for violating the requirements
11 for estimates and authorization. Under Regulations section 3353, subdivision (d), the estimate
12 does not disclose that it is really an offer to perform a teardown inspection. It does not disclose
13 the time required to reassemble if repairs are declined. It does not disclose the cost of items
14 normally destroyed by the teardown process. It does not disclose the fact that the disassembly of
15 the engine may prevent reassembly.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Failure to Return Parts)**

18 42. Complainant re-alleges and incorporates by reference the allegations set forth above in
19 paragraphs 19-41.

20 43. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
21 (a)(6) in conjunction with section 9884.10 and Regulations section 3355 for failure to return parts
22 to the customer. Respondent charged \$280.00 to crate and package Leung's parts and then failed
23 to crate, package, and return several newer, expensive parts belonging to Leung.

24 **KEVIN KOPACZ COMPLAINT**

25 44. At all times alleged in this Accusation, Jerry L. Marks, Jr. and Mia Pike were
26 technicians, employees, partners, officers, or members of Respondent.

27 45. Kevin Kopacz contacted Respondent to get an estimate to perform an engine
28 conversion and change the original four-cylinder engine to a six-cylinder engine on his 1970

1 Porsche 914. Respondent estimated that it would cost \$9,995.00 it would be completed within 90
2 days. Kopacz agreed and shipped the vehicle.

3 46. Marks, Jr. and Pike told Kopacz that they needed a deposit to begin the work. By July
4 31, 2012, Kopacz paid Respondent \$7,000.00. By March 8, 2013, Kopacz had made a third
5 payment of \$4,792.95.

6 47. Kopacz would periodically ask Respondent for a status update on the vehicle.
7 Respondent would regularly provide vague answers. After being dissatisfied with the status of the
8 vehicle and these unclear answers, Kopacz requested that Respondent stop the transaction and
9 refund his money. Pike told him that they would only refund a portion, not including the parts
10 already purchased. Although Kopacz requested documentation of the parts purchased,
11 Respondent never provided such documentation.

12 48. After sixteen months, Respondent returned the vehicle to Kopacz without the engine,
13 transmissions, and components that they removed from the vehicle. He was provided an
14 assembled 6-cylinder engine but not the additional parts required to complete the installation.

15 49. Had Kopacz known that the repair would have taken longer than 90 days, he would
16 not have contracted with Respondent.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

19 50. Complainant re-alleges and incorporates by reference the allegations set forth above in
20 paragraphs 44-49.

21 51. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
22 (a)(1), in that Respondent made or authorized statements which Respondent knew or in the
23 exercise of reasonable care should have known to be untrue or misleading. Respondent told
24 Kopacz that the transaction would be completed within 90 days. In fact and in truth, as
25 Respondent well knew, the transaction would take longer than 90 days.

26 ///

27 ///

28 ///

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 52. Complainant re-alleges and incorporates by reference the allegations set forth above in
4 paragraphs 44-51.

5 53. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
6 (a)(4), in that Respondent committed acts which constitute fraud. Respondent told Kopacz that
7 the transaction would be completed within 90 days. In fact and in truth, as Respondent well knew,
8 the transaction would not be completed within 90 days. Respondent intended Kopacz to rely on
9 this statement to persuade him to proceed with the transaction. Kopacz justifiably relied on this
10 misrepresentation. As a result, Kopacz paid Respondent over \$11,000.00 for the transaction.

11 **EIGHTH CAUSE FOR DISCIPLINE**

12 **(False Promise)**

13 54. Complainant re-alleges and incorporates by reference the allegations set forth above in
14 paragraphs 44-53.

15 55. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
16 (a)(8), in that Respondent made a false promise of a character likely to influence, persuade, or
17 induce a customer to authorize the repair, service, or maintenance of an automobile. Respondent
18 told Kopacz that the transaction would be completed within 90 days. In fact and in truth, as
19 Respondent well knew, the transaction would not be completed within 90 days. Respondent
20 intended Kopacz to rely on this statement to persuade him to proceed with the transaction.
21 Kopacz justifiably relied on this misrepresentation. Had Kopacz known that the repair would have
22 taken longer than 90 days, he would not have contracted with Respondent.

23 **NINTH CAUSE FOR DISCIPLINE**

24 **(Failure to Return Parts)**

25 56. Complainant re-alleges and incorporates by reference the allegations set forth above in
26 paragraphs 44-55.

