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

12 In the Matter of the Accusation Against:

Case No.

77/09-14

13 **BETTER BUILT TRANSMISSIONS, INC.**
14 **KEVIN BRENT QUINN,**
15 **a.k.a. KEVIN B. QUINN, PRESIDENT**
16 **509 North Maple**
17 **Fresno, CA 93702**
18 **Automotive Repair Dealer Reg. No. ARD 211510**

A C C U S A T I O N

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
21 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

22 2. On or about October 20, 2000, the Director of Consumer Affairs ("Director") issued
23 Automotive Repair Dealer Registration Number ARD 211510 to Better Built Transmissions, Inc.
24 ("Respondent"), with Randall Adams ("Adams") as president and Kevin Brent Quinn, also
25 known as Kevin B. Quinn ("Quinn"), as an officer. On or about October 18, 2001, Quinn
26 replaced Adams as president. Respondent's automotive repair dealer registration was in full force
27 and effect at all times relevant to the charges brought herein and will expire on June 30, 2010.
28 unless renewed.

1 **JURISDICTION**

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

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

8 **STATUTORY AND REGULATORY PROVISIONS**

9 **Statutory Provisions**

10 5. Code section 9884.7 states, in pertinent part:

11 (a) The director, where the automotive repair dealer cannot show there
12 was a bona fide error, may refuse to validate, or may invalidate temporarily or
13 permanently, the registration of an automotive repair dealer for any of the following
14 acts or omissions related to the conduct of the business of the automotive repair
15 dealer, which are done by the automotive repair dealer or any automotive technician,
16 employee, partner, officer, or member of the automotive repair dealer.

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

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

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

20 (4) Any other conduct which constitutes fraud.

21

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

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

26 6. Code section 9884.7, subdivision (c), states, in pertinent part, that the director may
27 invalidate temporarily or permanently, the registration for all places of business operated in this
28 state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is,

1 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
2 automotive repair dealer.

3 7. Code section 9884.8 states, in pertinent part:

4 All work done by an automotive repair dealer, including all warranty
5 work, shall be recorded on an invoice and shall describe all service work done and
6 parts supplied. Service work and parts shall be listed separately on the invoice, which
7 shall also state separately the subtotal prices for service work and for parts, not
8 including sales tax, and shall state separately the sales tax, if any, applicable to each . . .

9 8. Code section 9884.9 states, in pertinent part:

10 (a) The automotive repair dealer shall give to the customer a written
11 estimated price for labor and parts necessary for a specific job. No work shall be done
12 and no charges shall accrue before authorization to proceed is obtained from the
13 customer. No charge shall be made for work done or parts supplied in excess of the
14 estimated price without the oral or written consent of the customer that shall be
15 obtained at some time after it is determined that the estimated price is insufficient and
16 before the work not estimated is done or the parts not estimated are supplied. Written
17 consent or authorization for an increase in the original estimated price may be
18 provided by electronic mail or facsimile transmission from the customer. The bureau
19 may specify in regulation the procedures to be followed by an automotive repair
20 dealer when an authorization or consent for an increase in the original estimated price
21 is provided by electronic mail or facsimile transmission. If that consent is oral, the
22 dealer shall make a notation on the work order of the date, time, name of person
23 authorizing the additional repairs and telephone number called, if any, together with a
24 specification of the additional parts and labor . . .

25

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

9. Code section 9884.11 states that "[e]ach automotive repair dealer shall maintain any
records that are required by regulations adopted to carry out this chapter [the Automotive Repair
Act]. Those records shall be open for reasonable inspection by the chief or other law enforcement
officials. All of those records shall be maintained for at least three years."

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1 10. Code section 22, subdivision (a), states:

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

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

7 **Regulatory Provisions**

8 12. California Code of Regulations, title 16, section ("Regulation") 3303, subdivision (j),
9 states:

10 "Authorization" means consent. Authorization shall consist of the
11 customer's signature on the work order, taken before repair work begins.
12 Authorization shall be valid without the customer's signature only when oral or
electronic authorization is documented in accordance with applicable sections of
these regulations.

13 13. Regulation 3353 states, in pertinent part:

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

16

17 (d) Estimated Price to Tear Down, Inspect, Report and Reassemble. For
18 purposes of this article, to tear down" shall mean to disassemble, and teardown" shall
19 mean the act of disassembly. If it is necessary to tear down a vehicle component in
20 order to prepare a written estimated price for required repair, the dealer shall first give
21 the customer a written estimated price for the teardown. This price shall include the
22 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.

