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

In the Matter of the Accusation Against: **SAN BRUNO AT SILVER SUPER SHELL** **DENNIS T. VUONG, Owner** Automotive Repair Dealer Registration No. ARD 213788 Smog Check Station License No. RC 213788 Respondent.	Case No. 77/13-73 OAH No. 2013100019

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error in the Proposed Decision is corrected as follows:

> Page 2, paragraph 2, line 2: Smog Check Station license number RC "212788" is corrected to read "213788."

This Decision shall become effective May 30, 2014.

DATED: April 25, 2014

DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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

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PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California (OAH), heard this matter on January 22, 2014, in Oakland, California.

Deputy Attorney General Nicholas Tsukamaki represented complainant John Wallauch, Chief, Bureau of Automotive Repair.

Neither respondent Dennis T. Vuong, nor any attorney or other representative, appeared on his behalf or on behalf of San Bruno at Silver Super Shell, for the hearing in this matter.

On January 22, 2014, the record closed and the matter was submitted for decision.

FACTUAL FINDINGS

1. On June 7, 2013, complainant John Wallauch (complainant) made the Accusation in his official capacity as Chief, Bureau of Automotive Repair (the bureau), Department of Consumer Affairs (the department), State of California, against respondent Dennis T. Vuong, owner of "San Bruno at Silver Super Shell."

License History

2. On December 5, 2000, the department's Director (the director) issued Automotive Repair Dealer (ARD) Registration Number ARD 213788 to respondent Dennis T. Vuong (respondent), owner and doing business as San Bruno at Silver Super Shell (respondent's licensed establishment, respondent's facility or respondent). Respondent's licensed establishment has a principal place of business at 2380 San Bruno Avenue, San Francisco, California 94134. The ARD registration will expire on November 30, 2014, unless renewed, cancelled, or revoked before that date.

On January 21, 2001, respondent was issued Smog Check Station license number RC 212788. The Smog Check Station license will expire on November 30, 2014, unless renewed, cancelled, or revoked before that date.

Respondent's Default

3. Upon a determination that the Accusation, Notice of Hearing and other jurisdictional documents had been properly served and filed in accordance with Government Code sections 11503, 11505, 11506 and 11509, the matter proceeded as a default hearing under Government Code section 11520. Rather than the agency exercising its statutory prerogative to internally execute default proceedings, complainant, however, requested, through counsel, that evidence be presented, with witnesses being placed under oath, and that preparation of a proposed decision be effected by OAH.

Instances of Unlawful Acts by Respondent's Agents or Employees

A. FIRST UNDERCOVER OPERATION - OCTOBER 2011 – 1997 ACURA TL

4. Bureau Program Representative I David Warmuth (PR Warmuth) provided compelling testimonial evidence at the hearing of this matter. By his demeanor while testifying, his clear, unhesitating presentation of evidence and his solemn attitude towards the proposed action against respondent, PR Warmuth was shown to be a credible[1] and trustworthy witness.

PREPARATION OF THE VEHICLE

5. Between August and October 2011, PR Warmuth prepared a 1997 Acura 3.2TL (1997 Acura) for use in undercover operations initiated by the bureau.

[1] Government Code section 11425.50, subdivision (b), third sentence.

In particular to this matter, PR Warmuth documented the condition of the subject automobile and improved the vehicle's braking systems before he introduced deliberate defects onto the 1997 Acura.

First, on August 16 and August 22, 2011, PR Warmuth installed new front and rear brake pads and new front and rear brake rotors, front caliper seal kits and a new master cylinder with reservoir as well as remanufactured rear brake calipers. Then PR Warmuth inspected the vehicle brake, suspension and steering components. He found those components to be in good serviceable condition. PR Warmuth determined that no aspect of the vehicle's brake lines, power brake booster or brake hardware components required replacement.

Thereafter, PR Warmuth again inspected in detail the following brake, suspension and steering components: front and rear upper and lower control arms, front and rear sway bars, links and bushings, ball joints, tie rod ends, front and rear struts and mounting assemblies and hardware, brake lines, power steering pump and hoses, steering rack and brackets, front and rear hubs and bearing assemblies, front spindles, parking brake cables and adjustment assemblies and tire pressure.

Then PR Warmuth assembled and installed the front brake calipers. Also he installed the front and rear brake rotors and brake pads. After that step, he installed the rear brake calipers. Then he installed the new master cylinder and he bled the hydraulic system according to the manufacturer's specifications. By checking rotor thickness, thickness variation and "run out," PR Warmuth verified that the front and rear brake rotors were within manufacturer's specifications. Thereafter, he flushed the hydraulic brake system with new Honda brake fluid. Finally, he affixed tamper indicators on the bleeder values, brake hoses, lines and master cylinder reservoir to later detect whether bleeding or flushing of the brake system had been executed by others.

On August 24, 2011, PR Warmuth test-drove the 1997 Acura over a distance of 12 miles. After the drive, he again inspected the vehicle's suspension and brake components. From the inspection, he determined that no leakage or other mechanical malady was occurring with the recently installed components and that the brake pads were seated evenly. BAR PR Warmuth again inspected the previously installed tamper seals and he found then intact.

Between September 14 and September 15, 2011, in accordance with the manufacturer's approved fluids and quantities, PR Warmuth drained and filled the engine oils and filter, coolant, transmission fluid, differential fluid and brake fluid. Then he installed a tamper seal on related drain plugs and fill-access points. He photographed the tamper indicators. Then, he rechecked the power steering fluid level. Also, he checked the brake fluid cooper content by using a brake fluid cooper test strip; and he photographed that condition. Further, he checked the brake fluid boiling point by use of the bureau's Tech Plus Fluid Safety Tester; and he photographed the passing results. And, PR Warmuth installed

tamper seals onto the subject vehicle's brake caliper bleed screws and the cap of the brake master cylinder reservoir, which he photographed.

On September 20, 2011, PR Warmuth test-drove the 1997 Acura over 20 miles. The vehicle performed normally and exhibited no pulsation, noise, pull, wandering or shimmy during its operation.

Ten days later on September 30, 2011, PR Warmuth performed a four-wheel alignment to manufacturer's specifications on the 1997 Acura by using the bureau's Hunter WA-240 Alignment System guide. At the completion of the alignment adjustment, PR Warmuth obtained a passing grade for that system on the printout of the bureau's testing machine. He applied a tamper seal and he photographed the vehicle's alignment adjustments so as to later determine whether someone prospectively made a further adjustment.

Also on September 30, 2011, PR Warmuth machined ground the front brake pads down to 0.0624-inch thickness and the rear brake pads down to 0.1562-inch thickness. The industry standard is that brake pad thickness that warrants discarding the component is a 0.06-inch thickness.

Between October 3, and October 7, 2011, PR Warmuth test-drove the 1997 Acura 36 miles for the purpose to further seat in ground-down brake pads. The vehicle performed normally and it did not exhibit pulsation, noise, pull, wandering or shimmy.

Then PR Warmuth performed an inspection of the vehicle's brake pads and he found then to be making proper contact with the rotors. The rotors were not discolored, scored, glazed or crazed. There were no leaks in the brake hydraulic system. Also he inspected the vehicle's struts and suspension components, and PR Warmuth found neither leaks nor problems with the installation of those components.

PR Warmuth installed a defective brake and tail lamp bulb onto the left rear socket assembly to the 1997 Acura.

PR Warmuth again inspected the vehicle's wheels and he torqued the lug nuts to the manufacturer's specifications. He affixed tamper seals onto the wheels to detect whether the wheels were later removed from the vehicle. The external appearances of the components and tamper indicators as installed by PR Warmuth were blended to match the surrounding areas of the vehicle. Finally, he lowered the tire pressure for all tires to 24 pounds per square inch (PSI).

On October 24, 2011, PR Warmuth transported the 1997 Acura to a secure location in San Francisco, where he made the transfer of custody for the vehicle to PR I William Heimback.

USE OF THE 1997 ACURA IN THE FIRST UNDERCOVER OPERATION

I. BUREAU PROGRAM REPRESENTATIVE WILLIAM J. HEIMBACK

6. The declaration, dated May 8, 2012, by PR I William J. Heimback (PR Heimback) was received into evidence, absent any objection as respondent choose not to attend the hearing. The declaration is thorough and reasonable in the accounts given regarding PR Heimback.

7. On October 24, 2011, PR Heimback took custody and control from PR Warmuth of the 1997 Acura. PR Heimback was joined by PR Nilda R. Cano (PR Cano), who was to act as a consumer during the contemplated undercover operation.

At approximately 11:00 a.m. on October 24, 2011, PR Heimback appointed PR Cano to act as the undercover operator for use of the maladjusted 1997 Acura in an exercise to test the professionalism and proficiency of respondent's licensed establishment in performing repairs of vehicles. Respondent's repair facility had held itself out as being competent to provide general automobile repair service to the public.

PR Cano took possession of the 1997 Acura and drove to respondent's licensed establishment.

II. BUREAU PROGRAM REPRESENTATIVE NILDA R. CANO

8. PR Cano provided compelling testimonial evidence at the hearing of this matter. By her demeanor while testifying; her clear, unhesitating presentation of evidence; and, her solemn attitude towards the proposed action against respondent, PR Cano was shown to be a credible and trustworthy witness.

9. On October 24, 2011, at approximately 11:30 a.m., PR Cano took custody from PR Heimback of the bureau's 1997 Acura. She used the 1997 Acura for an undercover operation at respondent's licensed facility.

At the time of the assignment, PR Heimback gave PR Cano instructions including to use the alias of "Nannette Sinang" with personnel at respondent's repair facility. PR Cano was also instructed PR Cano to request the automotive repair technicians at respondent's licensed establishment to diagnose the reason for the vehicle exhibiting a "mushy feeling," as well as to ask about the reason that the brake light was illuminated on the vehicle's dash, and to request respondent's facility to make an appropriate engine oil change.