27
28

1 faulty, when in fact and in truth Tait had bought the battery less than two months before giving
2 Respondent the vehicle. Respondent said that an oil hose was rotted, when in fact and in truth he
3 had it replaced just before it was given to Respondent. Several items that Tait disputed were
4 removed from the work order.

5 65. On May 21, 2013, Tait attached a list of items that he wanted installed on his vehicle
6 and notified Respondent that before he would pay more money, he needed a completion date.
7 Eight days later, Marks, Jr. gave Tait the option to complete the recommended repairs or take the
8 vehicle in a disassembled state.

9 66. On June 12, 2013, Tait discussed the transaction with Marks, Jr. the engine and
10 transmission were assembled, but no accessories were installed. Tait agreed to have all the
11 recommended work done. He paid \$7,035.83. He paid the balance in full under the original
12 agreement. Respondent agreed to complete all repairs by July 31, 2013. In August 2013, the
13 transaction was completed.

14 **TENTH CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 67. Complainant re-alleges and incorporates by reference the allegations set forth above in
17 paragraphs 58-66.

18 68. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
19 (a)(1), in that Respondent made or authorized statements which Respondent knew or in the
20 exercise of reasonable care should have known to be untrue or misleading. The violation includes
21 the following:

22 a. Respondent told Tait that having the transaction completed within 120 days
23 “would not be a problem.” In fact and in truth, as Respondent well knew, it would take
24 substantially longer than 120 days to complete the transaction.

25 b. Respondent advertised a “Rebuilt Porsche 911 2.7 Engine” for \$2,995.00. In
26 fact and in truth, as Respondent well knew, these are not true representations of the parts and
27 services Respondent provides.

28

1 justifiably relied on this misrepresentation. Had Tait known that the transaction would have taken
2 longer than 120 days, he would not have contracted with Respondent.

3 **THIRTEENTH CAUSE FOR DISCIPLINE**

4 **(Violation of Estimate and Authorization Requirements)**

5 73. Complainant re-alleges and incorporates by reference the allegations set forth above in
6 paragraphs 58-72.

7 74. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
8 (a)(6) in conjunction with Code section 9884.9 and the Regulations for violating the requirements
9 for estimates and authorization. Under Regulations section 3353, subdivision (d), the estimate
10 does not disclose that it is really an offer to perform a teardown inspection. It does not disclose
11 the time required to reassemble if repairs are declined. It does not disclose the cost of items
12 normally destroyed by the teardown process. It does not disclose the fact that the disassembly of
13 the engine may prevent reassembly.

14 **RICHARD ALLEN TRAUGH COMPLAINT**

15 75. At all times alleged in this Accusation, Jerry L. Marks, Jr. and Mia Pike were
16 technicians, employees, partners, officers, or members of Respondent.

17 76. In August 2011, Richard Allen Traugh took the engine of his 2002 Porsche 996 to
18 Respondent. Jerry Marks, Jr. told him that he would inspect the engine and provide him an
19 estimate for the repairs.

20 77. On October 20, 2011, Marks, Jr. told Traugh that the repairs would cost \$12,925.00
21 and would take 90-120 days. Richard Allen Traugh contracted with Respondent to rebuild the
22 engine on his 2002 Porsche 996, and install additional custom options. Traugh authorized
23 \$12,925.00 for the rebuild and paid the amount in full.

24 78. On May 13, 2012, Traugh visited Respondent's facility to check on the progress of the
25 repairs. Respondent told him that the engine case was at the machine shop. In the following two
26 months, Traugh was told the case was at the machine shop being worked on.

27 79. In November 14, 2012, Respondent told Traugh that the engine was not completed.
28 Mia Pike showed him a finished pair of case halves that she represented were Traugh's.

1 Thereafter, Respondent continued to tell Traugh that the repair was almost done. In fact and in
2 truth, as Respondent well knew, this completed engine case was not Traugh's.

3 80. On February 16, 2013, Traugh decided to pick up his engine. When he arrived at
4 Respondent's facility, the case halves were not repaired. They were dirty, damaged, and appeared
5 the same as when he had first sent them to Respondent. Pike told him that the items he had been
6 previously shown were not his.