23 The repair dealer shall notify the customer orally and conspicuously in
24 writing on the teardown estimate the maximum time it will take the repair dealer to
25 reassemble the vehicle or the vehicle component in the event the customer elects not
26 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.

27 After the teardown has been performed, the dealer shall prepare a written
28 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

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

3 (f) Designation of Person to Authorize Additional Work or Parts. When a
4 customer, pursuant to subdivision (d) of Section 9884.9 of the Business and
5 Professions Code, designates another person to authorize work not estimated or parts
6 not included in the written estimated price given to the customer, all of the following
7 shall apply:

8 (1) The designation may be a separate form by itself or may be
9 incorporated into the dealer's work order form described in subsection (b) of Section
10 3352 . . .

11 14. Regulation 3356.1 states:

12 An automotive repair dealer may charge a customer for costs associated
13 with the handling, management and disposal of toxic wastes or hazardous substances
14 under California or federal law which directly relate to the servicing or repair of the
15 customer's vehicle. Such charge must be disclosed to the customer by being
16 separately itemized on the estimate prepared pursuant to Section 9884.9(a) of the
17 Business and Professions Code and on the invoice prepared pursuant to Section
18 9884.8 of the Business and Professions Code. In order to assess this charge, the
19 automotive repair dealer must note on the estimate and invoice the station's
20 Environmental Protection Agency identification number required by Section 262.12
21 of Title 40 of the Code of Federal Regulations.

22 15. Regulation 3358 states:

23 Each automotive repair dealer shall maintain legible copies of the
24 following records for not less than three years:

25 (a) All invoices relating to automotive repair including invoices received
26 from other sources for parts and/or labor.

27 (b) All written estimates pertaining to work performed.

28 (c) All work orders and/or contracts for repairs, parts and labor. All such
records shall be open for reasonable inspection and/or reproduction by the bureau or
other law enforcement officials during normal business hours.

16. 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. These minimum
requirements shall not be used to promote the sale of "rebuilt" automatic
transmissions when a less extensive and/or less costly repair is desired by the
customer. Any automotive repair dealer who represents to customers that the

1 following sections require the rebuilding of automatic transmissions is subject to the
2 sanctions prescribed by the Automotive Repair Act. All automotive repair dealers
3 engaged in the repair, sale, or installation of automatic transmissions in vehicles
4 covered under the Act shall be subject to the following minimum requirements:

5 (a) Before an automatic transmission is removed from a motor vehicle for
6 purposes of repair or rebuilding, it shall be inspected. Such inspection shall determine
7 whether or not the replacement or adjustment of any external part or parts will correct
8 the specific malfunction of the automatic transmission. In the case of an
9 electronically controlled automatic transmission, this inspection shall include a
10 diagnostic check, including the retrieval of any diagnostic trouble codes, of the
11 electronic control module that controls the operation of the transmission. If minor
12 service and/or replacement or adjustment of any external part or parts and/or of
13 companion units can reasonably be expected to correct the specific malfunction of the
14 automatic transmission, then prior to removal of the automatic transmission from the
15 vehicle, the customer shall be informed of that fact as required by Section 3353 of
16 these regulations. Before removing an automatic transmission from a motor vehicle,
17 the dealer shall also comply with the provisions of section 3353(d), and disclose any
18 applicable guarantee or warranty as provided in sections 3375, 3376 and 3377 of
19 these regulations. If a diagnostic check of an electronic control module cannot be
20 completed due to the condition of the transmission, the customer shall be informed of
21 that fact and a notation shall be made on the estimate, in accordance with Section
22 3353 of these regulations.

23

24 (c) Any automotive repair dealer that advertises or performs, directly or
25 through a sublet contractor, automatic transmission work and uses the words
26 "exchanged," "rebuilt," "remanufactured," "reconditioned," or "overhauled," or any
27 expression of like meaning, to describe an automatic transmission in any form of
28 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:

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

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

. . . .

(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

. . . .

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

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1 17. Regulation 3372 states:

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

7 18. Regulation 3373 states:

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

14 19. Regulation 3375 states, in pertinent part, that for the purposes of this Act (the
15 Automotive Repair Act) and of these regulations the term "guarantee" and "warranty" have like
16 meanings.

17 20. Regulation 3376 states, in pertinent part:

18 All guarantees shall be in writing and a legible copy thereof shall be
19 delivered to the customer with the invoice itemizing the parts, components, and labor
20 represented to be covered by such guarantee. A guarantee shall be deemed false and
21 misleading unless it conspicuously and clearly discloses in writing the following:

22 (a) The nature and extent of the guarantee including a description of all
23 parts, characteristics or properties covered by or excluded from the guarantee, the
24 duration of the guarantee and what must be done by a claimant before the guarantor
25 will fulfill his obligation (such as returning the product and paying service or labor
26 charges).

