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

In the Matter of the Accusation Against: **MARTINS TRANSMISSION & AUTO REPAIR** **JOSE MARTIN MERCADO, OWNER** **2828 S. Elm Avenue** **Fresno, CA 93706** **Automotive Repair Dealer Reg. No. ARD 208330** Respondent.	Case No. 77/13-18 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. In or about 1999, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 208330 to Jose Martin Mercado ("Respondent"), owner of Martins Transmission & Auto Repair. Respondent's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

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JURISDICTION

3. Business and Professions Code ("Code") section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

4. Code section 9884.13 states, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

STATUTORY AND REGULATORY PROVISIONS

(Statutory Provisions)

5. Code section 9884.7 states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
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> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
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> (4) Any other conduct that constitutes fraud.
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> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
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> (7) Any willful departure from or disregard of accepted trade standards for 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 . . .

6. Code section 9884.7, subdivision (c), states, in pertinent part, that the Director may suspend, revoke, or 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 has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

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7. Code section 9884.9, subdivision (a), states, in pertinent part:

> The automotive repair dealer shall give to the customer a written 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 the customer . . .

8. Code section 22, subdivision (a), states:

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

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

(Regulatory Provisions)

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

> No work for compensation shall be commenced and no charges shall accrue without specific authorization from the customer in accordance with the following requirements:
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> . . . .
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> (d) Estimated Price to Tear Down, Inspect, Report and Reassemble. For purposes of this article, to tear down" shall mean to disassemble, and teardown" shall mean the act of disassembly. If it is necessary to tear down a vehicle component in order to prepare a written estimated price for required repair, the dealer shall first give the customer a written estimated price for the teardown. This price shall include the cost of reassembly of the component. The estimated price shall also include the cost of parts and necessary labor to replace items such as gaskets, seals and O rings that are normally destroyed by teardown of the component. If the act of teardown might prevent the restoration of the component to its former condition, the dealer shall write that information on the work order containing the teardown estimate before the work order is signed by the customer.
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> The repair dealer shall notify the customer orally and conspicuously in writing on the teardown estimate the maximum time it will take the repair dealer to reassemble the vehicle or the vehicle component in the event the customer elects not to proceed with the repair or maintenance of the vehicle and shall reassemble the vehicle within that time period if the customer elects not to proceed with the repair or maintenance. The maximum time shall be counted from the date of authorization of teardown.
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> After the teardown has been performed, the dealer shall prepare a written estimated price for labor and parts necessary for the required repair. All parts required for such repair shall be listed on the estimate. The dealer shall then obtain the

customer's authorization for either repair or reassembly before any further work is done . . .

11. Regulation 3356 states, in pertinent part:

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

. . . .

(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 . . .

12. Regulation 3361.1 states, in pertinent part:

The following minimum requirements specifying accepted trade standards for good and workmanlike rebuilding of automatic transmissions are intended to define terms that have caused confusion to the public and unfair competition within the automotive repair industry. The term "automatic transmission" shall also apply to the automatic transmission portion of transaxles for the purposes of this regulation, unless both the automatic transmission portion and the differential portion of the transaxle share a common oil supply, in which case the term "automatic transmission" shall apply to both portions of the transaxle . . . All automotive repair dealers engaged in the repair, sale, or installation of automatic transmissions in vehicles covered under the Act shall be subject to the following minimum requirements:

(a) Before an automatic transmission is removed from a motor vehicle for purposes of repair or rebuilding, it shall be inspected. Such inspection shall determine whether or not the replacement or adjustment of any external part or parts will correct the specific malfunction of the automatic transmission. In the case of an electronically controlled automatic transmission, this inspection shall include a diagnostic check, including the retrieval of any diagnostic trouble codes, of the electronic control module that controls the operation of the transmission. If minor service and/or replacement or adjustment of any external part or parts and/or of companion units can reasonably be expected to correct the specific malfunction of the automatic transmission, then prior to removal of the automatic transmission from the vehicle, the customer shall be informed of that fact as required by Section 3353 of these regulations. Before removing an automatic transmission from a motor vehicle, the dealer shall also comply with the provisions of section 3353(d), and disclose any applicable guarantee or warranty as provided in sections 3375, 3376 and 3377 of these regulations . . .

. . . .

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

. . . .

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

. . . .

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

(C) All sealing rings

(D) Gaskets

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

COST RECOVERY

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

CONSUMER COMPLAINT (TORRES): 2004 NISSAN SENTRA

14. On or about November 18, 2010, the Bureau received a complaint from Alberto Torres ("Torres"), stating that he paid Respondent's facility over $1,200 to repair a transmission shifting problem on his 2004 Nissan Sentra, but the problem had not been resolved despite several visits to the facility.