7 81. Traugh cancelled the contract. He received a new set of pistons, bearings, and
8 gaskets. He received a used crankshaft, connecting rods, and crankshaft cradle. Traugh agreed to
9 pay \$9,035.63 to retrieve his engine and parts. Respondent told him that Respondent would
10 refund him the difference.

11 82. In order to retrieve his property, Traugh paid Respondent \$9,425.00 for a completely
12 disassembled and unfinished engine and parts.

13 83. Some of the services that Traugh paid Respondent to do were not performed. The
14 engine casing was not cleaned, resurfaced, or prepped for piston installation. The crankshaft
15 cradle was not polished or deburred. The crankshaft mating surfaces were not resurfaced.
16 Respondent listed these items on the invoice as having been performed. Respondent charged
17 Traugh \$2,500.00 to perform multiple labor operations. The items that Respondent did not
18 complete make up a substantial portion of the labor that Respondent charged Traugh.

19 84. Had Traugh known that the transaction would take longer than 120 days, he would
20 not have contracted with Respondent. Had Traugh know that he would pay Respondent
21 \$9,425.00 for an incomplete and unfinished engine and parts, he would not have contracted with
22 Respondent.

23 **FOURTEENTH CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

25 85. Complainant re-alleges and incorporates by reference the allegations set forth above in
26 paragraphs 75-84.

27 86. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
28 (a)(1), in that Respondent made or authorized statements which Respondent knew or in the

1 exercise of reasonable care should have known to be untrue or misleading. The violation includes
2 the following:

3 a. Respondent told Traugh that the transaction would be completed within 120
4 days. In fact and in truth, as Respondent well knew, it would take substantially longer than 120
5 days to complete the transaction.

6 b. Respondent showed Traugh an engine case that was represented to be his to
7 persuade him that Respondent had worked on the engine case. In fact and in truth, as Respondent
8 well knew, that engine case was not Traugh's.

9 c. Respondent charged Traugh \$2,500.00 to perform multiple labor operations. In
10 fact and in truth, as Respondent well knew, this labor was not performed. Respondent intended
11 Traugh to rely on this statement to persuade him to pay Respondent. Traugh justifiably relied on
12 this misrepresentation by paying. As a result, the services on Traugh vehicle were not completed
13 as contracted.

14 **FIFTEENTH CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 87. Complainant re-alleges and incorporates by reference the allegations set forth above in
17 paragraphs 75-86.

18 88. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
19 (a)(4), in that Respondent committed acts which constitute fraud. The violation includes the
20 following:

21 a. Respondent told Traugh that the transaction would be completed within 120
22 days. In fact and in truth, as Respondent well knew, the transaction would not be completed
23 within 120 days. Respondent intended Traugh to rely on this statement to persuade him to
24 proceed with the transaction. Traugh justifiably relied on this misrepresentation. As a result, the
25 services on Traugh's vehicle were not completed as contracted.

26 b. Respondent charged Traugh \$2,500.00 to perform multiple labor operations. In
27 fact and in truth, as Respondent well knew, this labor was not performed. Respondent intended
28 Traugh to rely on this statement to persuade him to pay Respondent. Traugh justifiably relied on

1 this misrepresentation by paying. As a result, the services on Traugh vehicle were not completed
2 as contracted

3 **SIXTEENTH CAUSE FOR DISCIPLINE**

4 **(False Promise)**

5 89. Complainant re-alleges and incorporates by reference the allegations set forth above in
6 paragraphs 75-88.

7 90. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
8 (a)(8), in that Respondent made a false promise of a character likely to influence, persuade, or
9 induce a customer to authorize the repair, service, or maintenance of an automobile. The violation
10 includes the following:

11 a. Respondent told Traugh that the transaction would be completed within 120
12 days. In fact and in truth, as Respondent well knew, the transaction would not be completed
13 within 120 days. Respondent intended Traugh to rely on this statement to persuade him to
14 proceed with the transaction. Traugh justifiably relied on this misrepresentation. Had Traugh
15 known that the transaction would have taken longer than 120 days, he would not have contracted
16 with Respondent.

17 b. Respondent charged Traugh \$2,500.00 to perform multiple labor operations. In
18 fact and in truth, as Respondent well knew, this labor was not performed. Respondent intended
19 Traugh to rely on this statement to persuade him to pay Respondent. Traugh justifiably relied on
20 this misrepresentation by paying. As a result, the services on Traugh's vehicle were not completed
21 as contracted.