PR Cano drove the 1997 Acura to respondent's licensed establishment. At the subject automotive repair dealer's facility, PR Cano met respondent's agent or employee, who was later identified as Vincent Kohi Bao Chu (Mr. Chu). Mr. Chu prompted PR Cano, in her role as a consumer, to complete the facility's work order by writing her name, address and

telephone number onto the document. PR Cano conveyed to Mr. Chu the script of supposed problems that PR Heimback had formulated. Respondent's employee, Mr. Chu, however, did not present the putative consumer with a written estimate, or a copy of the work order or the estimate document, even though she had been very descriptive of a set of problems affecting the 1997 Acura.

Respondent's facility repair order, which bore number [redacted], which was not presented to PR Cano before she left the premises, only reflected the supposed consumer's name, telephone number, and signature below the authorization language. The only writing by respondent's agent or employee, as placed upon the repair order under the form's "Part Number and Service" or "Service Order" sections, was: "fishing tail[ing] when driving," which was written by Mr. Chu.

PR Cano left respondent's licensed establishment without the vehicle, which remained in the possession of personnel at respondent's licensed establishment.

10. At approximately 1:00 p.m. on October 24, 2011, PR Cano received a telephone call from respondent's facility's agent or employee, Vincent Chu. During that call, respondent's agent or employee dishonestly informed PR Cano that the 1997 Acura's front and rear shocks had "given up" and those components required immediate replacement. Further, Mr. Chu untruthfully told PR Cano that the vehicle's brakes were worn out and "needed to be replaced." Yet, during that telephone call, Mr. Chu falsely asserted that the brake rotors were adequate. Respondent's agent or employee unreliably quoted to the supposed consumer the price at $899 to replace all four shocks. Then he spuriously told PR Cano that to repair the shocks and the brakes the price would be at $1,200. Further, Mr. Chu inaccurately asserted that a necessary engine tune-up, including a new water pump, timing belt, would cost another $1,000, to cover $700 in parts and $300 for labor. During the telephone call as initiated by Mr. Chu, PR Cano told respondent's agent or employee that she would check her finances and return his telephone call.

After consulting with PR Heimback regarding the strategy to be used during the return call, at approximately 2:20 p.m. on October 24, 2011, PR Cano telephoned respondent's agent or employee, Mr. Chu. First, PR Cano asked Mr. Chu to explain the meaning of his report that the "shocks gave up." Mr. Chu disingenuously replied that he meant that the shocks were loose so as to cause the vehicle to fishtail. Mr. Chu falsely insisted that it was important to replace the shocks. Then, PR Cano asked respondent's agent or employee whether it was safe to replace brake pads without replacing the brake rotors. Mr. Chu mendaciously responded that since the subject automotive repair dealer's facility was to work on the brakes, the facility might as well replace the rotors in order to allow a warranty to be given the entire brake work on the vehicle. Thus, Mr. Chu hypocritically asserted that it would be a better repair job upon the vehicle for all four rotors to be replaced. Mr. Chu quoted a price of $85 for each rotor, and he asserted that he would not charge labor to replace the brake rotors. Respondent's agent or employee unreliably told PR Cano that the revised price for replacement of the brakes and rotors would be $1,540. PR Cano played the

role of a financially impaired consumer by telling Mr. Chu that the supposed consumer only had sufficient money to pay respondent's licensed establishment to replace struts and brakes, and that an engine tune up would have to wait. PR Cano ended the telephone call by telling Mr. Chu that if she found enough money for the price of the rotor replacement, she would telephone him to authorize that work. Mr. Chu stated that all work could be completed by the next day.

After conferring with PR Heimback, PR Cano made a telephone call to Mr. Chu at approximately 2:32 p.m., which was within 15 minutes of ending her first telephone call to respondent's agent or employee. During that telephone call, PR Cano authorized respondent's employee or agent to execute the replacement work for the four brake rotors.

The next day, October 25, 2011, at approximately 1:35 p.m., PR Chu telephonically conversed with Mr. Chu. Respondent's employee or agent informed the supposed consumer that the repairs by the facility on the 1997 Acura had been completed. Mr. Chu duplicitously asserted, however, that he had underestimated the price of the brake rotors due to the vehicle's parts that were more expensive than he had expected. Respondent's agent or employee said that the price of the front rotors were $110 each, rather than $85 as quoted. Further, Mr. Chu stated that the cost of the stocks had a price at $190 for each of the front units and that the price for the rear components was set at $160 each. Hence, Mr. Chu informed the supposed consumer the total price for the new parts was at $1,290 plus $600 for labor. Thus, with sales tax of $190 the total cost that the consumer was to pay respondent's establishment was $2,059. Mr. Chu stated that he had replaced the brake lamp bulb, which had caused the dash board brake lamp to illuminate; but he had not charged the consumer for the brake lamp bulb or the labor to install that item. PR Cano used an excuse of having another obligation so that she could not retrieve the vehicle that date; but she would pick up the vehicle on October 26, 2011, before the lunch time hour.

On October 26, 2011, continuing to pretend to be a consumer, PR Cano telephoned respondent's licensed established to speak with Mr. Chu. PR Cano told Mr. Chu that she was only able to secure $2,000 in cash and that she needed to keep money for food until the end of the month. Mr. Chu lowered the total repair cost to $2,000 and respondent's agent or employee noted that the automotive repair dealer would grant the consumer a discount of $59.65.

On October 26, 2011, at approximately 10:29 a.m., PR Cano went to respondent's licensed facility, paid $2,000 in cash, received invoice number [redacted] and, he heard Mr. Chu proclaim that all problems with the vehicle had been repaired.

Before she exited respondent's licensed establishment, PR Cano asked Mr. Chu to restate the reason for replacement of the rotors to which he replied that the rotors were "all bad." Mr. Chu showed PR Cano a worktable that was covered with old brake pads, and he claimed that the items were taken from the 1997 Acura. But, Mr. Chu stated that the old

rotors had not been retained. Even though PR Cano asked Mr. Chu to give her the old parts, Mr. Chu refused the request.

PR Cano drove the 1997 Acura away from respondent's licensed facility.

At approximately 11:05 a.m. on October 26, 2011, PR Cano passed custody of the 1997 Acura onto PR Heimback.

RESULTS OF BUREAU INSPECTION OF THE 1997 ACURA AFTER THE FIRST UNDERCOVER OPERATION

11. After the October 2011 undercover operation was completed, the 1997 Acura was returned on October 26, 2011, by BAR PR Heimback to BAR PR Warmuth for the latter technician's inspection. Also BAR PR Warmuth received from PR Heimback a one-page repair order, dated October 24, 2011, that showed the originating facility to be "San Bruno @ Silver Super Shell," with an address of 2380 San Bruno Avenue, San Francisco. The document reflected a number of [redacted] and reflected ARD number as ARD 213788, which is held by respondent.

At the outset of the 1997 Acura's inspection, which focused special attention upon the repairs as described in repair order numbered [redacted] BAR PR Warmuth found the brake master cylinder reservoir to be wet with brake fluid.

Also PR Warmuth observed that the repair order numbered [redacted] has a section for labor and parts that sets out:

Front Rotors (Brakes)	$220
Front Brake Pads	$95
Labor	$180
Rear Brake Rotors	$190
Rear Brake Pads	$85
Labor	$180
Front Shock/Struts	$380
Labor	$150
Rear Shocks/Struts	$320
Labor	$150

During his inspection, PR Warmuth found that the tamper seal on the wheels had been broken. The front brake rotors and pads had been replaced. Also the rear brake rotors and pads had been replaced. The vehicle's front and rear struts had been replaced. The four caliper bleed screw tamper seals were broken. The two front brake bleeder screws were

missing the rubber dust caps. Also the screws that attach the front brake rotor to the hub were missing. The brake master cylinder was over filled with fluid. The reservoir cap tamper seal was broken. Two bolts were loose on the left front strut that attaches the brake line bracket. The right front tire had been rotated to the left front and it had not been inflated to the proper PSI. And the left brake lamp bulb had been replaced and it functioned properly.

12. PR Warmuth found that replacement of the front brake pads was a proper and correct repair. That repair was justified and warranted by personnel at respondent's licensed establishment.

13. PR Warmuth made the following determinations that reflect unprofessional conduct on the part of personnel at respondent's licensed establishment:

- Replacement was not warranted for either the front or rear struts because those components had been bench tested and bounce tested and installed as new onto the subject undercover vehicle at the bureau's laboratory. And a total of 131 miles of use had been applied to those components when the bureau's undercover operative presented the 1997 Acura to respondent's licensed establishment;

- Replacement was not warranted for the front brake rotors because those components were within factory specifications and evinced no grooves, hot spots or warping. And only 73 miles of use had been applied to those components when the bureau's undercover operative presented the 1997 Acura to respondent's licensed establishment;

- Replacement was not warranted for the rear brake pads because those components were within factory specifications and they revealed even wear and brake rotor contact.

- The left front tire remained at five PSI less than the manufacturer's recommended PSI.

- The left rear brake lamp bulb was replaced, but its replacement was not invoiced onto repair order numbered [redacted].

14. Among other things, BAR PR Warmuth established that respondent's agents and employees, through their work performance at the licensed facility, engaged in acts or omissions that constituted a material departure from industry standards expected in the automobile repair occupations as follows:

- The rubber dust caps for the engine were missing. (The missing dust caps are installed to prevent debris going into the brake fluid, which can become contaminated without proper placement of the dust cap.);

- Small machine screws, which hold the right brake rotor in place on the hub, were missing. (The screws allow the rotor to be flush with neighboring components.);

- The brake master cylinder was wet with over-flowing fluid. (The excessive fluid, which is a caustic liquid, when it leaks out of the cylinder can damage portions of the metal of the vehicle,);

- The left front strut showed a bracket that attaches to the brake to have two loose screws.

- The right front tire was not inflated to the proper 29 PSI in that the required tire's pressure was at 24 PSI. (The inadequate tire pressure can lead to excessive wear upon the under-inflated tire.)

