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8
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. 77/13-55

13 **G & G 2000, INC. DBA EAST COUNTY**
14 **TIRE PROS AUTO REPAIR,**
15 **GERARD S. RICCIO, PRESIDENT**
844 North Johnson Avenue
El Cajon, CA 92020

A C C U S A T I O N

16 **Automotive Repair Dealer Registration No.**
17 **ARD202922**

18 Respondents.

19
20 Complainant alleges:

21 **PARTIES**

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

24 2. In 1998, the BAR issued Automotive Repair Dealer Registration Number
25 ARD202922 (registration) to G & G 2000, Inc. dba East County Tire Pros Auto Repair, Gerard S.
26 Riccio, President (Respondent). The registration was in full force and effect at all times relevant
27 to the charges brought herein and will expire on December 31, 2013, unless renewed.

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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 (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,
8 reissued or reinstated.

9 5. Section 477 of the Code states:

10 As used in this division:

11 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
12 'examining committee,' 'program,' and 'agency.'

13 "(b) 'License' includes certificate, registration or other means to engage in a business
14 or profession regulated by this code."

15 6. Section 9884.7 of the Code states, in pertinent part:

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

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

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

....

(4) Any other conduct that constitutes fraud.

....

(6) Failure in any material respect to comply with the provisions of this
chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or
regulations adopted pursuant to it.

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

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

5

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

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

12 7. Section 9884.13 of the Code provides that the expiration of a valid registration shall
13 not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an
14 automotive repair dealer or to render a decision invalidating a registration temporarily or
15 permanently.

16 STATUTORY PROVISIONS

17 8. Section 9884.8 of the Code states:

18 "All work done by an automotive repair dealer, including all warranty work, shall be
19 recorded on an invoice and shall describe all service work done and parts supplied. . . . One copy
20 of the invoice shall be given to the customer and one copy shall be retained by the automotive
21 repair dealer."

22 9. Section 9884.9 of the Code states, in pertinent part:

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

1 original estimated price is provided by electronic mail or facsimile transmission. If
2 that consent is oral, the dealer shall make a notation on the work order of the date,
3 time, name of person authorizing the additional repairs and telephone number
4 called, if any, together with a specification of the additional parts and labor and the
5 total additional cost,

6

7 **REGULATORY PROVISIONS**

8 10. California Code of Regulations, title 16, (CCR) section 3353, states, in pertinent part:

9 No work for compensation shall be commenced and no charges shall accrue
10 without specific authorization from the customer in accordance with the following
11 requirements:

12 (a) Estimate for Parts and Labor. Every dealer shall give to each customer a
13 written estimated price for labor and parts for a specific job.

14

15 (c) Additional Authorization. The dealer shall obtain the customer's
16 authorization before any additional work not estimated is done or parts not
17 estimated are supplied. This authorization shall be in written, oral, or electronic
18 form, and shall describe additional repairs, parts, labor and the total additional
19 cost.

20 (1) If the authorization from the customer for additional repairs, parts, or
21 labor in excess of the written estimated price is obtained orally, the dealer shall
22 also make a notation on the work order and on the invoice of the date, time, name
23 of the person authorizing the additional repairs, and the telephone number called,
24 if any, together with the specification of the additional repairs, parts, labor and the
25 total additional costs.

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27 (4) The additional repairs, parts, labor, total additional cost, and a
28 statement that the additional repairs were authorized either orally, or by fax, or by
e-mail shall be recorded on the final invoice to Section 9884.9 of the Business and
Professions Code. All documentation must be retained pursuant to Section
9884.11 of the Business and Professions Code.

. . . .

11. CCR, section 3356, states, in pertinent part:

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

. . . .

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

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

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

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6 12. CCR, section 3371, states, in pertinent part:

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

10 "...."