27 (b) The manner in which the guarantor will perform. The guarantor shall
28 state all conditions and limitations and exactly what the guarantor will do under the
guarantee, such as repair, replacement or refund. If the guarantor or recipient of the
guarantee has an option as to what may satisfy the guarantee, this must be clearly
stated . . .

29 **COST RECOVERY**

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

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CONSUMER COMPLAINT (ITOH): 2000 HONDA CRV

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2 22. On or about October 4, 2007, Hisayo Itoh ("Itoh") took her 2000 Honda CRV to
3 Respondent's facility to have a transmission fluid leak repaired. Itoh signed a written estimate
4 totaling \$50 for a diagnosis of the vehicle, but did not receive a copy of the document. Later,
5 Respondent's president, Quinn, told Itoh that the transmission needed to be overhauled to correct
6 the leak and that the repairs would cost \$2,716.63. Itoh authorized the repairs.

7 23. On October 17, 2007, Quinn told Itoh that the shift solenoids were defective and
8 needed replacement at a cost of \$187.01. Itoh authorized the additional repairs.

9 24. On October 18, 2007, Itoh went to the facility to retrieve the vehicle, paid Quinn
10 \$2,903.64, and received a copy of Invoice No. 15404. The invoice stated that the parts listed in
11 the parts description were covered by a 12 month or 12,000 mile warranty, whichever came first,
12 "at this location only."

13 25. On January 2, 2008, Itoh returned the vehicle to the facility because the transmission
14 began leaking fluid again. Quinn had Itoh sign a repair order, but did not provide her with a copy
15 of the document or a written estimate for the warranty repairs.

16 26. On January 9, 2008, Itoh returned to the facility. Quinn told Itoh that the vehicle had
17 been involved in an accident, which damaged the frame and caused the transmission leak, and
18 that he had to rebuild the transmission again in order to correct the leak. Itoh stated that she had
19 never been involved in a collision with the vehicle and had purchased it from Mercedes Benz of
20 Fresno ("Mercedes Benz"). Quinn told Itoh that if she could provide him with proof that the
21 frame had not been damaged, causing the transmission to fail again, he would honor the
22 warranty.¹ Quinn provided Itoh with Invoice No. 15554, totaling \$2,131.84, to present to
23 Mercedes Benz.

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26 _____
27 ¹ Mercedes Benz determined that the vehicle had, in fact, been involved in an accident before it
28 was purchased by Itoh. Mercedes Benz purchased the vehicle back from Itoh, reimbursed Itoh \$2,903.64
for the original transmission repairs, but would not pay for the second transmission rebuild.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violations of the Code)**

3 32. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply with provisions of the Code in the
5 following material respects:

6 a. Respondent's president, Quinn, failed to provide Itoh with a written estimate for parts
7 and labor necessary for the warranty repairs on her 2000 Honda CRV, in violation of Code
8 section 9884.9, subdivision (c).

9 b. Respondent failed to maintain all parts receipts pertaining to the transmission repairs
10 on Itoh's 2000 Honda CRV, including the part receipts for the torque converters allegedly
11 installed on the vehicle, or failed to make those records available for inspection by the Bureau, in
12 violation of Code section 9884.11.

13 **CONSUMER COMPLAINT (CHANG): 1990 TOYOTA CELICA GT**

14 33. On or about July 14, 2008, Julie Chang ("Chang") had her 1990 Toyota Celica GT
15 towed to Respondent's facility because the transmission was not shifting properly. Quinn had
16 Chang sign a repair order for a diagnosis of the vehicle. Quinn did not list an estimate price for
17 the diagnosis on the repair order or provide Chang with a copy of the document.

18 34. On or about July 16, 2008, Quinn called Chang and told her that the transmission had
19 an internal problem and needed to be rebuilt. Quinn stated that he could obtain a used
20 transmission for the vehicle quickly and at a much better price than the price of the transmission
21 rebuild. Chang authorized Quinn to install a used transmission in the vehicle for \$1,386.38.

22 35. On or about July 28, 2008, Chang called Quinn and told him that she was picking up
23 the vehicle because he still had not located a used transmission. Quinn told Chang that the
24 facility had removed the transmission from the vehicle to expedite the repair and that he would
25 not release the vehicle until Chang paid him \$425 in cash. Chang reluctantly paid Quinn \$425 for
26 the removal and reinstallation of the unit, and received a copy of Invoice No. 015950. The
27 invoice stated that there was a "6 month warranty at this location only".

