KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General
KAREN R. DENVIR
Deputy Attorney General
State Bar No. 197268
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5333
Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the Accusation Against: **FOREIGN AUTO CARE** **ANATOLIY BUTKEVICH, OWNER** **6315 Watt Avenue, #121, #122, #123** **North Highlands, CA 95660** **Mailing Address:** **6315 Watt Avenue, #123** **North Highlands, CA 95660** **Automotive Repair Dealer Reg. No. ARD 225813** Respondent.	Case No. 77/10-40 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about March 6, 2003, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 225813 to Anatoliy Butkevich ("Respondent"), owner of Foreign Auto Care. Respondent's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

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JURISDICTION

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

4. Code section 9884.13 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.

STATUTORY AND REGULATORY PROVISIONS

5. Code section 9884.7 states, in pertinent part:

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

6. Code section 9884.7, subdivision (c), states, in pertinent part, that the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

7. Code section 9884.8 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 . . . One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

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

> The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. 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 when 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 . . .

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

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

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

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

12. California Code of Regulations, title 16, section ("Regulation") 3356 states, in pertinent part:

> (a) All invoices for service and repair work performed, and parts supplied, as provided for in Section 9884.8 of the Business and Professions Code, shall comply with the following:
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> . . . .
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> (2) The invoice shall separately list, describe and identify all of the following:
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> (A) All service and repair work performed, including all diagnostic and warranty work, and the price for each described service and repair.

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

13. Regulation 3358 states, in pertinent part:

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

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

14. Regulation 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.

COST RECOVERY

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

CONSUMER COMPLAINT (SMITH): 2000 TOYOTA 4RUNNER

16. On or about April 4, 2008, Sheila Smith ("Smith") was driving her 2000 Toyota 4Runner on the freeway when the engine quit. Smith had the vehicle towed to Respondent's facility and authorized Respondent to diagnose the vehicle. Later, Respondent told Smith that the engine needed to be replaced and that he could obtain a used engine with a one year warranty for $1,850.

17. On or about October 5, 2008, Smith went to the facility and paid Respondent $1,850. Respondent stated that the repairs would be completed in a couple of weeks. Smith asked Respondent how much more she owed him for the repairs and he stated $800 ($2,650 total).

18. On or about March 9, 2009, Smith went to the facility to check on the vehicle. Respondent recommended that the seals, timing belt, water pump, thermostat, and hoses be replaced on the used engine. Smith declined the repairs.

19. On or about March 19, 2009, Smith went to the facility to pick up the vehicle. Respondent told Smith that the final bill totaled *$3,165*. Smith asked Respondent why the repairs cost more than he originally quoted. Respondent told Smith that the person who sold him the used engine would not honor the warranty unless the additional parts Smith previously declined were replaced. Smith paid Respondent $700 in cash and made arrangements to pay the $615 balance later. Respondent gave Smith Invoice No. 8604, but did not provide her with the written warranty. Later, as Smith was driving the vehicle, she noticed that it would run hot when she turned on the air conditioning system and that her GPS navigation system was missing.

20. On or about April 14, 2009, Smith filed a complaint with the Bureau, seeking proof that Respondent had, in fact, installed a used engine in the vehicle.

21. On or about June 16, 2009, a representative of the Bureau obtained Smith's consent to have the vehicle inspected at Roseville Toyota.

22. On or about July 15, 2009, the representative went to Roseville Toyota and inspected and photographed the engine number that was stamped on the engine block of the vehicle (Roseville Toyota had removed various parts enabling the representative to access the engine).

23. On or about July 20, 2009, the representative went to Respondent's facility and requested the repair records on the vehicle. Respondent provided the representative with a few of his records, including a parts invoice for a used engine. Respondent told the representative that they found during their diagnosis of the vehicle that the engine had no compression and recommended replacing it with a used engine, that they had, in fact, replaced the engine, and that they still had possession of Smith's old engine.

24. On or about July 23, 2009, the representative returned to the facility and obtained additional records on the vehicle, including Worldpac invoice number 76842 dated February 6, 2009, and Worldpac invoice number 842752 dated January 23, 2009. The representative photographed the engine that Respondent claimed had been removed from the vehicle (hereinafter "junk engine").

25. On or about July 29, 2009, the representative went to Roseville Toyota and obtained Toyota data records pertaining to the vehicle and the junk engine. The representative verified

through the records that the engine number on the engine block in Smith's vehicle (which the representative had photographed on July 15, 2009), matched the number of the engine that had originally been installed by Toyota, confirming that Respondent had not replaced the engine on the vehicle as invoiced.

26. On or about August 18, 2009, the representative received information indicating that the junk engine had been supplied by A4dable Auto Care.