First Cause for Discipline: Untrue or Misleading Statements Regarding the First Undercover Operation and the 1997 Acura

15. The 1997 Acura that the bureau's undercover operative, PR Cano, drove to respondent's repair facility was released from the bureau's laboratory technician with limited problems, namely, ground-down front brake pads and a defective light for the vehicle's rear tail lamp. In the interactions between PR Cano and respondent's licensed establishment's agent and employee, respondent's personnel made false or misleading statements regarding that vehicle's conditions for which repairs were pursed by the subject automotive repair dealer's personnel.

First, respondent's facility's invoice, which was delivered to PR Cano, represented that the vehicle required extensive repairs, including installation of parts such as new struts, brake rotors, and brake pads. That description was untrue. (A "repair" suggests "putting together what is torn or broken; fix."[2]) The installation of those parts and the related supposed repair were not needed.

Also, respondent's personnel omitted from the invoice a notation or reference to the replacement of the rear brake lamp.

Further untrue statements to PR Cano by respondent's agent or employee involved the excessive costs for the unnecessary repairs. Respondent's employee or agent falsely listed

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[2] Merriam-Webster's Collegiate Dictionary (11th ed. 2007) p. 1055.

on the invoice prices for unnecessary labor and parts. And he telephonically told the supposed consumer prices that later were unexpectedly increased. Those statements were false. BAR PR Warmuth established that the vehicle's rear brake pads, front and rear shocks and brake rotors were in good working condition when the vehicle was released for the undercover operation. Accordingly, respondent's personnel knew, or should have known, that the subject statements to PR Cano were false.

Second Cause for Discipline: Fraud
Regarding the First Undercover Operation and a 1997 Acura

16. Respondent committed fraud when its agents or employees falsely stated that the 1997 Acura's properly functioning rear brake pads, front and rear shocks as well as front and rear brake rotors were defective, then obtained authorization to replace the components, and finally collected money for the replacement of those components that did not require replacement.

Respondent's agents or employees either knew the rear brake pads, front/rear struts, and all brake rotors were in good working order, or those individual agents or employees demonstrated gross disregard for the actual condition of the vehicle's components that did not require replacement. As established by BAR PR Warmuth, simple tests would have revealed that the rear brake pads, all shocks/struts, and all rotors did not display any defects and the aforementioned components were in good working order. The facts showed that respondent's agents and employees failed to test the subject components.

By fraudulently replacing the properly functioning rear brake pads, all struts/shocks, and all rotors, respondent's agents and employees were required to replace the subject components.

17. Under the circumstances, the reckless disregard for the truth[3] by respondent's agents and employees constitutes fraud. By falsely stating the vehicle's shocks had "given up," that all brake pads had worn out, and that all brake rotors should be replaced, respondent's personnel fraudulently induced the consumer to pay for the replacement of a properly functioning parts. Also, respondent had no reasonable basis to make those false statements because the parts had been tested by the bureau's technician before the undercover operation began.

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[3] False representations made recklessly and without regard for the truth in order to induce action by another person are the equivalent of misrepresentations knowingly and intentionally uttered. (See Civ. Code, § 1572; Civ. Code, § 1709; Civ. Code § 1710; *Engalla v. Kaiser Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951 at 974; and *Textron Financial Corp. v. National Union Fire Ins. Co. of Pittsburgh* (2004) 118 Cal.App.4th 1061)

Third Cause for Discipline: Willful Departure from Trade Standards Regarding the First Undercover Operation and a 1997 Acura

18. When its employees replaced components, which were actually in good condition, respondent willfully departed from trade standards. PR Warmuth established that the 1997 Acura's rear brake pads, all struts/shocks and the rotors were in good working order before the vehicle was driven a relatively short distance before entering respondent's licensed facility. Respondent willfully departed from trade standards by replacing satisfactorily functioning components as described above.

Respondent's personnel willfully violated trade standards when his agents or employees failed to properly test the components. There was no evidence that respondent's employees tested the unwarranted replaced parts before making the unnecessary repairs to the undercover vehicle.

Fourth Cause for Discipline: Failure to Record Work on Invoice Regarding the First Undercover Operation and a 1997 Acura

19. Respondent, through his employee or agent, Mr. Chu, replaced a rear brake bulb onto the 1997 Acura. Mr. Chu, however, did not record the repair onto the invoice that he delivered to the supposed consumer, PR Cano.

Fifth Cause for Discipline: Failure to Provide a Written Estimate Regarding the First Undercover Operation and a 1997 Acura

20. Respondent's agent or employee, Mr. Chu, failed to present the bureau's undercover operator with a written estimated price for labor and parts that were deemed to be necessary.

Sixth Cause for Discipline: Performing Additional Repair Work Without Obtaining Consent from the Consumer

21. After respondent's agent or employee, Mr. Chu, provided the bureau's undercover operative with an initial estimate for repairs and following the undercover operator giving verbal authorization for those repairs, personnel at respondent's licensed establishment performed repairs and supplied parts that were all in excess of the initially quoted price. That work at respondent's licensed establishment was done without first obtaining either the operator's oral or written consent for respondent's personnel performing work for which a reasonably clear estimate was first given. And personnel at respondent's licensed facility charged the consumer, PR Cano, an excessive price for the additional, unwarranted parts and labor.

B. SECOND UNDERCOVER OPERATION - FEBRUARY 2012 - 1985 OLDSMOBILE 88 ROYALE

22. Bureau Program Representative I Michael A. Frerichs (PR Frerichs) provided compelling testimonial evidence at the hearing of this matter. By his demeanor while testifying, his clear, unhesitating presentation of evidence and his solemn attitude towards the proposed action against respondent, PR Frerichs was shown to be a credible and trustworthy witness.

PREPARATION OF THE VEHICLE

23. During January 2012, PR Frerichs prepared a 1995 Oldsmobile "88" Royale (1995 Oldsmobile) for use in undercover operations initiated by the bureau.

Upon his inspection of the 1995 Oldsmobile on January 9, 2012, PR Frerichs documented the condition of the vehicle's brake system, suspension, vehicle alignment and transmission. During that phase of his preparation of the vehicle for the subject vehicle's use in a bureau undercover operation, PR Frerichs installed tamper indicators upon various components of the brake system so as to later detect whether someone else adjusted or otherwise worked on the vehicle's components.

On or about January 9, 2012, PR Frerichs inspected the following components and parts of the 1995 Oldsmobile: the existing brake system components; front brake rotors; rear actuator springs; rear retractor springs; brake caliper bushings; master cylinder; rear wheel cylinders; disc brake pads; caliper piston seals; left and right brake caliper housings; front disc brake caliper pistons; left and right front brake hoses; caliper bleed valves; caliper mounting bolts; rear brake shoes; rear brake shoe adjuster actuators; rear brake shoe adjusters; left and right rear brake drums; rear brake cables and adjuster; left and right rear brake hoses; rear park brake levers; rear backing plates; left rear park brake cable; and brake pressure modulator valve assembly.

PR Frerichs visually inspected the left and right disc brake rotors. The bureau's technician found the disc brake rotors smooth and free of defects. He found the brake rotor thickness to measure 1.269 inches for the left rotor and 1.264 inches on the right rotor. (Under existing standards, the maximum rotor thickness is 1.276 inches, while the minimum thickness after refinish is 1.224 inches and the thickness of a rotor that requires discard of the component is 1.209 inches.) The brake rotor thickness variation measured .0001 inch for both the left and right rotor. (The maximum thickness variation is .0005 inch.)

Then PR Frerichs installed the rotors and he performed lateral runout measurements. (The total lateral runout measured .001 inch for each rotor. Maximum runout specification is .002 inch.) Both brake rotors were within factory specifications when PR Frerichs examined the 1995 Oldsmobile in January 2012. PR Frerichs determined that the brake rotors had been installed new on July 1, 2011.

Then on January 9, 2012, PR Frerichs measured the rear brake drums. He found the measured diameter for the left drum was 8.860 inches and for the right drum was 8.860 inches. (Under existing standards, a drum's new diameter is 8.860 inches. The maximum refinish diameter is 8.860 inches. The diameter of a drum that is to discarded is 8.909 inches.) On the date of his inspection, PR Frerichs determined both the left drum and right drum were within specifications.)

PR Frerichs adjusted the rear brake shoes to the manufacturer's specification of .050 inch to shoe clearance. Then he adjusted the park brake to proper specification. PR Frerichs tested the brake fluid boiling point, which was found to be above 385 degrees F. (That boiling point was above the minimum of 284 degrees F as specified in the Brake Fluid Safety Chart.) Then the bureau technician used the bureau's Tech Two Scan tool to perform an automated bleed test that showed the 1995 Oldsmobile's brake system passed the automated bleed test.

PR Frerichs measured the brake pad travel to be 1.75 inches. (Pedal travel should not exceed 2.24 inches.) PR Frerichs determined the 1995 Oldsmobile's brake pedal travel to be within specifications.

Thereafter, PR Frerichs inspected the following existing suspension system components of the 1995 Oldsmobile: front springs; rear springs; front and rear wheel hubs; front and rear tie rod ends; left and right front steering knuckles; left and right front struts; and left and right rear struts. PR Frerichs determined all of the components to be in good working condition. And PR Frerichs observed that the front struts had been installed as new on June 29, 2011. The 1995 Oldsmobile had traveled only 136 miles between June 29, 2011, and January 9, 2012, when PR Frerichs inspected the vehicle.

Then, PR Frerichs inspected a previously installed tamper indicator on the transmission pan case. He found the tamper indicator to be intact, which established that the previously documented and installed transmission pan gasket and transmission oil filter were in place. PR Frerichs observed that the transmission oil filter, transmission pan gasket and seven quarts of transmission oil had been installed as new on September 22, 2011. The 1995 Oldsmobile had traveled 27 miles between September 22, 2011, and January 9, 2012, when PR Frerichs inspected the vehicle.

Three days after beginning the preparation of the 1995 Oldsmobile for the bureau's prospective undercover operation, PR Frerichs, on January 12, 2012, introduced maladjustments or defective conditions onto the vehicle. Those conditions entailed:

> Removal of the front brake pads and then evenly machined the brake pads to a level that would indicate a need for replacement of those components. After the machining the pad material thickness was: .070 inch for the left outer pad; .070 inch for the

right outer pad: .070 inch for the left inner pad; and .070 inch for the right inner pad. The machined front brake pads were installed by PR Frerichs.