28 36. On or about August 5, 2008, Chang filed a complaint with the Bureau.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 40. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
5 standards for good and workmanlike repair without the consent of the owner or the owner's duly
6 authorized representative, in the following material respects: Respondent failed to perform an
7 external inspection of the automatic transmission on Chang's 1990 Toyota Celica GT, and failed
8 to retrieve the diagnostic trouble codes from the vehicle's electronic control module ("ECM")
9 before allegedly removing the transmission from the vehicle.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 **(Violations of the Code)**

12 41. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
13 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
14 that Code in the following material respect: Respondent's president, Quinn, failed to provide
15 Chang with a written estimate for parts or labor necessary for a specific job, in violation of Code
16 section 9884.9, subdivision (c).

17 **CONSUMER COMPLAINT (VANG): 2002 TOYOTA RAV4**

18 42. On or about July 9, 2008, Xia Vang ("Vang") took her 2002 Toyota RAV4 to
19 Respondent's facility because the vehicle shuddered when taking off from a stop after 30 minutes
20 of driving. Quinn told Vang that the transmission was burnt up and needed to be overhauled.
21 Quinn had Vang sign a written estimate for \$3,264.49 to overhaul the transmission, but did not
22 provide her with a copy of the document.

23 43. On July 23, 2008, Vang went to the facility to retrieve the vehicle, paid Quinn
24 \$3,264.49 for the repairs, and received a copy of Invoice No. 015944.

25 44. On July 25, 2008, Vang returned the vehicle to the facility because the shuddering
26 problem had not been corrected.

27 45. On August 8, 2008, Quinn called Vang and told her that they could not fix the
28 transmission and that she would have to take the vehicle to a Toyota dealership. Quinn stated that

1 the problem could be corrected by having the ECM calibration updated. Later, Vang had the
2 vehicle towed to Bingham Toyota. Bingham Toyota reprogrammed the ECM, which did not
3 resolve the transmission problem. Vang authorized Bingham Toyota to perform a diagnosis of
4 the transmission. Bingham Toyota determined that the ECM was defective and needed
5 replacement after retrieving a P0755 diagnostic trouble code. Bingham Toyota found a technical
6 service bulletin pertaining to the shuddering problem and advised Vang that the ECM should
7 have been replaced first before the transmission was overhauled. Vang called Quinn and
8 requested her money back, but Quinn refused to issue Vang a refund.

9 46. On or about August 13, 2008, Vang filed a complaint with the Bureau.

10 47. On September 3, 2008, Bureau Representative Nicks made a field visit at the facility
11 and met with Quinn. Quinn told Nicks that he performed an external inspection of the vehicle
12 and determined that the transmission was burnt up. Nicks asked Quinn what pinpoint tests his
13 technician performed to diagnose the P0755 code. Quinn stated that the transmission fluid was
14 burnt so the transmission had to be overhauled first, and that there was no need to perform a
15 pinpoint test to diagnose the code.

16 **EIGHTH CAUSE FOR DISCIPLINE**

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

18 48. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
19 subdivision (a)(3), in that Respondent's president, Quinn, failed to provide Vang with a copy of
20 the written estimate as soon as Vang signed the document.

21 **NINTH CAUSE FOR DISCIPLINE**

22 **(Departure from Trade Standards)**

23 49. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
24 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
25 standards for good and workmanlike repair without the consent of the owner or the owner's duly
26 authorized representative, in the following material respects: Respondent failed to perform an
27 external inspection of the automatic transmission on Vang's 2002 Toyota RAV4, and/or failed to

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1 retrieve the diagnostic trouble codes from the vehicle's ECM before removing the transmission
2 from the vehicle for repair.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Violations of the Code)**

5 50. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
6 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
7 that Code in the following material respect: Respondent's president, Quinn, failed to provide
8 Vang with a written estimate for the external inspection on her 2002 Toyota RAV4, in violation
9 of Code section 9884.9, subdivision (c).

10 **CONSUMER COMPLAINT (KARCESKI): 1996 TOYOTA COROLLA**

11 51. Jenny Karceski ("Karceski") is the owner of a 1996 Toyota Corolla. In or about June
12 2008, while driving from Southern California to Fresno, Karceski began having problems with
13 the vehicle in that would not shift properly.

14 52. On or about June 27, 2008, Karceski ("Karceski") took the vehicle to Respondent's
15 facility for repair. Quinn told Karceski that the transmission was defective and needed to be
16 overhauled or replaced. After discussing the repair options with Quinn, Karceski decided to have
17 the transmission replaced with a remanufactured unit. Quinn told Karceski that the repairs would
18 cost \$900 and were covered by a six month warranty. Karceski authorized the repairs then
19 returned to Southern California.