15. On November 23, 2010, a representative of the Bureau contacted Torres, who related the following: On or about July 7, 2010, Torres took the vehicle to Respondent's facility because the transmission would "jump" when cold and had a hard up-shift (the "check engine light" was also illuminated). Torres authorized the facility to perform a diagnosis of the vehicle for $125. Later, the facility informed Torres that the shifting problem was due to the valve body. Torres paid the facility $650 to repair the part. On or about August 9, 2010, Torres took the vehicle back to the facility due to the same shifting problem. Torres paid the facility $616.55 to remove the valve body and replace various valves and a separator plate. Torres returned the vehicle to the facility on at least three other occasions due to the same problem, but the facility could not find

anything wrong with the vehicle. Torres requested his money back, but Respondent refused to issue him a refund.

16. On January 18, 2011, the Bureau obtained copies of Respondent's repair records on the vehicle, including a repair order dated August 9, 2010.

FIRST CAUSE FOR DISCIPLINE

(Violations of the Code)

17. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent stated on the repair order that the original estimate price was "350.00 + parts", but did not list the specific parts that were needed on Torres' 2004 Nissan Sentra.

CONSUMER COMPLAINT (RODRIGUEZ): 1994 TOYOTA PICKUP

18. On or about April 30, 2010, Carlos Rodriguez ("Rodriguez") towed his 1994 Toyota pickup to Respondent's facility because it would not move forward or in reverse. Rodriguez signed a repair order and a "Job Approval Worksheet", authorizing the facility to perform a diagnosis of the vehicle. Later that same day, Rodriguez authorized the facility to remove, disassemble, and inspect the transmission for damage.

19. On or about May 3, 2010, Rodriguez signed the Job Approval Worksheet, authorizing the facility to repair or rebuild the transmission for $1,250.

20. On or about May 6, 2010, Rodriguez went to the facility to retrieve the vehicle, paid $1,300 for the repairs, and received a copy of an invoice. The invoice indicated that the transmission repairs, including the torque converter, were covered by a 12 month, 12,000 mile warranty.

21. On or about January 3, 2011, Rodriguez towed the vehicle back to the facility because it began smoking, and the transmission was making noise and leaking fluid. Rodriguez authorized the facility to perform a diagnosis of the vehicle for $125. Respondent told Rodriguez that he would waive the diagnostic fee if the vehicle's problem was covered under the warranty.

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22. On or about January 10, 2011, Respondent called Rodriguez and told him that the engine had overheated, damaging the torque converter. Respondent stated that the warranty was not valid due to Rodriguez's negligence.

23. On or about January 11, 2011, Rodriguez filed a complaint with the Bureau.

24. On or about January 12, 2011, a representative of the Bureau went to the facility and obtained copies of the repair records on the vehicle. Respondent told the representative that while overhauling the transmission, he found that the radiator was leaking. Respondent recommended replacing the radiator and radiator cap, but Rodriguez declined the repairs. Respondent claimed that the torque converter failed due to Rodriguez's negligence, which voided the warranty.

SECOND CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

25. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, as follows: Respondent failed to provide Rodriguez with a written teardown estimate before removing the transmission from Rodriguez's 1994 Toyota pickup, in violation of Regulations 3361.1, subdivision (a), and 3353, subdivision (d).

THIRD CAUSE FOR DISCIPLINE

(Violations of the Code)

26. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent failed to provide Rodriguez with a written estimate for parts and labor necessary for a specific job, the repairing or rebuilding of the transmission on Rodriguez's 1994 Toyota pickup.

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FOURTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

27. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivision (a)(2)(A), in a material respect, as follows: Respondent failed to list, describe or identify on the invoice all repair work performed on Rodriguez's 1994 Toyota pickup; specifically, the replacement of the air filter and shift cable.

UNDERCOVER OPERATION #1: 1996 CHEVROLET C-1500 PICKUP

28. On February 10, 2011, an undercover operator of the Bureau ("operator") took the Bureau's 1996 Chevrolet C-1500 pickup to Respondent's facility. The 1-2 (A) shift solenoid on the Bureau-documented vehicle was damaged. The operator told Respondent's employee, "Elizabeth", that she wanted the vehicle checked because the transmission was not shifting correctly and the check engine light was illuminated. Elizabeth stated that it would cost $125 to diagnose the problem with the vehicle. The operator signed and received a copy of a repair order, then left the facility.