11 13. CCR, section 3373, states:

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

17 COST RECOVERY

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

22 CONSUMER COMPLAINT (JB)

23 15. On or about May 15, 2012, consumer JB could not start her 1998 Chevrolet Lumina.
24 She contacted Respondent to have them pick up her vehicle and check the inability to start
25 condition and a noise coming from the engine compartment. On May 16, 2012, JB was advised
26 by Respondent's employee, store manager, Mark Faraci (Faraci) that her vehicle needed a number
27 of repairs that included, in part; new gaskets for the intake manifold and plenum, the replacement
28 of the alternator, the belt tensioner, spark plugs and hoses. JB was given a verbal estimate of
\$1800.00 and after explaining to Faraci that she was on Social Security and had limited funds, she

1 authorized the repairs. Later that day Faraci notified JB that her vehicle was completed. He sent
2 some other employees out to JB's house and she followed them back to Respondent's facility to
3 pay the bill. JB noticed on the drive to the facility that the noise she had initially complained
4 about was still present. Faraci dismissed this noise as normal for her vehicle. He also informed
5 JB that he had installed a new battery at no charge. JB paid the bill, totaling \$1,814.06 with her
6 credit card and received a copy of an invoice number 1-29167 from Respondent.

7 16. On May 21, 2012, JB could not start the Lumina. Respondent checked the vehicle
8 again and told JB the battery they had installed was defective. Respondent then replaced the
9 battery.

10 17. On or about May 25, 2012, JB's caretaker had her boyfriend look at the vehicle. He
11 recommended JB take the Lumina to another repair dealer, because he suspected that some
12 repairs she had paid for at Respondent's facility were not completed.

13 18. On or about May 31, 2012, the Lumina again would not start and on June 7, 2012, JB
14 brought the Lumina to Devore Automotive and signed an estimate to have the vehicle inspected.
15 Following their inspection Devore Automotive informed JB that the vehicle was in no condition
16 to drive and that the Bureau of Automotive Repair would probably want to inspect her vehicle.
17 Devore did not charge JB for their inspection.

18 19. On June 12, 2012, JB filed a complaint with the Bureau of Automotive Repair. On
19 June 14, 2012 a representative from the Bureau inspected the Lumina using invoice #1-29167
20 from Respondent for comparison. The representative, after receiving authorization from JB had
21 Devore Automotive disassemble the Lumina for further inspection. The Bureau representative
22 found that Respondent had replaced the engine's serpentine belt tensioner, but the tensioner
23 installed was incorrect for this vehicle application causing the serpentine belt to ride incorrectly
24 on the pulley. It was also discovered that Respondent had not replaced the intake manifold and
25 plenum gaskets, as charged for on the invoice.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 20. Respondent's registration is subject to discipline under Code section 9884.7,
4 subdivision (a)(1), in that on or about May 16, 2012, Respondent made statements which he
5 knew, or which by exercise of reasonable care should have known to be untrue or misleading,
6 when he represented to the consumer that the intake manifold and plenum gaskets on her 1998
7 Chevrolet Lumina had been replaced when in fact, they had not.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 21. Respondent's registration is subject to discipline under Code section 9884.7,
11 subdivision (a)(4), in that on or about May 16, 2012, Respondent committed acts constituting
12 fraud by accepting payment for replacing the intake manifold and plenum gaskets when in fact,
13 these parts had not been replaced.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with the Code)**

16 22. Respondent has subjected his registration to discipline pursuant to Business and
17 Professions Code section 9884.7, subdivision (a)(6), in that on or about May 16, 2012
18 Respondent failed to comply with the following sections of the Code:

19 a) **Section 9884.8:** Respondent failed to describe on invoice #1-29167 the repairs
20 performed on the 1998 Chevrolet Lumina.

21 b) **Section 9884.9, subdivision (a):** Respondent failed to properly document the oral
22 authorization for the increase of estimate on the invoice and/or work order.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Violations of Regulations)**

25 23. Respondent has subjected his registration to discipline pursuant to Business and
26 Professions Code section 9884.7, subdivision (a)(6), in that on or about May 16, 2012
27 Respondent failed to comply with the following sections of the California Code of Regulations,
28 title 16, as follows:

1 a) **Section 3353, subdivision (c)(1):** Respondent failed to properly record additional
2 oral authorization for the increased estimate on the work order and invoice for the 1998 Chevrolet
3 Lumina.