On January 12, 2012, PR Frerichs road tested the 1995 Oldsmobile over a distance of six miles. Upon applying the brakes for the vehicle, the brakes stopped quietly with no pull, grab or pulsation. PR Frerichs found the brake pedal to be firm. And he observed that the park brake operation was smooth and normal. He found that no instrument panel brake light or ABS light illuminated during the road test. PR Frerichs noted that park brake lamp illuminated when he depressed the brake pedal. He observed the vehicle's steering to be normal and the vehicle steered straight with no drift or pull. The steering wheel was centered during PR Frerichs' road test. When he visually inspected the brake system for fluid leakage, he found no fluid leaks.

On January 19, 2012, PR Frerichs road tested the 1995 Oldsmobile. He drove the vehicle 19 miles. The bureau's technician found the brakes did not pull, grab or pulsate when he applied the brake pedal. The brakes operated properly. PR Frerichs found the vehicle steered normally with no anomalies. Then after the road test, PR Frerichs inspected the brake system. He found there was no brake fluid leakage or anomalies.

Then again on January 20, 2012, PR Frerichs again road tested the 1995 Oldsmobile. He drove the vehicle 16 miles. The bureau's technician found that the brakes stopped quietly with no pull, grab or pulsation and the brake pedal felt firm. Also he found the brake operation was normal, as the park brake held the vehicle, and the park brake lamp illuminated upon depressing the park brake pedal. Further, no instrument panel brake light or ABS lamp illuminated during the road test. The 1995 Oldsmobile steered normally without anomalies. Following the January 20, 2012, road test, PR Frerichs inspected the brake system, which revealed no fluid leaks.

On January 20, 2012, PR Frerichs created an excessive positive camber condition at the right strut and he placed out of specification the "toe in" orientation of the right wheel. The bureau's technician obtained a printout of the excessive camber and toe in condition. PR Frerichs adjusted the tire pressure in the right front tire to 24 PSI. (The vehicle's tire specification is 30 PSI.)

On January 25, 2012, PR Frerichs performed a final road test. He drove the vehicle 15 miles. During the road test, he did not see the brake warning lamp illuminate. The brakes did not pulsate, chatter or pull. The ABS lamp did not illuminate. The vehicle, however, had a strong drift to the right because of the excessive camber maladjustment as caused by PR Frerich. After the road test, PR Frerichs's inspection revealed no brake fluid leaks and the brake fluid was at operating level in the reservoir.

On January 30, 2012, PR Frerichs completed the documentation of the 1995 Oldsmobile. He caused the vehicle to be secured in the bureau's Sacramento Documentation laboratory.

On February 14, 2012, PR Frerichs transported the 1995 Oldsmobile from Sacramento to San Francisco. And on that date at approximately 10:05 a.m., PR Frerichs surrendered custody of the vehicle into the possession of Bureau Program Representative I Christopher A. Cummings (PR Cummings).

USE OF THE 1995 OLDSMOBILE IN THE SECOND UNDERCOVER OPERATION

I. BUREAU PROGRAM REPRESENTATIVE CHRISTOPHER A. CUMMINGS

24. PR Cummings provided persuasive testimonial evidence at the hearing of this matter. By his demeanor while testifying, his clear presentation of evidence and his solemn attitude towards the proposed action against respondent, PR Cummings was shown to be a credible and trustworthy witness.

25. On February 14, 2012, at approximately 10:02 a.m., PR Cummings appointed PR Cano to act as an undercover operator for use of the maladjusted 1995 Oldsmobile to test the professionalism and proficiency in effecting repairs of vehicles for which respondent's licensed repair facility held itself out as being competent to provide service.

PR Cano was instructed to tell the facility's personnel that a diagnosis of problems with the vehicle consisting of the 1995 Oldsmobile wandering "all over the road" and a strange noise coming from underneath the vehicle.

26. On February 14, 2012, at approximately 10:32 a.m., PR Cano, using the fictitious name of "Nannette Sinang," drove the 1995 Oldsmobile to respondent's licensed repair facility.

PR Cano met again with respondent's employee or agent, Mr. Chu. PR Cano told respondent's employee or agent the account of imaginary problems with the vehicle, which the supposed consumer said belonged to her stepfather. The vehicle's claimed problems had purportedly developed as the consumer had driven during a recent rainy day. Respondent's agent or employee summarized the problems as "swirling" and "noise." Mr. Chu presented the supposed consumer with a blank estimate form and directed PR Cano to sign the document and to write her name and telephone number onto the blank estimate/work order form. Respondent's facility repair order, which bore number [redacted], was not presented to PR Cano before she left the premises. And the repair order reflected the supposed consumer's name, telephone number, and signature below the authorization language. The only writing placed by respondent's agent or employee upon the repair order under the form's "Part Number and Service" or "Service Order" sections was: "swirling and nose," which was written by Mr. Chu. Respondent's employee or agent told PR Cano that he would telephone

the consumer when the repair shop's mechanic detected the nature of problems that affected the vehicle. PR Cano asked respondent's employee or agent to assure that the 1995 Oldsmobile underwent a thorough inspection because the consumer did not know the state of repair that her stepfather maintained the vehicle. Before she left the facility, PR Cano was not given a copy of the proposed repair order.

27. At approximately 10:49 a.m., Mr. Chu telephoned PR Cano, who continued to portray herself as a consumer. Respondent's employee or agent falsely told PR Cano that the front brakes to the 1995 Oldsmobile were in a condition of significant disrepair so as to be metal to metal. Mr. Chu untruthfully stated that the two front rotors and two front brake pad required replacement. Also during the telephone call, respondent's agent or employee further dishonestly explained to PR Cano that fluids or oil leaked from two valve cover gaskets, an engine oil pan gasket, and a transmission gasket. And Mr. Chu deceitfully stated that the vehicle's unusual swirling noise, which had supposedly been heard by the consumer, resulted from two front struts that were in complete disrepair and needed replacement. Mr. Chu spuriously stated that after respondent's licensed facility replaced the front struts, the subject automotive repair dealer's personnel would perform a wheel alignment. In reply to the "consumer's" question of the price for the repairs, Mr. Chu, on behalf of respondent's licensed establishment, unreliably stated that $1,900 would be the costs for the repair work.

28. PR Cano, in pretending to be a consumer, told Mr. Chu that she would tell her stepfather about the need repairs and the costs of the repairs, and that she would return the telephone call to Mr. Chu.

PR Cano conferred with PR Cummings and they created a response for PR Cano to convey to respondent's agent or employee about the contemplated repairs for the 1995 Oldsmobile. The program representatives created a plan whereby PR Cano would authorize all the repairs described by respondent's employee or agent and that PR Cano would ask Mr. Chu to clarify the location of the oil or fluid leaks.

29. At approximately 11:38 a.m., on February 14, 2012, PR Cano telephoned the subject automotive repair dealer's facility to speak with Mr. Chu. Upon PR Cano asking about the leaks, Mr. Chu falsely stated that the leaks were "all at the bottom of the vehicle." A person, however, could only observe the leaks upon the vehicle being lifted on a hoist, according to the lie told by Mr. Chu. Mr. Chu never provided PR Cano with an accurate description regarding the leaks. Respondent's agent or employee then said that he had personally checked the rear brake and he determined them to be in proper state of repair. To the question by PR Cano as to whether the vehicle would be safe to drive, Mr. Chu replied by chicanery, "Trust me, did I let you down in the past?" Mr. Chu informed PR Cano that the repairs would be completed by 4:30 p.m. that day. At 4:45 p.m., PR Cano telephoned respondent's licensed establishment to say that she could not secure the vehicle that day. Another agent or employee named Dennis Wong (Mr. Wong) expressed that that the vehicle would be available the next day for the consumer's retrieval.

On February 15, 2012, at approximately 9:40 a.m., PR Cano telephoned respondent's facility with the aim of speaking with Mr. Chu. Mr. Wong, however, spoke with PR Cano. When the putative consumer asked the price of the repairs, Mr. Wong stated that the total cost for repairs to the 1995 Oldsmobile was $2,066.65, rather than $1,900 as stated by Mr. Chu the previous day.

At approximately 10:35 a.m., PR Cano, while pretending to be "Nannette Sinang," arrived at respondent's facility. Since neither Mr. Chu nor Mr. Wong was present, PR Cano interacted with a cashier named "John." The cashier, John, directed PR Cano to speak with a technician named "Rob." Rob presented the supposed consumer with an invoice and showed her a wheel alignment printout.

30. Rob falsely asserted that the vehicle's alignment had been "really bad," which caused the 1995 Oldsmobile to move "all over the road." Rob deviously pointed to the printout and dishonestly stated that the document showed the wheel alignment's measurements before and after the repairs by respondent's licensed facility. Then by fabrication, Rob proclaimed that the vehicle's struts were soft and that condition caused the vehicle to bounce all over the place. When PR Cano asked respondent's employee or agent to explain the condition of the brake rotors, Rob deceitfully asserted that the rotors were digging into the vehicle and that those components required replacement.

Rob then instructed PR Cano to pay the cashier $2,066.65. The supposed consumer tendered cash in paying the bill as presented by respondent's agents and employees. John provided PR Cano with an invoice with number [redacted].

After leaving respondent's facility's premises, PR Cano drove the 1995 Oldsmobile to a location where she released custody of the vehicle to PR Cummings at approximately 10:55 a.m. on February 15, 2012.

RESULTS OF BUREAU INSPECTION OF THE 1995 OLDSMOBILE AFTER THE UNDERCOVER OPERATION DURING FEBRUARY 2012

31. After the February 2012 undercover operation was completed, the 1995 Oldsmobile was returned on February 15, 2012, by BAR PR Cummings to BAR PR Frerichs for the later technician's inspection. Also BAR PR Frerichs received a one-page repair order, dated February 13, 2012, that showed the originating facility to be "San Bruno @ Silver Super Shell," with an address of 2380 San Bruno Avenue, San Francisco. The document reflected a number of [redacted] and reflected ARD number as ARD 213788, which is held by respondent.