27. On or about September 14, 2009, the representative met with the manager of A4dable Auto Care. The manager told the representative that in May 2009, Respondent came to his facility in need of an engine from a Toyota 4Runner. The manager told Respondent that he had just given one to a scrap metal recycler.

28. Between September 21, 2009, and September 23, 2009, the representative had an employee at Worldpac examine parts invoice numbers 76842 and 842752. The employee told the representative that the invoice numbers were not complete, and provided the representative with a copy of Worldpac's purchase history for Respondent's facility from January 10, 2009, to February 9, 2009. There was no record of either invoice in the purchase history. Later, the manager provided the representative with two invoices dated July 21, 2009, which had been issued by Worldpac to Respondent, one numbered 76842752 and the other numbered 76842753. The parts listed on these invoices were the same parts listed on invoice numbers 76842 and 842752. The manager told the representative that the parts Respondent had purchased on July 21, 2009, had been returned for credit on July 22, 2009.

29. On or about October 6, 2009, the representative spoke with the scrap metal recycler. The scrap metal recycler stated that in May 2009, he had received a junk V6 engine out of a Toyota 4Runner from A4dable Auto Care and he had sold it to Respondent for $20 along with a couple of cylinder heads.

30. On or about November 3, 2009, the representative met with Respondent. Respondent admitted that the engine had not been replaced in the vehicle and that his facility had repaired it instead by replacing the cylinder heads.

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FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

a. Respondent represented on Invoice No. 8604 that a used engine assembly had been installed in Smith's 2000 Toyota 4Runner. In fact, the existing engine had not been replaced in the vehicle.

b. Respondent represented on Invoice No. 8604 that Smith had authorized additional repairs on the vehicle, including the installation of the timing belt, water pump, and seals. In fact, Smith had declined the additional repairs.

c. Respondent knowingly prepared or made false parts invoices; i.e., Worldpac Invoice Numbers 76842 and 842752 and submitted them to the Bureau with the intent to mislead the Bureau into believing that the parts listed on the invoices (water pump, seals, timing belt, and thermostat) had been purchased for Smith's 2000 Toyota 4Runner. In fact, Worldpac's records indicated that the above parts were purchased by Respondent on July 21, 2009, and were returned for credit on July 22, 2009.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

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

a. Respondent charged and obtained payment from Smith for installing a used engine assembly in her 2000 Toyota 4Runner. In fact, the existing engine had not been replaced in the vehicle.

b. Respondent obtained a junk engine from a scrap metal recycler and produced it for inspection by the Bureau, claiming that it was the old engine from Smith's 2000 Toyota 4Runner.

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THIRD CAUSE FOR DISCIPLINE

(Violations of the Code)

33. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code, as follows:

a. Respondent failed to obtain Smith's authorization for the additional repairs on her 2000 Toyota 4Runner, including the replacement of the cylinder heads, cam seals, crank seals, a timing belt, a water pump, and a thermostat.

b. Respondent exceeded the original estimate price of $2,650 for the repair of Smith's 2000 Toyota 4Runner without Smith's consent.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

34. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivisions (a)(2)(A) and (B), as follows: Respondent failed to list, describe, and identify on Invoice No. 8604 all repair work performed and parts supplied on Smith's 2000 Toyota 4Runner, as follows: Respondent failed to record the replacement of the cylinder heads or the results of the diagnostic work or basis for replacing the cylinder heads on the vehicle.

CONSUMER COMPLAINT (WALLER): 2006 TOYOTA COROLLA

35. On or about September 18, 2009, Irina Waller ("Waller") took her 2006 Toyota Corolla to Econo Lube N Tune ("Econo Lube") because the transmission was not shifting properly and the check engine light was on. During their diagnosis of the vehicle, Econo Lube found a diagnostic trouble code ("code") relating to the pressure control ("P/C") solenoid. Econo Lube cleared the code, which shut off the check engine light.

36. On or about October 10, 2009, Waller took the vehicle to Fulton Auto Repair & Transmission ("Fulton") because the check engine light had come back on and the transmission still was not shifting properly. Fulton found the same code in the vehicle's computer (engine

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control module or ECM), checked the solenoid, and recommended replacing the ECM, which Waller declined.

37. On or about October 21, 2009, Waller called Foreign Auto Care and spoke with Respondent. Waller explained the problems with the vehicle and the findings of the other repair shops. Respondent told Waller that he could fix the vehicle.

38. On or about October 22, 2009, Waller took the vehicle to Respondent's facility and asked Respondent if he was going to verify the code. Respondent indicated that he could not verify the code because his diagnostic tester was not working and that he would replace the P/C solenoid since the code had identified the solenoid as the source of the problem on the vehicle. Waller paid Respondent $375, but did not receive a written estimate.