22 **SEVENTEENTH CAUSE FOR DISCIPLINE**

23 **(Invoice Violations)**

24 91. Complainant re-alleges and incorporates by reference the allegations set forth above in
25 paragraphs 75-90.

26 92. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
27 (a)(6) in conjunction with Code section 9884.8 in that Respondent failed to comply with invoice
28 requirements. Under Regulations section 3356, subdivision (a)(2) (A), Respondent failed to

1 record all service and repair work performed and the price for each service and repair. The labor
2 charges are not itemized.

3 AARON WOMACK COMPLAINT

4 93. At all times alleged in this Accusation, Jerry L. Marks, Jr. and Mia Pike were
5 technicians, employees, partners, officers, or members of Respondent.

6 94. On September 6, 2012, Aaron Womack towed his 1977 Porsche 911 to Respondent's
7 facility. Respondent agreed to remove and rebuild the engine and disassemble the transmission to
8 perform a teardown inspection. After the inspections, Womack contracted with Respondent to
9 rebuild the engine and transmission on his 1977 Porsche 911. Womack authorized \$11,749.85 for
10 the engine rebuild with the upgrade option of installing larger 3.4-liter pistons. Womack provide a
11 \$1,000.00 deposit. Marks Jr. told Womack that the repairs would be completed in 120 days.

12 95. On February 15, 2013, Respondent charged Womack's credit card \$500.00 without
13 authorization. Although Respondent later refunded Womack this amount, this incident persuaded
14 Womack to cancel the transaction. On February 28, 2013, Womack asked to cancel the
15 transaction. Womack asked to inspect the engine. Marks Jr. told him that the engine was sent out
16 to another facility for machine work. Marks Jr. did not tell him previously that the engine would
17 be subcontracted to another facility for machine work and did so without Womack's knowledge or
18 consent. Respondent refused to allow Womack to inspect other vehicle parts.

19 96. On March 5, 2013, Womack received an invoice from Respondent. The engine and
20 transmission would be returned to Womack in a disassembled state and there was a balance due of
21 \$4,072.87. Womack contacted the Bureau to assist him in meeting and conferring with
22 Respondent about the transaction.

23 97. On March 7, 2013, Womack and Respondent contracted to have Respondent
24 complete the rebuild with 3.2-liter pistons by the end of May 2013. Womack paid for \$4,000.00
25 as a deposit.

26 98. On May 3, 2013, Respondent told him that they no longer had the 3.2-liter pistons in
27 stock and offered to install the 3.4-liter piston as originally contracted by May 20, 2013.

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1 to pay Respondent. Womack justifiably relied on this misrepresentation by paying. As a result,
2 the services on Womack's vehicle were not completed as contracted.

3 **NINETEENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 104. Complainant re-alleges and incorporates by reference the allegations set forth above in
6 paragraphs 93-103.

7 105. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
8 (a)(4), in that Respondent committed acts which constitute fraud. The violations include the
9 following:

10 a. Respondent contracted with Womack to complete the transaction within 120
11 days. In fact and in truth, as Respondent well knew, the transaction would take longer than 120
12 days. Respondent intended Womack to rely on this statement to persuade him to pay Respondent.
13 Womack justifiably relied on this misrepresentation by paying Respondent. As a result, the
14 services on Womack's vehicle were not completed as contracted.

15 b. In 2013, Respondent contracted with Womack to complete the engine rebuild by
16 the end of May 2013. In fact and in truth, as Respondent well knew, this was not going to be
17 completed by May 2013. Respondent intended Womack to rely on this statement to persuade him
18 to pay Respondent. Womack justifiably relied on this misrepresentation by paying. As a result,
19 the services on Womack's vehicle were not completed as contracted.

20 **TWENTIETH CAUSE FOR DISCIPLINE**

21 **(False Promise)**

22 106. Complainant re-alleges and incorporates by reference the allegations set forth above in
23 paragraphs 93-105.

24 107. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
25 (a)(8), in that Respondent made a false promise of a character likely to influence, persuade, or
26 induce a customer to authorize the repair, service, or maintenance of an automobile. The
27 violations include the following:

1 a. Respondent contracted with Womack to complete the transaction within 120
2 days. In fact and in truth, as Respondent well knew, the transaction would take longer than 120
3 days. Respondent intended Womack to rely on this statement to persuade him to pay Respondent.
4 Womack justifiably relied on this misrepresentation by paying Respondent. As a result, the
5 services on Womack's vehicle were not completed as contracted.