Upon his inspection of the 1995 Oldsmobile's inspection, which followed the repairs described in repair order numbered [redacted], BAR PR Frerichs found the brake master cylinder reservoir wet with brake fluid.

The repair order numbered [redacted] has a section for labor and parts that sets out:

Parts:	
Transmission Filter Kit	$40
One set of Valve Cover Gaskets	$80
Two Front Struts	$360
One Set Front Brake Pads	$80
Two Brake Rotors	$220
One Engine Oil Pan Gasket	$90
Five Quarts Transmission Fluid	$50
Labor:	
Removal and Replacement (R&R) Transmission Fluid and Gasket;	$110
R&R Valve Cover Gaskets and Cleaning Valve Covers;	$270
R&R Front Struts;	$300
Alignment;	$110
R&R Front Brakes and Rotors; and	$110
Replace Engine Oil Pan Gasket	$150

32. Upon the return of the 1995 Oldsmobile by PR Cummings to PR Frerichs, the bureau's technician again inspected the vehicle. During the reinspection, which resulted from the bureau's undercover operation, PR Frerichs found significant indicia of incompetent work attributable to respondent's agents and employs, who had supposedly made repairs and then presented a billing invoice to the consumer. Such finding by PR Cummings established incompetence of respondent's employees and agents. Yet, the extent of the work by respondent's agents or employees was more likely fraudulent in nature than only incompetent. The substandard and unprofessional work that was performed by respondent's employees or agents, and detected by PR Frerichs, included the following:

- Agents or employees at respondent's licensed facility had replaced the front brake pads and front brake rotors. Those repairs were shown in the invoice that was given to PR Cano, who acted as a consumer. Replacement of the front brake rotors was not warranted. The price charged to the consumer was entirely unreasonable and excessive.

- Agents or employees at respondent's licensed facility had replaced the front struts. That repair was shown in the invoice that was given to PR Cano, who acted as a consumer. Replacement of the front struts was not warranted. The price charged to the consumer was entirely unreasonable and excessive.

- Agents or employees at respondent's licensed facility had replaced a transmission fluid filter and a transmission pan gasket. The replacement of those components was set out in the invoice that was given to PR Cano. The replacement of a transmission fluid filter and a transmission pan gasket was not warranted.

- Although agents or employees at respondent's licensed facility supposedly performed a vehicle alignment, respondent's workers did not set to proper specification the front caster, camber and toe.

- Agents or employees at respondent's licensed facility did not set to specification the right front tire pressure.

- Agents or employees at respondent's licensed facility removed the cosmetic engine cover. That component was removed to replace the engine valve cover gaskets, but it was not reinstalled on the 1995 Oldsmobile.

PR Warmuth correctly determined that respondent's agents or employees fraudulently charged PR Cano, acting as a consumer, the price for unnecessary parts and labor in an amount of $1,136.97.

33. Before the undercover run began, the 1995 Oldsmobile the only defects introduced by the bureau's representative were the excessive positive camber condition at the right strut and the placement out of specification for the "toe in" orientation of the right wheel.

Following the undercover operation, the vehicle exhibited maladjustments as set out in Factual Finding 32. By those instances of malfeasance, respondent's agents' or employees' unnecessary "repairs" rendered the vehicle prone to prospective damage. The evidence established that the bureau's induced problems were not properly repaired by respondent's employees or agents. But most important, the vehicle was put in a worse condition because of the grossly inaccurate, poor repairs performed on the vehicle by respondent's agents or employees.

Seventh Cause for Discipline: Untrue or Misleading Statements Regarding the Second Undercover Operation and a 1995 Oldsmobile

34. Respondent's employee, Mr. Chu, told PR Cano that the 1995 Oldsmobile required specific parts; however, the parts did not require replacement. That defective condition on the subject vehicle, which was claimed by Mr. Chu, did not exist. And respondent's agent or employee told PR Cano, the supposed consumer, that the vehicle required the extensive repairs and parts as described in Factual Finding 27. Those repairs and parts were not necessary. Respondent knew or should have known all of those statements as made by his agent or employee, Mr. Chu, were false.

PR Frerichs credibly represented that 1995 Oldsmobile's brake pads, brake rotors, struts, and various gaskets were in good working condition and those components were within manufacturer's specifications. PR. Frerichs's testimony at the hearing was uncontroverted in this matter.

35. Respondent's estimate or proposed work order, which was presented to PR Cano, falsely stated or listed certain contemplated parts and repairs for the 1995 Oldsmobile. But as set out in findings above, those parts and repairs were unnecessary.

36. Respondent's invoice, which was presented to PR Cano, falsely stated or listed certain parts for the 1995 Oldsmobile had been completed by respondent's agents or employees. But those parts were not replaced as falsely indicated on the invoice as presented by respondent's licensed facility to PR Cano, who was acting as a consumer.

Eighth Cause For Discipline: Fraud
Regarding the Second Undercover Operation and a 1997 Oldsmobile

37. Respondent's agent or employee committed fraud by wrongfully accepting payment from the supposed consumer for the cost of parts and labor to replace front brake rotors, front struts, a transmission fluid filter, and a transmission pan gasket on the 1995 Oldsmobile. None of those services and parts were necessary.

Respondent's personnel either knew these statements were false or acted with reckless disregard to their veracity by failing to properly inspect the vehicle and its parts. Respondent's employee made these statements to supposed consumer in order to induce her to purchase unnecessary repairs.

Ninth Cause for Discipline: Willful Departure from Trade Standards
Regarding the Second Undercover Operation and the1995 Oldsmobile

38. Respondent's employee or agent, who worked on the 1995 Oldsmobile, willfully departed from, or disregarded, accepted trade standards for good and workmanlike repair without obtaining the consent of the consumer or owner's duly authorized representative in the following material ways:

- Personnel at respondent's licensed facility did not set the Oldsmobile's front caster, camber, and toe to proper specification.

- Personnel at respondent's licensed facility did not set to specification the tire pressure in the vehicle's right front tire.

- Personnel at respondent's licensed facility removed the cosmetic engine cover on the Oldsmobile in order to replace engine valve cover gaskets; however, the personnel did not reinstall the engine cover onto the vehicle.

39. Respondent's employee or agent failed to accurately diagnose and repair the induced defect, namely, the matters described in Factual Finding 38. The bureau's program representative established that respondent's personnel's failure regarding the above described maladjustments imposed by the bureau's program representative and the misdiagnoses and nonrepair attributable to respondent's agents or employees constituted instances of willful departure from trade standards.

Tenth Cause for Discipline: Failure to Provide Written Estimate Regarding the Second Undercover Operation and a 1997 Oldsmobile

40. Respondent's agents or employees failed to properly present to the bureau's operative, who was acting as a consumer, a written estimate for labor and parts necessary for the repairs of the 1995 Oldsmobile.

Eleventh Cause for Discipline: Performing Additional Work Without Obtaining Consent Regarding the Second Undercover Operation and a 1997 Oldsmobile

41. Respondent's agent or employee presented the bureau's operator with an initial verbal estimate of the costs of the repairs to the Oldsmobile. After the operator telephonically authorized those repairs, however, respondent's licensed establishment charged the operator for work supposedly done and for parts supplied by an amount of money well in excess of the initially stated price to make the repairs. The excessive amount of the final invoice was calculated and presented without first obtaining the consumer/operator's oral or written consent.

Matter in Aggravation

42. On September 11, 2008, the bureau issued Citation No C09-0224 against respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional smog check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested.) The bureau assessed against respondent civil penalties totaling $550 for those violations.

Other Matters

43. Due to respondent's default and his resultant failure to appear for hearing, evidence did not establish that respondent's supervisory personnel or staff of mechanics have voluntarily pursued educational endeavors to improve deficiencies identified through the bureau's investigations.

44. Due to respondent's default and his resultant failure to appear for hearing, no competent evidence was offered to establish that respondent or his facility's supervisors have been engaged in significant and conscientious involvement and participation in community, religious or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

45. Due to respondent's default and his resultant failure to appear for hearing, respondent did not call to the hearing of this matter any witness, such as a satisfied customer, to provide evidence regarding the repair facility's personnel's trustworthiness and honesty. No independent person came to the hearing of this matter to offer favorable evidence regarding Respondent's conduct that led to the Accusation's causes for discipline. No credible person offered evidence regarding the attitudes of respondent or the licensed establishment's supervisors relative to the past acts of unprofessional conduct as described above.

46. As to the factual findings set out above, by a preponderance of evidence to a reasonable certainty proved that respondent's acts and omissions, which give cause to sustain all allegations in the Accusation, establish that respondent as an automotive repair dealer has, or is, engaged in a course of repeated and willful violations of the statutes and regulations that govern licensees of the Bureau.

Costs of Investigation and Prosecution

47. Program Manager I William D. Thomas, of the Case Management and Enforcement Statistics unit for the bureau, certified that as of January 13, 2014, certain costs were incurred in connection with the preparation of undercover vehicles, which were used in the agency's action that led to the Accusation against respondent:

i. Costs of Vehicle Preparation Services:

Personnel	Fiscal Year	Hours	Rate/HR	Cost
Program Representative I	2011/12	194.5	$71.45	$13,898.03
	2012/13	22	$73.20	$1,610.40
Program Representative II	2011/12	14	$76.06	$1,064.84

Costs of Equipment to Misadjust Vehicles

Undercover Vehicle Operations	$4,066.65
Total Cost for Investigation and Enforcement Operations	$20,638.92

ii. Cost of Prosecution Services:

Deputy Attorney General Nicholas Tsukamaki certified, on January 21, 2014, that the costs of prosecution by the Department of Justice on behalf of the bureau were incurred regarding the Accusation against respondent as follows:

b. Department of Justice

Deputy Attorneys General	Fiscal Year	Hours	Rate $	Cost $
All deputies	2012/13	53.75	$170	$9,137.50
Paralegal Services	2012/13	2.75	$120	$330.00

The sum of prosecution costs, through the Department of Justice, is $9,467.50.