39. On or about October 24, 2009, Waller went to the facility to pick up the vehicle, but found that the problems had not been fixed. Respondent told Waller that the ECM needed replacement and that he would order the ECM and complete the repairs when the part arrived. Respondent did not provide Waller with an invoice. Later, Waller made various calls to Respondent to check on the status of the repairs, but Respondent would hang up or would not answer Waller's calls.

40. On or about November 30, 2009, Waller took the vehicle to Maita Toyota of Sacramento ("Maita") for a diagnosis. Maita determined that the ECM was in need of replacement and repaired the vehicle at no charge since it was still covered under the manufacturer's warranty.

41. On or about December 2, 2009, Waller delivered a letter to Respondent's facility, requesting a refund of her $375. Respondent refused to refund Waller any of her money.

42. On or about April 22, 2010, Waller filed a complaint with the Bureau.

43. On or about May 17, 2010, a representative of the Bureau went to the facility and requested the repair records on the vehicle, including all parts invoices. Respondent told the representative that he had replaced the P/C solenoid on the vehicle.

44. On or about May 27, 2010, Respondent provided the Bureau with Invoice No. 4582 from Foreign Auto Care. The invoice indicated that a transmission pan gasket had been replaced

on the vehicle in addition to the P/C solenoid. Respondent also provided a handwritten purchase receipt from Hi-Tech Transmission dated October 22, 2009, for a solenoid kit with a parts number of 67420CK.

45. On or about June 10, 2010, the representative met with the owner of Hi Tech Transmission & Repair ("Hi Tech"), who recalled selling a solenoid kit to Respondent. The representative requested a copy of the parts invoice relating to Hi Tech's original purchase of the solenoid.

46. On or about June 15, 2010, Hi Tech's owner sent the representative an invoice from Transtar Industries, Inc. ("Transtar") relating to the sale of a solenoid kit with a parts number of 67420CK.

47. On or about June 16, 2010, the representative went to Maita and obtained information pertaining to the transmission on the vehicle, including a technical service bulletin which outlined the procedures for repairing erratic shifting problems on the transmission, resulting in the illumination of the check engine light. The recommended repair for the shifting problem was the replacement of the ECM. Later, the representative met with the Sacramento division manager of Transtar and had him examine the parts invoice that was provided by the owner of Hi Tech. The division manager stated that the kit referenced on the parts invoice was for a *shift solenoid*, not a P/C solenoid, and showed the representative a shift solenoid kit with a part number of 67420CK. The representative found that the shift solenoid kit was not applicable to the transmission on Waller's vehicle.

48. On or about June 22, 2010, the representative obtained Waller's consent to have the vehicle inspected at Maita. Later, the representative went to Maita and observed the shop foreman remove the transaxle pan from the vehicle and inspect the shift and P/C solenoids. The shop foreman found that all of the shift and P/C solenoids in the vehicle were OEM (original equipment manufacturer) parts.

49. On or about July 13, 2010, the representative returned to Maita and obtained the sales history for the P/C solenoid from July 2009 to October 2009. The information showed that Respondent's facility had not purchased a P/C solenoid during the above time period.

FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

a. Respondent represented on Invoice No. 4582 that the P/C solenoid on Waller's 2006 Toyota Corolla had been replaced when, in fact, that part had not been replaced on the vehicle.

b. Respondent knowingly prepared or made a false document; i.e., the handwritten purchase receipt from Hi-Tech Transmission dated October 22, 2009, and submitted it to the Bureau with the intent to mislead the Bureau into believing that a P/C solenoid had been purchased for Waller's 2006 Toyota Corolla. In fact, the part number listed on the purchase receipt was for a shift solenoid, not a P/C solenoid. Further, the shift solenoid kit referenced on the purchase receipt was not applicable to the transmission on Waller's vehicle.

SIXTH CAUSE FOR DISCIPLINE

(Fraud)

51. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes fraud, as follows: Respondent charged and obtained payment from Waller for replacing the P/C solenoid on her 2006 Toyota Corolla when, in fact, that part had not been replaced on the vehicle.

SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Code)

52. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 9884.8**: Respondent failed to provide Waller with a copy of Invoice No. 4582.

b. **Section 9884.9, subdivision (a)**: Respondent failed to provide Waller with a written estimate for the repairs on her 2006 Toyota Corolla.

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c. **Section 9884.11:** Respondent failed to maintain a copy of the parts invoice or receipt for the transmission pan gasket referenced on Invoice No. 4582, or failed to make that document available for inspection by the Bureau.

OTHER MATTERS

53. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Anatoliy Butkevich, owner of Foreign Auto Care, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 225813, issued to Anatoliy Butkevich, owner of Foreign Auto Care;

2. Revoking or suspending any other automotive repair dealer registration issued to Anatoliy Butkevich;

3. Ordering Anatoliy Butkevich, owner of Foreign Auto Care, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 3/1/11

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

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