29. At approximately 1300 hours that same day, Elizabeth called the operator and told her that there was a problem with a shift solenoid. Elizabeth stated that they would need to remove the transmission pan to test the electrical components and check for internal damage, and that the repairs should not cost over $700. The operator told Elizabeth that she would have to call her back. At approximately 1330 hours, the operator called Elizabeth and authorized the repairs.

30. On February 11, 2011, Elizabeth called the operator and informed her that the vehicle was ready. Elizabeth told the operator that they had to replace the 2-4 servo assembly, in addition to the shift solenoid and the transmission pan gasket, because the shaft on the servo assembly was bent.

31. On February 14, 2011, the operator returned to the facility to retrieve the vehicle, paid $700 in cash for the repairs, and received a copy of an invoice.

32. On and between February 18 and 22, 2011, the Bureau inspected the vehicle using the invoice for comparison and found that the facility failed to repair the vehicle as invoiced.

FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

33. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent's employee, Elizabeth, represented to the operator that the shaft or servo pin on the 2-4 servo assembly in the Bureau's 1996 Chevrolet C-1500 pickup was bent. In fact, the 2-4 servo pin was not bent at the time the vehicle was taken to Respondent's facility. Further, the 2-4 servo assembly was in good condition and was not impaired, defective, substantially worn, or in need of replacement.

b. Respondent represented on the invoice that the 2-4 servo assembly in the Bureau's 1996 Chevrolet C-1500 pickup was replaced. In fact, only two components of the assembly were replaced on the vehicle (the pin and pin spring).

SIXTH CAUSE FOR DISCIPLINE

(Fraud)

34. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows: Respondent obtained payment from the operator for replacing the 2-4 servo assembly in the Bureau's 1996 Chevrolet C-1500 pickup. In fact, only two components of the assembly were replaced on the vehicle (the pin and pin spring).

CONSUMER COMPLAINT (GODINEZ): 1991 GMC 3500 TRUCK

35. On or about May 11, 2011, Raul Godinez ("Godinez") removed the transmission from his 1991 GMC 3500 truck and took it to Respondent's facility. Godinez told the facility that the vehicle would not go into forward or reverse gear and signed a repair order, authorizing them to check the transmission for $125. The facility inspected the transmission and informed Godinez that it had severe internal damage. Godinez authorized the facility to rebuild the transmission.

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36. On or about May 25, 2011, Godinez returned to the facility to pick up the transmission, paid $566.46 for the repairs, and received a copy of an invoice. The invoice indicated that the repairs were covered by a 30 day warranty.

37. On or about June 20, 2011, Godinez reinstalled the transmission in the vehicle and found that the vehicle would not go into reverse. Godinez took the vehicle to the facility to have the problem diagnosed. Later, the facility called Godinez and informed him that the transmission was removed from the vehicle and disassembled and that the transmission was burnt. Respondent claimed that Godinez "broke the reverse" and was responsible for the damage to the transmission. Respondent told Godinez that it would cost $1,000 to rebuild the transmission.

38. On or about July 6, 2011, Godinez filed a complaint with the Bureau.

39. On or about August 8, 2011, the Bureau obtained copies of the facility's repair records on the vehicle, including a repair order dated June 20, 2011.

SEVENTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

40. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, as follows: On or about June 20, 2011, Respondent failed to provide Godinez with a written teardown estimate before removing the transmission from Godinez's 1991 GMC 3500 truck, in violation of Regulations 3361.1, subdivision (a), and 3353, subdivision (d).

EIGHTH CAUSE FOR DISCIPLINE

(Violations of the Code)

41. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in the following material respects: On or about June 20, 2011, Respondent failed to provide Godinez with a written estimate for parts and labor necessary for a specific job and obtain

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Godinez's authorization before removing and disassembling the transmission on Godinez's GMC 3500 truck.

UNDERCOVER OPERATION #2: 1997 CHEVROLET C-1500 PICKUP

42. On July 6, 2011, an undercover operator of the Bureau ("operator") took the Bureau's 1997 Chevrolet C-1500 pickup to Respondent's facility. A defective reactive sun shell had been installed in the transmission of the Bureau-documented vehicle. The operator met with Elizabeth and told her that the transmission would not go into reverse. Elizabeth stated that it would cost $125 to perform a diagnosis of the transmission. The operator signed and received a copy of a repair order, then left the facility.