6 b. In 2013, Respondent contracted with Womack to complete the engine rebuild by
7 the end of May 2013. In fact and in truth, as Respondent well knew, this was not going to be
8 completed by May 2013. Respondent intended Womack to rely on this statement to persuade him
9 to pay Respondent. Womack justifiably relied on this misrepresentation by paying. As a result,
10 the services on Womack's vehicle were not completed as contracted.

11 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

12 **(Unauthorized Subcontracted Repair)**

13 108. Complainant re-alleges and incorporates by reference the allegations set forth above in
14 paragraphs 93-107.

15 109. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
16 (a)(9), in conjunction with Regulations Section 3359 in that Respondent had repair work done by
17 someone other than the dealer or his or her employees without the knowledge or consent of the
18 customer. Respondent refused to disclose to Womack the location of subcontracted repairs.

19 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

20 **(Failure to Return Parts)**

21 110. Complainant re-alleges and incorporates by reference the allegations set forth above in
22 paragraphs 93-109.

23 111. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
24 (a)(6) in conjunction with section 9884.10 and Regulations section 3355 for failure to return parts
25 to the customer. Respondent refused to produce Womack's parts when requested.

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1 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

2 **(Violation of Estimate and Authorization Requirements)**

3 112. Complainant re-alleges and incorporates by reference the allegations set forth above in
4 paragraphs 93-111.

5 113. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
6 (a)(6) in conjunction with Code section 9884.9 and the Regulations for violating the requirements
7 for estimates and authorization. Under Regulations section 3353, subdivision (d), the estimate
8 does not disclose that it is really an offer to perform a teardown inspection. It does not disclose
9 the time required to reassemble if repairs are declined. It does not disclose the cost of items
10 normally destroyed by the teardown process. It does not disclose the fact that the disassembly of
11 the engine may prevent reassembly.

12 **ROBERT LANGHOLZ COMPLAINT**

13 114. At all times alleged in this Accusation, Jerry L. Marks, Jr. and Mia Pike were
14 technicians, employees, partners, officers, or members of Respondent.

15 115. Robert Langholz works in Washington State on Porsches and high-end German
16 vehicles. On June 16, 2011, he had a misfire condition on a 2005 Porsche Boxster for one of his
17 customers. He searched the internet for used parts and Respondent appeared in the search results.

18 116. Langholz contacted Respondent and spoke with Marks, Jr. Marks, Jr. told him that all
19 parts were in stock and immediately available. Marks Jr., offered his rebuilding services and the
20 "big bore" options.

21 117. Langholz's consumer requested the engine rebuild at Respondent's facility and asked
22 that the same engine be rebuilt to maintain Vehicle Information Number and engine number
23 consistency.

24 118. Under the contract, the rebuild would be completed within 120 days. The existing
25 2.7-liter engine would be utilized. The displacement would increase from 2.7-liters to 3.4-liters.
26 Langholz shipped to Respondent the 2.7-liter engine and all external components.

27 119. On August 17, 2011, Langholz bought an intermediate shaft bearing from IMS bearing
28 for \$423.75 and shipped it to Respondent at Marks Jr.'s request.

1 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Return Parts)**

3 132. Complainant re-alleges and incorporates by reference the allegations set forth above in
4 paragraphs 114-131.

5 133. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
6 (a)(6) in conjunction with section 9884.10 and Regulations section 3355 for failure to return parts
7 to the customer. Respondent failed to return the engine, IMS bearing, and other parts entrusted to
8 or charged by Respondent.

9 **OTHER MATTERS**

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

14 **PRAYER**

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

17 1. Revoking or suspending Automotive Repair Registration Number ARD 197177,
18 issued to Lola Henrietta Marks, President; Jerry L. Marks, Secretary/Treasurer; Motor Meister
19 Inc., doing business as Motor Meister, Inc.;

20 2. Ordering Lola Henrietta Marks, President; Jerry L. Marks, Secretary/Treasurer; Motor
21 Meister Inc., doing business as Motor Meister, Inc. to pay the Bureau of Automotive Repair the
22 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
23 Professions Code section 125.3; and

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

DATED: August 28, 2014 Patrick Dorais

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

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