20 53. On or about July 1, 2008, Karceski's mother, Roberta, informed Karceski that she
21 received a call from Quinn. Quinn told Roberta that the transmission cost \$900, *not including* the
22 labor to replace the unit, and that the total repair costs were actually \$1,400. Roberta authorized
23 the repairs.

24 54. On or about July 3, 2008, Karceski returned to the facility, paid Quinn \$1,414.35 for
25 the repairs, and received a copy of Invoice No. 015918. The invoice did not include any
26 information pertaining to the six month warranty.

27 55. On or about July 26, 2008, Karceski called Quinn because the transmission failed
28 again while she was driving home from work. Quinn told Karceski that the used transmission he

1 installed in the vehicle must have failed and asked her to have the vehicle towed back to the
2 facility for warranty repairs. Karceski asked Quinn why he installed a used transmission in the
3 vehicle instead of the remanufactured unit she previously authorized. Quinn stated that a
4 remanufactured transmission would have cost an additional \$1,500.

5 56. On or about August 7, 2008, the vehicle was towed to the facility. Karceski retrieved
6 the vehicle on August 22, 2008, and was not charged for the repairs.

7 57. On or about August 29, 2008, Karceski filed a complaint with the Bureau.

8 58. On November 24, 2008, Bureau Representatives Arnold Lee and Nicks made a field
9 visit at the facility and met with Quinn. Nicks asked Quinn why a scan of the computer system
10 had not been performed. Quinn stated that the vehicle was a three speed not an electronic
11 transmission, so a scan of the computer was not needed.

12 **ELEVENTH CAUSE FOR DISCIPLINE**

13 **(Departure from Trade Standards)**

14 59. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
15 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
16 standards for good and workmanlike repair without the consent of the owner or the owner's duly
17 authorized representative, in the following material respects: Respondent failed to perform an
18 external inspection of the automatic transmission on Karceski's 1996 Toyota Corolla, and/or
19 failed to retrieve the diagnostic trouble codes from the vehicle's ECM before removing the
20 transmission from the vehicle for repair.

21 **TWELFTH CAUSE FOR DISCIPLINE**

22 **(Violations of the Code)**

23 60. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
24 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
25 that Code in the following material respect: Respondent failed to obtain Karceski's authorization
26 to install the used transmission in her 1996 Toyota Corolla.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 61. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply Regulation 3376 in a material respect, as
5 follows: Respondent failed to provide Karceski with a written warranty on the transmission
6 repairs.

7 **CONSUMER COMPLAINT (ROMERO/MENDOZA): 2002 HYUNDAI SANTA FE**

8 62. On or about August 29, 2008, Gerardo Romero ("Romero") contacted Respondent's
9 facility because his business associate, Laura Mendoza's ("Mendoza"), 2002 Hyundai Santa Fe
10 would not move, and spoke with Quinn about the problem. Quinn offered to tow the vehicle to
11 the facility free of charge and perform a visual inspection to determine the cause of the problem.

12 63. On September 2, 2008, after the vehicle was towed to the facility, Quinn called
13 Romero and told him that the transmission needed to be rebuilt and that he needed \$1,100 to start
14 the repairs. Romero stated that he would have to obtain the owner's (Mendoza) authorization
15 before any repairs were performed.

16 64. On September 3, 2008, Romero called Quinn and explained that the transmission was
17 still under manufacturer's warranty and that he would be taking the vehicle to the dealer for
18 repair. Quinn told Romero that the transmission was removed from the vehicle by mistake and
19 that they would need time to reassemble the vehicle.

20 65. On September 5, 2008, Quinn called Romero and told him that the vehicle was ready.
21 Later, Romero went to the facility and met with Quinn. Quinn told Romero that the transmission
22 had not been installed in the vehicle, but all of the parts were placed in the back of the vehicle.
23 Later, Romero had the vehicle towed to Lithia Hyundai. Lithia Hyundai would not repair the
24 transmission under warranty because it had already been removed from the vehicle, which
25 prevented them from diagnosing the problem with the unit. Mendoza had Lithia Hyundai replace
26 the transmission for \$2,425.09. After the transmission was replaced, the vehicle still would not
27 move. Lithia Hyundai determined that the problem was with the transfer case, and not the
28 transmission, and replaced the transfer case under warranty.

1 **FOURTEENTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Code)**

3 66. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
5 that Code a material respect, as follows: Respondent removed the transmission from Mendoza's
6 2002 Hyundai Santa Fe without Romero's and/or Mendoza's authorization.