48. The total costs of investigation, vehicle preparation and prosecution in this matter are $30.106.42. These were the costs actually and necessarily incurred investigating and prosecuting this matter. The hearing of this matter pertained to two distinct undercover operations, which included extensive work by two bureau laboratory representative in preparing two different vehicles. And there were five or six program representatives who provided billable services during the investigation efforts that underscore this matter.

49. Due to his default and resultant failure to appear for the hearing, respondent did not advance a meritorious defense in the exercise of its right to a hearing in this matter. Also, respondent cannot be seen, under the facts set out above, to have committed slight or inconsequential misconduct in the context of the Accusation. Respondent did not raise "colorable challenges" to Complainant's Accusation's paramount causes for discipline. Respondent did not contest or refute the conclusions of the bureau's program representatives that respondent's employees' unprofessional conduct arose out of five overriding deficiencies, which were: (i) fraudulently uttering false statements to a consumer, albeit an undercover operator; (ii) issuing grossly deceitful and significantly inflated invoices for work

that was not required to be performed by a competent automotive repair dealer; (iii) departures from industry standards for good and workmanlike automotive repairs; (iv) making an array of misdiagnoses of automotive defects that entailed the pattern of making incomplete or incorrect repairs; and (v) violating the statutory requirements for the preparation and presentation to consumers of reasonably accurate estimates of repair.

The immediate foregoing factors do not indicate that the imposition of the full costs of investigation and prosecution will unfairly penalize respondent. And a substantial basis does not exist to warrant a reduction of the assessment against respondent for the costs of prosecution incurred by complainant.

50 Accordingly, as of the date of the hearing, the reasonable cost owed by Respondent to the Department, on behalf of the Bureau, is $30,106.42.

LEGAL CONCLUSIONS

Standard of Proof

1. "Preponderance of the evidence" is the standard of proof to be applied as to facts in dispute under the Accusation from which disciplinary action may result against the registration and license held by respondent. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repairs* (2011) 201 Cal.App.4th 911, 916-918.)

The Factual Findings and Order, herein, rest upon a preponderance of evidence that establishes respondent's unprofessional and unlawful acts and omissions in the matters recorded herein.

Untrue or Misleading Statements

2. Business and Professions Code section 9884.7, subdivision (a)(1), sets out that:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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.
>
> (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.

Cause for discipline of the automotive repair dealer registration exists under Business and Professions Code section 9884.7, subdivision (a)(1), by reason of the matters set forth in Factual Findings 10, 15, 17, 27, 29, 30, and 34 through 36.

Fraud

3. Business and Professions Code section 9884.7, subdivision (a)(4), establishes:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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.
>
> [¶] . . . [¶]
>
> (4) Any other conduct which constitutes fraud.

Fraud is the willful deceit of another with the intent to induce him to enter a contract or to alter his position to his injury or risk. (Civ. Code, §§ 1572; 1709.) Under California law, in order to find a person culpable of actual fraud, the party must be shown to have concealed material facts from the victim with intent thereby to deceive the victim or to induce the victim to enter into a contract. (*Earl* v. *Saks & Co.* (1951) 36 Cal.2d 602.)

It must also be stated that the term "fraud" has many definitions. It has been defined as "any kind of artifice employed by one person to deceive another."[4] Also, it is said to be "a generic term, embracing all multifarious means [that] human ingenuity can devise, and [that] are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated."[5] And, fraud and "bad faith" are synonymous, and also the term has synonyms of "dishonesty, infidelity, faithlessness, perfidy [and] unfairness."[6]

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[4] *Black's Law Dict.* (Revised 4th ed., 1968) p. 788.

[5] *Ibid.*

[6] *Ibid.*

California appellate courts have ruled that "where failure to disclose a material fact is calculated to induce a false belief, the distinction between concealment and affirmative misrepresentation is tenuous. Both are fraudulent. An active concealment has the same force and effect as a representation which is positive in form." (*Outboard Marine Corp. v. Superior Court* (1975) 52 Cal.App.3d 30, 37.)

Misrepresentation "being a false assertion of fact, commonly takes the form of spoken or written words. Whether a statement is false depends on the meaning of the words in all the circumstances, including what may fairly be inferred from them. An assertion may also be inferred from conduct other than words. Concealment or even non-disclosure may have the effect of a misrepresentation . . . . [A]n assertion need not be fraudulent to be a misrepresentation. Thus a statement intended to be truthful may be a misrepresentation because of ignorance or carelessness, as when the word 'not' is inadvertently omitted or when inaccurate language is used. But a misrepresentation that is not fraudulent has no consequences . . . . unless it is material." (*Restatement (Second) of Contracts* § 159 comment A (1979).)

Respondent, through its agents and employees, made repeated false assertions and misrepresentations to the pretend consumer and bureau program representative. The aggrieved consumers were persons who depended upon accurate, truthful and correct information. The misrepresentations by Respondent's personnel were material and substantial.

Cause for discipline of the automotive repair dealer registration exists under Business and Professions Code section 9884.7, subdivision (a)(4), by reason of the matters set forth in Factual Findings 10, 16, 17, 27, 29, 30 and 37.

Departure from Trade Standards

4. Business and Professions Code section 9884.7, subdivision (a)(7), sets out, in part, that: "the director, where the automotive repair dealer cannot show there was a bona fide error, . . . may invalidate temporarily or permanently, the registration of an automotive repair dealer for . . . [a]ny 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."

Cause exists to invalidate temporarily or permanently Respondent's automotive repair dealer registration, pursuant to Business and Professions Code section 9884.7, subdivision (a)(7), by reason of the matters set forth in Factual Findings 11, 13, 14, 18, 31 through 33, 38 and 39.

Failure to Record Work on Invoice

5. Business and Professions Code section 9884.8 sets out:

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

California Code of Regulations, title 16, section 3356, subdivision (a)(2)(A), provides:

> (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.

Cause for discipline of the automotive repair dealer registration exists under Business and Professions Code section 9884.8, as that statutory provision interacts with California Code of Regulations, title 16, section 3356, subdivision (a)(2)(A), by reason of the matters set forth in Factual Findings 9 and 19.

Failure to Provide a Written Estimate

6. Business and Professions Code section 9884.9, subdivision (a), states:

(a) 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. 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 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 are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from 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 original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs, and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

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

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

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

_____
(signature or initials)"

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

California Code of Regulations, title 16, section 3353, subdivision (a), sets forth:

> No work for compensation shall be commenced and no charges shall accrue without specific authorization from the customer in accordance with the following requirements:
>
> (a) Estimate for Parts and Labor. Every dealer shall give to each customer a written estimated price for parts and labor for a specific job.

Cause for discipline of the automotive repair dealer registration exists under Business and Professions Code section 9884.9, subdivision (a), in conjunction with California Code of Regulations, title 16, section 3353, subdivision (a), by reason of the matters set forth in Factual Finding 9, 20 and 40.

Performing Additional Work Without Obtaining Consent

7. California Code of Regulations, title 16, section 3353, subdivision (c), states:

> No work for compensation shall be commenced and no charges shall accrue without specific authorization from the customer in accordance with the following requirements:
>
> [¶] . . . [¶]
>
> [¶] . . . [¶]
>
> (c) Additional Authorization. Except as provided in subsection (f), the dealer shall obtain the customer's authorization before any additional work not estimated is done or parts not estimated are supplied. This authorization shall be in written, oral, or electronic form, and shall describe the additional repairs, parts, labor and the total additional cost.
>
> (1) If the authorization from the customer for additional repairs, parts, or labor in excess of the written estimated price is obtained orally, the dealer shall also make a notation on the work order and on the invoice of the date, time, name of the person authorizing the additional repairs, and the telephone number called, if any, together with the specification of the additional repairs, parts, labor and the total additional cost.

(2) If the authorization from the customer for additional repairs, parts, or labor in excess of the written estimated price is obtained by facsimile transmission (fax), the dealer shall also attach to the work order and the invoice, a faxed document that is signed and dated by the customer and shows the date and time of transmission and describes the additional repairs, parts, labor and the total additional cost.

(3) If the authorization from the customer for additional repairs, parts, or labor in excess of the written estimated price is obtained by electronic mail (e-mail), the dealer shall print and attach to the work order and invoice, the e-mail authorization which shows the date and time of transmission and describes the additional repairs, parts, labor and the total additional cost.

(4) The additional repairs, parts, labor, total additional cost, and a statement that the additional repairs were authorized either orally, or by fax, or by e-mail shall be recorded on the final invoice pursuant 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.

Cause for discipline of the automotive repair dealer registration exists under Business and Professions Code section 9884.9, in conjunction with California Code of Regulations, title 16, section 3353, subdivision (c), by reason of the matters set forth in Factual Finding 9, 21, 29 and 41.

Adverse Inference Due to Failure to Appear for Administrative Adjudication Hearing

8. Because Respondent failed to appear at the hearing of this matter, no evidence in mitigation or rehabilitation is available. Hence, no basis exists to consider respondent's rehabilitation following unlawful, fraudulent and deceitful acts, omissions and behavior committed by respondent's employees or agents during October 2011 and February 2012.

Respondent is Subject to Agency Action

9. In light of the well-established rule of nondelegable duties imposed upon an owner-licensee, respondent must be held responsible for the acts and omissions of, or by, his agents and employees at the licensed automotive repair dealer's facility, and respondent owner is subject to the causes for discipline that result from the serious misconduct associated with the premises owned by respondent Vuong.

The nondelegable duties rule, which is similar to the rule of *respondeat superior*, advances that a "licensee, if he elects to operate his business through employees, must be

responsible to the licensing authority for [the employees'] conduct in the exercise of his license." (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295.) "By virtue of the ownership of a . . . license, such owner has a responsibility to see to it that the license is not used in violation of law." (*Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 360.)