43. On July 7, 2011, Elizabeth called the operator and told her that they had completed their diagnosis. Elizabeth stated that the transmission had no reverse or upshift, "first gear jumped to third gear", and there was no overdrive. Elizabeth told the operator that they could either replace the transmission in the vehicle with a unit they had in stock or rebuild the existing transmission. The operator asked Elizabeth about the repair costs. Elizabeth told the operator that it would cost $1,840 for a transmission with a three year, 36,000 mile warranty and $1,350 for a transmission with a one year, 12,000 mile warranty. The operator stated that she would call Elizabeth back.

44. At approximately 1345 hours that same day, the operator called Elizabeth and authorized her to rebuild the transmission in the vehicle for $1,350 with the one year warranty. Elizabeth stated that the cost would be the same whether they rebuilt the existing transmission or replaced it with a stock unit. The operator told Elizabeth that she wanted the transmission rebuilt.

45. On July 11, 2011, the operator returned to the facility to retrieve the vehicle and met with Elizabeth. Elizabeth went over the invoice with the operator and circled items 4 and 7 in the warranty section. Item #4 indicated that the transmission repairs were covered by a 12 month, 12,000 mile warranty; Item #7 indicated that the warranty covered "parts only". Elizabeth informed the operator that they had replaced the transmission in the vehicle. The operator told Elizabeth that she had asked her to rebuild the transmission. Elizabeth did not respond. The operator paid Elizabeth $1,410.89 for the repairs and received a copy of the above invoice.

46. On July 19, 2011, the Bureau inspected the vehicle using the invoice for comparison and found that the replacement transmission was defective and in poor operating condition and had not been overhauled or rebuilt to accepted trade standards.

NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

47. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent represented on the invoice that a new overhaul kit had been installed in the replacement transmission. In fact, a complete overhaul kit had not been installed in the unit in that various O-ring seals and gaskets were substantially worn or used (an overhaul kit would have included all new O-ring seals and gaskets).

b. Respondent represented on the invoice that the operator had authorized the facility to replace the transmission in the Bureau's 1997 Chevrolet C-1500 pickup with a "repaired stock unit". In fact, the operator had authorized the facility to rebuild the existing transmission in the vehicle.

TENTH CAUSE FOR DISCIPLINE

(Fraud)

48. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:

a. Respondent obtained payment from the operator for installing a new overhaul kit in the Bureau's 1997 Chevrolet C-1500 pickup. In fact, a complete overhaul kit had not been installed in the vehicle, as set forth in subparagraph 47 (a) above.

b. Respondent obtained payment from the operator for installing a "repaired stock transmission" in the Bureau's 1997 Chevrolet C-1500 pickup. In fact, the operator had authorized the facility to rebuild the existing transmission. Further, the replacement transmission was defective and in poor operating condition, and had not been overhauled or rebuilt to accepted trade standards, as set forth in paragraph 49 below.

ELEVENTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

49. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in the following material respects:

a. Respondent installed O-ring seals and gaskets in the replacement transmission that were substantially worn or used, in violation of Regulation 3361.1, subdivision (c).

b. Respondent installed a replacement transmission in the Bureau's 1997 Chevrolet C-1500 pickup which was defective in that the third and fourth gear steel and fiber clutches showed signs of failure (blue and black spots caused by overheating) and the bolts retaining the control body valve assembly were not evenly tightened (proper torque of these bolts is critical to the operation of the transmission). Further, the transmission was in poor operable condition with flare-ups between shifts, slippage, and hesitation.

c. Respondent failed to disclose to the operator the complete terms of the warranty before removing the transmission from the Bureau's 1997 Chevrolet C-1500 pickup in that Respondent failed to inform the operator that the warranty covered parts only, in violation of Regulations 3361.1, subdivision (a).

TWELFTH CAUSE FOR DISCIPLINE

(Violations of the Code)

50. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent replaced the transmission in the Bureau's 1997 Chevrolet C-1500 pickup when, in fact, the operator had authorized Respondent to rebuild the existing transmission in the vehicle.

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CONSUMER COMPLAINT (MASSEY): 1981 FORD F100 TRUCK

51. On or about May 31, 2011, Vincent Massey ("Massey") took his 1981 Ford F100 truck to Respondent's facility because the transmission would not go into forward gear, just reverse. Massey signed an estimate, authorizing the facility to remove the transmission and "repair damage only" for $600, not including "fluid or taxes".