7 **CONSUMER COMPLAINT (PASILLA): 1989 GMC SIERRA 4X4 TRUCK**

8 67. On or about December 17, 2008, Bernard Pasilla ("Pasilla") took his 1989 GMC
9 Sierra 4x4 truck to Respondent's facility for a diagnosis because the vehicle would not shift or go
10 over 20 miles per hour. Pasilla left the vehicle at the facility, but did not sign or receive a repair
11 order for the diagnostic service.

12 68. On December 18, 2008, Respondent's technician, "Steve", called Pasilla and told him
13 that the problem with the vehicle was internal and that the transmission needed to be
14 disassembled to determine the cause of the failure. Steve stated that the repairs would not cost
15 more than \$800. Pasilla told Steve that he could only afford \$800, and authorized the repairs.

16 69. On December 19, 2008, Quinn called Pasilla and told him that the transmission
17 repairs would cost an additional \$625. Pasilla stated that Steve had given him a quote of \$800,
18 which was all the money he had for the repairs. Quinn told Pasilla that the \$800 price was for a
19 tear down and inspection only. Later, Pasilla filed a complaint with the Bureau.

20 70. On December 22, 2008, Bureau Representative Nicks made a field visit at the facility
21 and obtained a copy of the repair order on the vehicle. Nicks asked Quinn what was wrong with
22 the transmission. Quinn had Steve take Nicks out to look at the transmission, which had been
23 disassembled. Nicks found that all of the components listed on the repair order were damaged
24 and required replacement. Nicks asked Quinn if the vehicle's transmission was electronic. Quinn
25 referred the question to Steve, who told Nicks that the transmission was electronically controlled.
26 Nicks asked Steve why the diagnostic trouble codes were not recorded. Steve told Nicks that the
27 problem with the vehicle was internal, not electrical.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

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

7 a. Respondent failed to perform an external inspection of the automatic transmission on
8 Pasilla's 1989 GMC Sierra 4x4 truck and/or failed to retrieve the diagnostic trouble codes from
9 the vehicle's ECM before removing the transmission from the vehicle for repair.

10 b. Respondent failed to provide Pasilla with a written estimate for the teardown,
11 inspection, and reassembly of the transmission before removing the unit from the vehicle, in
12 violation of Regulation 3353, subdivision (d).

13 **SIXTEENTH CAUSE FOR DISCIPLINE**

14 **(Violations of the Code)**

15 72. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
16 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
17 that Code in the following material respect: Respondent failed to obtain Pasilla's authorization
18 for the diagnosis of his 1989 GMC Sierra 4x4 truck.

19 **UNDERCOVER OPERATION #1: 1995 DODGE CARAVAN**

20 73. On October 27, 2008, an undercover operator with the Bureau, using the alias "Pam
21 Cush" (hereinafter "operator"), took the Bureau's 1995 Dodge Caravan to Respondent's facility.
22 The input speed sensor on the Bureau-documented vehicle was rendered defective. The operator
23 told Respondent's technician, Steve, that the transmission was not shifting properly. Steve stated
24 that the transmission was electronic, that a scan would have to be performed, and that it would
25 cost \$50 to diagnose the problem with the transmission. Steve had the operator sign a work order
26 for \$50, but did not list the diagnostic service on the document.

27 74. At approximately 1415 hours, Quinn called the operator and told her that they pulled
28 some codes from the vehicle and that the solenoids were setting codes from the sensors. Quinn

1 stated that they needed to replace the sensors, wire harnesses for the sensors, and service the
2 transmission, which included changing the fluid, filter, and pan gasket, at a total estimated cost of
3 \$411.06. The operator told Quinn that she would call him back after she discussed the repairs
4 with her husband. Later, the operator contacted Quinn and authorized the repairs.

5 75. On October 29, 2008, the operator returned to the facility to retrieve the vehicle, paid
6 \$411 in cash for the repairs, and received a copy of Invoice No. 016153. The invoice stated that
7 the parts listed in the parts description were covered by a 12 month or 12,000 mile warranty,
8 whichever came first, "at this location only."

9 76. On October 31, 2008, Bureau Representative Bruce Geloso ("Geloso") inspected the
10 vehicle using the final invoice for comparison. Geloso found that the vehicle had not been
11 repaired as invoiced and that the facility performed unnecessary repairs, as set forth below.

12 **SEVENTEENTH CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements)**

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

17 a. Respondent's president, Quinn, represented to the operator that the sensors and wire
18 harnesses for the sensors on the Bureau's 1995 Dodge Caravan were in need of replacement and
19 that the transmission was in need of servicing. In fact, the only repair needed on the vehicle was
20 the replacement of the defective input speed sensor. Further, the output speed sensor and the
21 wiring connectors for the input and output speed sensors were in good working order and were
22 not in need of replacement at the time the vehicle was taken to Respondent's facility.