In citing Civil Code section 2330, the court in the *Ford Dealers Association* case commented that: "[t]he settled rule that licensees can be held liable for the acts of their employees comports with the general rule governing principal-agent liability. 'An agent represents his principal for all purposes within the scope of his actual or ostensible authority.' "(Civil Code section 2330.)" (*Ford Dealers Assn. v. DMV, supra,* 32 Cal.3d at p. 360.)

The rule of nondelegable duties of licensees is of common law derivation. (*California Assn. of Health Facilities v. Department of Health Services supra,* 16 Cal.4th at p. 296: *Van Arsdale v. Hollinger* (1968) 68 Cal.2d 245, 251.) The essential justification for the rule is to ensure accountability of licensees so as to safeguard the public health, safety or welfare. More importantly, if a licensee, such as respondent Vuong, were not liable for the acts and omissions of his agents and independent contractors, "effective regulation would be impossible. [The licensee] could contract away the daily operations of his business to independent contractors and become immune to disciplinary action by the licensing authority." (*California Assn. of Health Facilities v. Department of Health Services, supra*, 16 Cal.4th at p. 296.) Such result would undermine effective law enforcement and regulatory oversight. And, the concept that a licensee will be held liable for the acts of agents is one that has been applied to situations where the agent is an independent contractor or is an employee. (See *Banks v. Board of Pharmacy* (1984) 161 Cal.App.3d 708, 713; *Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797-798.)

Respondent was obligated to supervise and control the activities and functions of the service writers and mechanics, who were associated with the ARD registration attached to San Bruno at Silver Super Shell. Respondent must bear full responsibility for the acts and omissions of Mr. Vincent Chu, "John" and "Rob," the repair shop's service writers who were either agents or employees of respondent.

Matters in Aggravation and Degree of Discipline

10. As set out in Factual Finding 42, the past citation against respondent's license constitutes a matter in aggravation in this agency action.

11. The bureau has promulgated guidelines that set out the extent of license discipline that may be imposed under particular circumstances. The guidelines explicitly indicate that license revocation is justified for nearly all of the causes for discipline against Respondent as established by the evidence in this matter.

An array of factors in aggravation exists and includes:

- The undercover operations involve detection of incompetence on the part of respondent's facility's personnel.

- Respondent, through his employees or agents, has performed negligent and willfully improper repair work that endangers consumers. Respondent's negligence is vividly demonstrated through the two undercover operations. More importantly, the evidence is clear that respondent's agents' or employees' unlawful acts, as proven in the undercover operations, were part of a pattern of practice.

- Respondent has a history of imposition of a citation penalty from the bureau.

- Respondent committed fraud by replacing perfectly good parts and by charging for work that was wholly unwarranted.

- There was no evidence that respondent has provided any outside training for the mechanics and service writer who are employed at the subject repair facility.

- There was no evidence that respondent voluntary purchased proper diagnostic equipment or manuals to avoid the grave unprofessional conduct described above.

- There was no evidence of any medical or mental conditions that prevented respondent from exercising direct supervision and control over employees and agents, whose fraudulent conduct led to wrongdoing.

- There was significant loss to the State of California and potentially significant damage to consumer's property as detected through the bureau's undercover operations.

- There was no evidence that respondent's licensed establishment has taken any specific steps to minimize recurrence of the violations described herein.

- There is no indication that respondent will change his facility's operation if the ARD is placed on probation.

There can be little doubt that respondent is subject to discipline and the only level of discipline that will adequately protect the public is revocation. This level of discipline is well within the bureau's guidelines.

Other Determinations

12. Business and Professions Code section 9884.7, subdivision (c), establishes: "The director may invalidate, temporarily or permanently, 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 this chapter, or regulations adopted pursuant to it." (Emphasis added.)

In order to avoid an injustice and to assure the utmost compliance with, and respect for, the bureau's police powers relative to the automobile repair industry, the directive of Business and Professions Code section 9884.7, subdivision (c), must operate with regard to respondent to the fullest extent of the law.

Hence, the director may permanently invalidate the registration for all places of business operated in the State of California in respondent's name because of the course of repeated and willful violations of Automotive Repair Act (Business and Professions Code, Chapter 20.3, section 9880 et seq.), or regulations adopted pursuant to it. And, the director may revoke the Smog Check Station license issued to respondent

Recovery of Costs of Investigation and Prosecution

13. Complainant has requested that respondent Dennis T. Vuong be ordered to pay the department the costs of investigation and prosecution as incurred by the bureau.

Code section 125.3 prescribes that a "licentiate found to have committed a violation or violations of the licensing act" may be directed "to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

The California Supreme Court's reasoning on the obligation of a licensing agency to fairly and conscientiously impose costs in administrative adjudication as articulated in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45-46, is persuasive and should be considered in this matter. Scrutiny of certain factors, which pertain to the Director's exercise of discretion to analyze or examine factors that might mitigate or reduce costs of investigation and prosecution upon a licensee found to have engaged in unprofessional conduct, are set forth in Factual Finding 49.

The reasonable costs of investigation and prosecution as set forth in Factual Findings 47, 48 and 50 amount to $30,106.42 .

ORDER

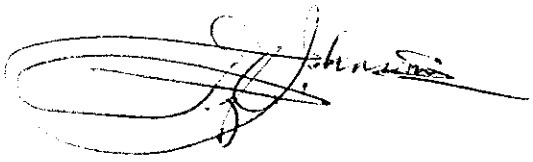
1. Automotive Repair Dealer Registration Number ARD 213788 issued to Dennis T. Vuong, owner and doing business as San Bruno at Silver Super Shell, is permanently invalidated by reason of Legal Conclusions 2 through 7, and 9, individually and jointly.

2. Smog Check, Test Only, Station License Number RC 213788 issued to respondent Dennis T. Vuong as owner of, and doing business as San Bruno at Silver Super Shell, is revoked, pursuant to Legal Conclusions 2 through 7, 9, and 12, separately and for all of them.

3. Any and all other automobile repair dealer registrations, or other licenses issued by the bureau, for all places of business operated in this state or whose financial or management interests are held in this state by respondent Dennis T. Vuong, are permanently invalidated and revoked, by reason of Legal Conclusions 2 through 7, 9, and 12, separately and for all of them.

4. Within thirty days of the effective date of this decision respondent Dennis T. Vuong shall pay the Director, Department of Consumer Affairs, the costs of investigation and prosecution in an amount of $30,106.42, by reason of Legal Conclusion 13.

DATED: February 20, 2014



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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: **SAN BRUNO AT SILVER SUPER SHELL** **DENNIS T. VUONG, OWNER** **2380 San Bruno Ave.** **San Francisco, CA 94134** **Automotive Repair Dealer Registration No. ARD 213788** **Smog Check Station License No. RC 213788** Respondent.	Case No. 77/13-73 **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. On or about December 5, 2000, the Bureau issued Automotive Repair Dealer Registration Number ARD 213788 to San Bruno at Silver Super Shell, Dennis T. Vuong, Owner (Respondent). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2013, unless renewed.

3. On or about January 17, 2001, the Bureau issued Smog Check Station License Number RC 213788 to Respondent. The smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2013, unless renewed.

JURISDICTION

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

5. Section 9884.7 of the Code provides that the Director may revoke an automotive repair dealer registration.

6. Section 9884.13 of the Code provides, 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.

7. Section 118 of the Code states:

> The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

STATUTORY PROVISIONS

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

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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.
>
> (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.

. . .

(4) Any other conduct which 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.

(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.

. . .

(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 subdivision (a) shall only refuse to validate, or shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this 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.

(c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate temporarily or permanently, 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 this chapter, or regulations adopted pursuant to it.

9. Section 9884.8 of the Code states in pertinent part: "All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. . . ."

10. Section 9884.9 of the Code states in pertinent part:

(a) 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. 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 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 are supplied. . . .

. . .

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11. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration, or other means to engage in a business or profession regulated by the Code.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 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:
>
> (a) Estimate for Parts and Labor. Every dealer shall give to each customer a written estimated price for parts and labor for a specific job.
>
> . . .
>
> (c) Additional Authorization. Except as provided in subsection (f), the dealer shall obtain the customer's authorization before any additional work not estimated is done or parts not estimated are supplied. This authorization shall be in written, oral, or electronic form, and shall describe the additional repairs, parts, labor and the total additional cost.
>
> . . .

13. California Code of Regulations, title 16, 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.
>
> . . .

14. California Code of Regulations, title 16, section 3371 states in pertinent part: "No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading. . . ."

15. California Code of Regulations, title 16, section 3373, states:

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

COSTS

16. Section 125.3 of the Code provides, in pertinent part, that the Bureau 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

UNDERCOVER OPERATION – October 24, 2011

17. Prior to initiating an undercover run at the subject facility on October 24, 2011, Bureau personnel had inspected and documented a 1997 Acura. The only repairs needed for this vehicle to be safely driven were replacement of the front brake pads, replacement of the left rear brake and tail lamp bulb, and inflation of the tires to their proper pressure.

18. On or about October 24, 2011, a Bureau undercover operator (operator) drove the Acura to Respondent's facility and was greeted by the service manager Vincent Chu (Chu). The operator told Chu that the vehicle felt "mushy" and "squirmy" and that the brake lamp was on. Chu handed the operator an invoice requesting that she fill it out. The invoice did not contain an estimated price for the repairs. Chu told the operator he would call her with an estimated price for the work within the hour.

19. Later in the day on October 24, Chu phoned the operator and told her that the Acura needed front and rear brake pads and front and rear shocks. Chu gave the operator an estimated price of $1,200 for the repairs. The operator then told Chu that she needed to check her finances and she would get back to him. Later that day, the operator called Chu and asked him whether it was safe to replace the brakes without replacing the brake rotors. Chu replied that he might as

well replace the rotors so he could warranty the brake job. Chu also informed the operator that the rotors would cost $85 each and that he would not charge her for the brake labor. Chu also told the operator that the new total cost of the repairs was $1,540. The operator verbally authorized the brake pad, rotor, and shock replacement on the Acura.