4 b) **Section 3356, subdivision (a)(2)(A):** Respondent failed to record the replacement of
5 the battery and the price for that repair and part on the invoice for the Lumina.

6 c) **Section 3373:** Respondent stated on the invoice for the Lumina that the intake
7 manifold and plenum gaskets had been replaced, when in fact they had not. Respondent also
8 recorded a mileage figure on the same invoice that was advanced at least 508 miles beyond the
9 actual mileage. Both of these entries cause that document to be false and misleading.

10 UNDERCOVER OPERATION

11 24. On September 24, 2012, a Bureau of Automotive Repair undercover operator drove
12 the Bureau's 2004 Dodge Neon into Respondent's facility and asked the Respondent for an oil
13 change and free tire rotation and brake inspection. The undercover vehicle had been previously
14 documented as being only in need of an engine oil change and filter replacement. The undercover
15 operator signed and was given a copy of work order number [REDACTED]. Later that day
16 Respondent's employee, Faraci, told the undercover operator that she was overdue for a 60,000
17 mile service on the vehicle and that she needed a tune up, spark plugs, plug wires and have a fuel
18 injection service. Faraci also told the undercover operator that the vehicle's struts were worn out
19 and that Respondent's facility was currently running a special on them (buy three and get the
20 fourth for free). The undercover operator agreed to all of the recommended repairs. Faraci also
21 promised to balance the tires and do an alignment for free. The undercover operator approved the
22 estimate for repairs of \$1,100.00 including tax.

23 25. On September 25, 2012 the undercover operator returned to the Respondent's facility,
24 paid \$1,137.85 and received Invoice number [REDACTED]. She asked for, but was not provided the old
25 parts.

26 26. On or about September 27, 2012 a Bureau representative re-inspected the Neon. He
27 found that the oil filter and PCV valve had not been replaced, the tires had not been rotated, the
28 brakes had not been cleaned and adjusted, and the brake fluid had not been flushed, as invoiced.

1 He also found that the ignition wires, spark plugs and the struts had been unnecessarily replaced
2 and the dust shields on the rear struts had not been re-installed. Respondent also unnecessarily
3 aligned the steering system and performed a fuel system cleaning.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(False and Misleading Statements)**

6 27. Respondent's registration is subject to discipline under Code section 9884.7,
7 subdivision (a)(1), in that on or about September 24, 2012, Respondent made statements which he
8 knew, or which by exercise of reasonable care should have known to be untrue or misleading,
9 when he told the undercover operator that the 2004 Dodge Neon needed replacement of the front
10 and rear struts, spark plugs, spark plug wires, PCV valve and a fuel system cleaning, when in fact
11 all of these parts and systems were new and/or in good serviceable condition.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 28. Respondent's registration is subject to discipline under Code section 9884.7,
15 subdivision (a)(4), in that on or about September 24, 2012, Respondent made a false and
16 misleading representation to the operator regarding the condition of the struts, spark plugs, plug
17 wires, PCV valve and fuel system and on or about September 25, 2012 accepted payment for
18 those parts and services as set forth in paragraphs 24 through 26, above. Respondent also
19 accepted payment for an oil filter and PCV valve that were not replaced, and a tire rotation, rear
20 brake clean and adjust, and brake fluid flush that were not performed.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with the Code)**

23 29. Respondent has subjected his registration to discipline pursuant to Business and
24 Professions Code section 9884.7, subdivision (a)(6), in that on September 24, 2012, Respondent
25 failed to comply with the following sections of the Code:

26 a) **Section 9884.7, subdivision (a)(7):** Respondent failed to follow accepted trade
27 standards in that on September 24, 2012, he replaced the rear struts, but left the dust shields off.

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2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to G & G 2000, Inc. dba East County Tire Pros Auto Repair, Gerard S. Riccio, President;

3. Ordering G & G 2000, Inc. dba East County Tire Pros Auto Repair, Gerard S. Riccio, President to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 4/15/13

John Wallauch
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

Doug Balatte

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