23 b. Respondent represented on Invoice No. 016153 that the oil filter on the Bureau's
24 1995 Dodge Caravan had been replaced. In fact, that part had not been replaced on the vehicle.

25 c. Respondent represented on Invoice No. 016153 that the parts listed in the parts
26 description were covered by a 12 month or 12,000 mile warranty, whichever came first, "at this
27 location only", but failed to disclose the full nature and extent of the warranty, a description of all
28 parts, characteristics, or properties covered by or excluded from the warranty, the manner in

1 which Respondent would perform under the warranty, and/or all conditions and limitations on the
2 warranty, as required by Regulation 3376.

3 **EIGHTEENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Record Repairs Requested by the Customer)**

5 78. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
6 subdivision (a)(2), in that Respondent's technician, Steve, caused or allowed the operator to sign
7 the work order which did not state the repairs requested by the operator, i.e., the diagnostic
8 service on the Bureau's 1995 Dodge Caravan.

9 **NINETEENTH CAUSE FOR DISCIPLINE**

10 **(Fraud)**

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

13 a. Respondent's president, Quinn, made false or misleading statements to the operator
14 regarding the condition of the Bureau's 1995 Dodge Caravan, as set forth in subparagraph 77 (a)
15 above, in order to induce the operator to purchase unnecessary transmission repairs on the
16 vehicle, then sold the operator unnecessary repairs, including the replacement of the output speed
17 sensor and the wiring connectors for the input and output speed sensors and the servicing of the
18 transmission.

19 b. Respondent obtained payment from the operator for replacing the oil filter on the
20 Bureau's 1995 Dodge Caravan. In fact, that part had not been replaced on the vehicle.

21 **TWENTIETH CAUSE FOR DISCIPLINE**

22 **(Violations of the Code)**

23 80. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
24 subdivision (a)(6), in that Respondent failed to comply with Code section 9884.8 in the following
25 material respects: Respondent stated on Invoice No. 016153 that the total price for the input and
26 output sensors was \$76.24 without specifying the cost of each individual part, in violation of
27 Code section 9884.8. Further, Respondent failed to state separately on the invoice the subtotal
28 prices for the service work.

1 **UNDERCOVER OPERATION #2: 1997 CHEVROLET 1500 TRUCK**

2 81. On February 2, 2009, an undercover operator with the Bureau, using the alias "Dave
3 Garcia" (hereinafter "operator"), took the Bureau's 1997 Chevrolet 1500 truck to Respondent's
4 facility. A defective reaction sun shell had been installed in the transmission of the Bureau-
5 documented vehicle. The operator met with Quinn and told him that the transmission would not
6 go into reverse. Quinn stated, among other things, that the reverse planetary gears were probably
7 bad and that once he opened the transmission, it would need to be rebuilt. Quinn gave the
8 operator an estimate of \$895 to rebuild the transmission, not including the hard parts, and stated
9 that he would apply the \$895 to the total cost of the repairs. The operator signed and received a
10 copy of a written estimate, then left the facility.

11 82. On February 5, 2009, at approximately 1630 hours, the operator called the facility and
12 spoke with Quinn. Quinn told the operator that the transmission had stripped the sun shell gear
13 and required rebuilding and that the repairs to the transmission would cost \$1,639, which
14 included a rebuilt torque converter and a 12 month, 12,000 mile warranty. The operator told
15 Quinn that he needed to discuss the cost with his wife and would call him back. At
16 approximately 1700 hours, the operator called Quinn and authorized the repairs.

17 83. On February 10, 2009, the operator returned to the facility to retrieve the vehicle, paid
18 \$1,639 for the repairs, and received a copy of Invoice No. 016318. The invoice stated that the
19 parts listed in the parts description were covered by a 12 month or 12,000 mile warranty,
20 whichever came first, "at this location only."

21 84. On February 17, 2009, Bureau Representative Irving DeVelbiss ("DeVelbiss")
22 inspected the vehicle using the invoice for comparison. DeVelbiss found that the transmission
23 had not been repaired as invoiced and was not rebuilt in compliance with Regulation 3361.1, as
24 set forth below.

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1 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

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

6 a. Respondent represented on Invoice No. 016318 that the transmission in the Bureau's
7 1997 Chevrolet 1500 truck had been overhauled. In fact, the transmission had not been
8 overhauled or rebuilt as required by Regulation 3361.1.