20. On October 25, the operator phoned Chu. Chu informed the operator that the repairs were finished but that the cost of the repairs exceeded the quoted price due to the increased price of certain parts. Chu told the operator that the total price was now $2,059.65. He also told the operator that he had replaced the brake bulb at no charge.

21. On or about October 26, 2011, the operator phoned Chu and told him that she could only pay $2,000 for the repairs. Chu agreed to lower the bill to $2,000. Later in the day on October 26, the operator returned to Respondent's facility, paid Chu $2,000 in cash, and received final invoice number [redacted] The invoice does not indicate that the Acura's rear brake bulb had been replaced.

22. Upon re-inspection of the Acura, a Bureau representative determined that Respondent's facility had replaced the front brake pads, the front brake rotors, the rear brake pads, and the rear brake rotors as invoiced. The front and rear brake rotors and the rear brake pads were within factory specifications and were not in need of replacement. The Bureau representative also determined that the rear brake bulb had been replaced and was needed. The Bureau representative further determined that the front and rear shocks were replaced as invoiced but that they were not in need of replacement. Finally, the Bureau representative determined that two front brake bleeder screw rubber dust caps were missing, the front brake rotor to hub screws were missing, the brake master cylinder was over full, two left front brake line bracket to strut bolts were loose, and one tire was 5 pounds per square inch under the manufacturer's specification.

23. Bureau personnel determined that Respondent's facility charged the operator $1,778.34 in unnecessary parts and labor. The parts and labor costs paid for the unnecessary repairs are shown in Table #1 below.

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TABLE #1

Description	Parts Cost (incl. CA sales tax)	Service/installation labor cost
Rear brake pads	$92.23	$180.00
Front and rear shocks	$759.50	$300.00
Front brake rotors	$239.98	
Rear brake rotors	$206.63	
Total Parts	$1,298.34	
Total Labor	$480.00	
Total Fraud	$1,778.34	

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

24. Respondent's registration is subject to discipline under section 9884.7, subdivision (a)(1) of the Code and California Code of Regulations, title 16, sections 3371 and 3373, 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 told the Bureau's operator that the Acura needed certain parts that were not in need of replacement.

b. Respondent's employee listed on the invoice for the repairs to the Acura certain parts and repairs that were unnecessary.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

25. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(4) of the Code in that Respondent committed acts constituting fraud by accepting payment for the replacement of front and rear brake rotors, rear brake pads, and front and rear shocks on the Acura even though those parts were not in need of replacement.

THIRD CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

26. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(7) of the Code 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's facility failed to replace two front brake bleeder screw rubber dust caps and the front brake rotor to hub screws on the Acura.

b. Respondent's facility left the Acura's brake master cylinder over full.

c. Respondent's facility left two of the Acura's left front brake line bracket to strut bolts loose.

d. Respondent's facility left one of the Acura's tires 5 pounds per square inch under the manufacturer's specification.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Record Work on Invoice)

27. Respondent is subject to disciplinary action under section 9884.8 of the Code and California Code of Regulations, title 16, section 3356, subdivision (a)(2)(A) in that Respondent replaced a rear brake bulb on the Acura but did not record this repair on the invoice.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate)

28. Respondent is subject to disciplinary action under section 9884.9, subdivision (a) of the Code and California Code of Regulations, title 16, section 3353, subdivision (a) in that Respondent failed to give to the Bureau's operator a written estimated price for labor and parts necessary for the repairs to the Acura.

SIXTH CAUSE FOR DISCIPLINE

(Performing Additional Work Without Obtaining Consent)

29. Respondent is subject to disciplinary action under section 9884.9 of the Code and California Code of Regulations, title 16, section 3353, subdivision (c) in that after Respondent's

employee provided the Bureau's operator with an initial estimate of the repairs to the Acura and after the operator verbally authorized those repairs, Respondent's facility performed work and/or supplied parts in excess of the estimated price without obtaining the operator's oral or written consent. Respondent's facility also charged the operator for this additional work and/or parts supplied.

UNDERCOVER OPERATION – FEBRUARY 14, 2012

30. Prior to initiating an undercover run at the subject facility, Bureau personnel had inspected and documented a 1995 Oldsmobile. The only repairs needed for this vehicle to be safely driven were replacement of the front brake pads, adjustment of the right front camber and toe, and inflation of the right front tire to the proper pressure. The vehicle's front brake rotors and front shocks were installed new and found to be free of defect. The transmission oil filter, pan gasket, and seven quarts of transmission oil were also installed new.

31. On or about February 14, 2012, the same Bureau operator involved in the undercover operation on October 24, 2011, drove the Oldsmobile to Respondent's facility and was greeted by Chu. The operator told Chu that the vehicle was wandering all over the road and was making a strange noise. Chu gave the operator a blank work order and asked that she fill it out and sign it, which the operator did. Chu did not provide the operator with a copy of the work order or an estimated price for the repairs. Chu agreed to look over the vehicle and requested that the operator leave it at the facility to be diagnosed.

32. Later in the day on February 14, the operator phoned Respondent's facility and spoke with Chu. Chu informed the operator that the front brake pads and front brake rotors needed to be replaced, and that there was oil leaking from the valve cover gaskets, the transmission gasket, and the engine oil pan gasket. Chu also informed the operator that the two front struts, or shocks, needed to be replaced, and that after he replaced the struts, Chu would perform an alignment. Chu verbally gave the operator an estimated price of $1,900 for the repairs. The operator later authorized the repairs.

33. On or about February 15, 2012, the operator called Respondent's facility to check on

the status of the repairs. The operator was informed by one of Respondent's employees that the total cost of the repairs was $2,066.65. Later in the day on February 15, the operator went to Respondent's facility, paid $2,066.65 for the repairs, and picked up the Oldsmobile. The operator also received a final invoice number [redacted] which was incorrectly dated February 13, 2012.

34. Upon re-inspection of the Oldsmobile, a Bureau representative determined the following with regard to the vehicle:

a. Respondent's facility had replaced the front brake pads and front brake rotors as invoiced. The front brake rotors were not in need of replacement.

b. Respondent's facility had replaced the front struts as invoiced. The front struts were not in need of replacement.

c. The transmission oil filter and transmission pan gasket were not in need of replacement and were not replaced as invoiced.

d. Although a vehicle alignment had been performed, the front caster, camber, and toe were not set to proper specification.

e. The right front tire pressure was not set to specification.

f. The cosmetic engine cover was removed to replace the engine valve cover gaskets but was not reinstalled on the vehicle.

35. Bureau personnel determined that Respondent's facility charged the operator $1,136.97 in unnecessary parts and labor. The parts and labor costs paid for the unnecessary repairs are shown in Table #2 below.

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TABLE #2

Description	Parts Cost (incl. CA sales tax)	Service/installation labor cost
Transmission fluid	$54.26	$110.00
Transmission filter kit*	$43.40	$0.00
Front brake rotors	$238.70	$0.00
Front struts	$390.61	$300.00
Total Parts	$726.97	
Total Labor	$410.00	
Total Fraud	$1,136.97	
*Transmission filter kit was invoiced but not installed on the undercover vehicle		

SEVENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

36. Respondent's registration is subject to discipline under section 9884.7, subdivision (a)(1) of the Code and California Code of Regulations, title 16, sections 3371 and 3373 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 told the Bureau's operator that the Oldsmobile needed certain parts that were not in need of replacement.

b. Respondent's employee listed on the invoice for the repairs to the Oldsmobile certain parts and repairs that were unnecessary.

c. Respondent's employee listed on the invoice for the repairs to the Oldsmobile certain parts that were not replaced as invoiced.

EIGHTH CAUSE FOR DISCIPLINE

(Fraud)

37. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(4)

of the Code in that Respondent committed acts constituting fraud by accepting payment for the replacement of front brake rotors, front struts, a transmission oil filter, and a transmission pan gasket on the Oldsmobile even though those parts were not in need of replacement.

NINTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

38. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(7) of the Code 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's facility did not set the Oldsmobile's front caster, camber, and toe to proper specification.

b. The right front tire pressure on the Oldsmobile was not set to specification.

c. The cosmetic engine cover on the Oldsmobile was removed to replace the engine valve cover gaskets but was not reinstalled on the vehicle.

TENTH CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate)

39. Respondent is subject to disciplinary action under section 9884.9, subdivision (a) of the Code and California Code of Regulations, title 16, section 3353, subdivision (a) in that Respondent failed to give to the Bureau's operator a written estimated price for labor and parts necessary for the repairs to the Oldsmobile.

ELEVENTH CAUSE FOR DISCIPLINE

(Performing Additional Work Without Obtaining Consent)

40. Respondent is subject to disciplinary action under section 9884.9 of the Code and California Code of Regulations, title 16, section 3353, subdivision (c) in that after Respondent's employee provided the Bureau's operator with an initial estimate of the repairs to the Oldsmobile and after the operator verbally authorized those repairs, Respondent's facility charged the operator for work done and/or parts supplied in excess of the estimated price without obtaining the operator's oral or written consent.

PRIOR CITATIONS

41. To determine the degree of discipline, if any, to be imposed on Respondent, Complaint alleges the following:

a. On or about September 11, 2008, the Bureau issued Citation No. C09-0224 against Respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the Department), and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). The Bureau assessed civil penalties totaling $500 against Respondent for these violations. Respondent complied with this citation on July 9, 2009.

OTHER MATTERS

42. Pursuant to section 9884.7, subdivision (c) of the Code, the Director may suspend, revoke, or place on probation the registrations for all places of business operated in this state by San Bruno at Silver Super Shell, Dennis T. Vuong, Owner, upon a finding that he 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 213788 issued to San Bruno at Silver Super Shell, Dennis T. Vuong, Owner (Respondent);

2. Revoking or suspending Smog Check Station License Number RC 213788 issued to Respondent;

3. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Dennis T. Vuong;

4. Ordering Respondent 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; and

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

DATED: June 7, 2013

John Wallauch by Doug Balatti

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

DOUG BALATTI

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