52. On or about July 1, 2011, Massey went to the facility to retrieve the vehicle and paid $670 for the repairs.

53. On or about July 6, 2011, Massey returned the vehicle to the facility due to the same transmission problem. Respondent told Massey that he would not test drive the vehicle because the radiator was leaking. Respondent also informed Massey that the transmission was leaking as well and refused to perform any warranty repairs on the vehicle. That same day, Massey filed a complaint with the Bureau.

54. On August 18, 2011, a representative of the Bureau went to the facility and obtained copies of Respondent's repair records on the vehicle, including the above estimate and a final invoice. The representative reviewed the estimate with Respondent and asked him why he gave Massey an estimate of $600 without performing a diagnosis of the transmission. Respondent told the representative that Massey wanted them to remove the transmission and replace "only the broken parts", and that the facility removed and overhauled the transmission.

THIRTEENTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

55. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, as follows: Respondent failed to provide Massey with a written teardown estimate before removing the transmission from Massey's 1981 Ford F100 truck, in violation of Regulations 3361.1, subdivision (a), and 3353, subdivision (d).

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FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Code)

56. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent failed to provide Massey with a written estimate for parts and labor necessary for a specific job after removing the transmission from Massey's 1981 Ford F100 truck for rebuilding.

UNDERCOVER OPERATION #3: 1996 CHEVROLET CAMARO

57. On October 13, 2011, an undercover operator of the Bureau ("operator") took the Bureau's 1996 Chevrolet Camaro to Respondent's facility. An open wire or circuit was created in the transmission wiring harness of the Bureau-documented vehicle and the MIL (malfunction indicator light) in the dash panel was disabled. The operator told Elizabeth that he wanted the transmission checked on the vehicle because the vehicle was "jerking" and had to be started out in second gear. Elizabeth stated that it would cost $125 to determine the problem with the vehicle. The operator signed and received a copy of a repair order, then left the facility.

58. At approximately 1115 hours that same day, Elizabeth called the operator and told him that the transmission fluid in the vehicle was "real low" and that they had to add fluid before they could road test the vehicle and continue with the diagnosis. Elizabeth stated that the charge would be $295. The operator authorized the addition of the fluid.

59. At approximately 1315 hours, Elizabeth called the operator and told him that they completed the diagnosis, that some wires in the transmission and possibly one or two solenoids needed to replaced, and that the repair costs would not exceed $650. The operator told Elizabeth that he would call her back. At approximately 1320 hours, the operator called Elizabeth and authorized the repairs.

60. On October 18, 2011, the operator returned to the facility to retrieve the vehicle, paid $650 in cash for the repairs, and received a copy of an invoice.

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61. On October 24 and 25, 2011, the Bureau inspected the vehicle using the invoice for comparison and found that the MIL still was not functional. The Bureau also found that the facility had performed an unnecessary repair on the vehicle, as set forth below.

FIFTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

62. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent's employee, Elizabeth, represented to the operator that the transmission fluid in the Bureau's 1996 Chevrolet Camaro was "real low" and that they had to add fluid before they could road test the vehicle and continue with the diagnosis. In fact, the transmission fluid was filled to the proper level and the vehicle was not leaking or losing fluid at the time the vehicle was taken to Respondent's facility

b. Respondent falsely represented on the invoice that the transmission fluid in the Bureau's 1996 Chevrolet Camaro was low and that additional fluid was needed in order to "continue with diagnostic test".

SIXTEENTH CAUSE FOR DISCIPLINE

(Fraud)

63. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows: Respondent's employee, Elizabeth, made a false or misleading statement to the operator regarding the Bureau's 1996 Chevrolet Camaro, as set forth in subparagraph 62 (a) above, in order to induce the operator to authorize an unnecessary repair on the vehicle, then sold the operator an unnecessary repair; i.e., the addition of transmission fluid.

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SEVENTEENTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

64. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in the following material respects:

a. Respondent failed to follow manufacturer's specifications in performing the diagnosis of the electrical system on the transmission of the Bureau's 1996 Chevrolet Camaro in that Respondent failed to verify the operation of the MIL and/or determine that the MIL was not functioning.

b. Respondent failed to tighten the bolts on the transmission pan and as a result, the vehicle was leaking transmission fluid.

OTHER MATTERS

65. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Jose Martin Mercado, owner of Martin's Transmission & Auto Repair, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 208330, issued to Jose Martin Mercado, owner of Martin's Transmission & Auto Repair;

2. Revoking or suspending any other automotive repair dealer registration issued in the name of Jose Martin Mercado;

3. Ordering Jose Martin Mercado, owner of Martin's Transmission & Auto Repair, 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: October 15, 2012

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

SA2012105875