9 b. Respondent represented on Invoice No. 016318 that a new overhaul kit had been
10 installed in the Bureau's 1997 Chevrolet 1500 truck, including seals, sealing rings, and filters. In
11 fact, the full circle nylon internal sealing rings on the oil pump stator and on the input shaft, the
12 external seals, and the internal screen filters were not replaced in the transmission.

13 c. Respondent represented on Invoice No. 016318 that the low-reverse sprag in the
14 transmission of the Bureau's 1997 Chevrolet 1500 truck had been replaced. In fact, the
15 transmission was not equipped with a low-reverse sprag.

16 d. Respondent represented on Invoice No. 016318 that the forward sprag in the
17 transmission of the Bureau's 1997 Chevrolet 1500 truck had been replaced. In fact, that part was
18 not replaced in the transmission.

19 e. Respondent represented on Invoice No. 016318 that the parts listed in the parts
20 description were covered by a 12 month or 12,000 mile warranty, whichever came first, "at this
21 location only", but failed to disclose the full nature and extent of the warranty, a description of all
22 parts, characteristics, or properties covered by or excluded from the warranty, the manner in
23 which Respondent would perform under the warranty, and/or all conditions and limitations on the
24 warranty, as required by Regulation 3376.

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1 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

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

5 a. Respondent obtained payment from the operator for overhauling the transmission in
6 the Bureau's 1997 Chevrolet 1500 truck. In fact, the transmission was not overhauled or rebuilt
7 as required by Regulation 3361.1.

8 b. Respondent obtained payment from the operator for installing a new overhaul kit in
9 the Bureau's 1997 Chevrolet 1500 truck, including seals, sealing rings, and filters. In fact, the
10 full circle nylon internal sealing rings on the oil pump stator and on the input shaft, the external
11 seals, and the internal screen filters were not replaced in the transmission.

12 c. Respondent obtained payment from the operator for replacing the low-reverse sprag
13 in the transmission of the Bureau's 1997 Chevrolet 1500 truck. In fact, the transmission was not
14 equipped with a low-reverse sprag.

15 d. Respondent obtained payment from the operator for replacing the forward sprag in
16 the transmission of the Bureau's 1997 Chevrolet 1500 truck. In fact, that part was not replaced in
17 the transmission.

18 e. Respondent charged the operator twice for installing bonded pistons in the Bureau's
19 1997 Chevrolet 1500 truck.

20 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

21 **(Departure from Trade Standards)**

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

26 a. Respondent failed to replace the full circle nylon internal sealing rings on the oil
27 pump stator and on the input shaft, the external seals, and the internal screen filters in the
28 transmission of the Bureau's 1997 Chevrolet 1500 truck, as required by Regulation 3361.1.

1 b. Respondent failed to completely disassemble, clean, and inspect the transmission oil
2 pump and valve body, in violation of Regulation 3361.1.

3 c. Respondent left the attaching bolts to certain transmission components loose,
4 including the heat shield that protects the plastic electronic connector and wiring of the
5 transmission from the exhaust (catalytic converter) and the heat shield on the frame that protects
6 the oxygen sensor plug from the exhaust.

7 d. Respondent failed to reinstall one of the bolts for the gear selector selection switch.

8 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

9 **(Violations of the Code)**

10 88. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
11 subdivision (a)(6), in that Respondent failed to comply with Code section 9884.8 in a material
12 respect, as follows: Respondent failed to state separately on Invoice No. 016318 the subtotal
13 prices for the service work on the Bureau's 1997 Chevrolet 1500 truck.

14 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

15 **(Violations of the Code)**

16 89. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
17 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356.1 in a material
18 respect, as follows: Respondent charged the operator a hazardous waste disposal fee of \$12 on
19 Invoice No. 016318, but failed to disclose on the written estimate that a hazardous waste disposal
20 fee would be charged on the transmission repairs.

21 **OTHER MATTERS**

22 90. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
23 or may invalidate temporarily or permanently, the registrations for all places of business operated
24 in this state by Respondent Better Built Transmissions, Inc. upon a finding that Respondent has,
25 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining
26 to an automotive repair dealer.

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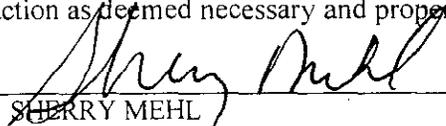
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PRAYER

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. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number 211510, issued to Better Built Transmissions, Inc.;
2. Temporarily or permanently invalidating any other automotive repair dealer registration issued in the name of Better Built Transmissions, Inc.;
3. Ordering Better Built Transmissions, Inc. 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: 12/10/09


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant