

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 ELENA L. ALMANZO  
Deputy Attorney General  
4 State Bar No. 131058  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-5524  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. *77/13-66*

13 **GARCIA TIRE SHOP**  
14 **FELIX GARCIA, Owner**  
202 North H Street  
15 **Fresno, CA 93701**

**ACCUSATION**

16 **Automotive Repair Dealer Registration No.**  
17 **ARD 228333**

Respondent.

18  
19 John Wallauch ("Complainant") alleges:

20 **PARTIES**

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

23 2. In 2003, the Bureau issued Automotive Repair Dealer Registration Number  
24 ARD 228333 to Felix Garcia ("Respondent"), doing business as Garcia Tire Shop. The  
25 registration was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on June 30, 2013, unless renewed.

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1 a statement indicating whether any crash parts are original equipment manufacturer  
2 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.

3 5. Code section 9884.9 states:

4 (a) The automotive repair dealer shall give to the customer a written  
5 estimated price for labor and parts necessary for a specific job. No work shall be  
6 done and no charges shall accrue before authorization to proceed is obtained from the  
7 customer. No charge shall be made for work done or parts supplied in excess of the  
8 estimated price without the oral or written consent of the customer that shall be  
9 obtained at some time after it is determined that the estimated price is insufficient and  
10 before the work not estimated is done or the parts not estimated are supplied. Written  
11 consent or authorization for an increase in the original estimated price may be  
12 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:

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

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

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

18 \_\_\_\_\_  
19 (signature or initials)"

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

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

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1 **REGULATORY PROVISIONS**

2 7. California Code of Regulations, title 16, section 3356 states:

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

5 (1) The invoice shall show the automotive repair dealer's registration  
6 number and the corresponding business name and address as shown in the Bureau's  
7 records. If the automotive repair dealer's telephone number is shown, it shall comply  
with the requirements of subsection (b) of Section 3371 of this chapter.

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

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

11 **COST RECOVERY**

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

16 **UNDERCOVER OPERATION - 1987 TOYOTA**

17 9. On or about January 3, 2012, a Bureau undercover operator drove a Bureau  
18 documented 1987 Toyota to Respondent's facility. The only repair necessary was the  
19 replacement of a fuse in the charging system. The operator arrived at Respondent's facility and  
20 was greeted by Respondent. The operator told Respondent that she wanted a diagnosis of the  
21 vehicle because there were dash lights on. Respondent opened the hood and attached an  
22 instrument to the battery and told the operator that the battery had low voltage and needed to be  
23 replaced. Respondent told the operator that the brake light was a different problem and may  
24 require brake work. Respondent had the operator complete a blank work order and sign it. The  
25 operator did not receive a copy. The operator asked Respondent how much it was going to cost,  
26 to which he did not respond.

27 10. On or about January 4, 2012, the operator returned to Respondent's facility. The  
28 operator told Respondent to contact her with an estimate for the repairs. Later that day,

1 Respondent contacted the operator and told her that he completed the diagnosis and that the  
2 vehicle needed a parking relay and alternator, and the cost of the repairs, including the diagnostic  
3 check, would be \$272.77. The operator authorized the repairs. That same day, Respondent  
4 contacted the operator and told her that the repairs were completed. The operator arrived at  
5 Respondent's facility and paid Respondent \$272.77 and received a copy of the invoice.

6 11. On or about January 6, 2012, a Bureau representative reinspected the vehicle using an  
7 invoice dated January 3, 2012, as a reference. The inspection revealed the following:

8 a. The faulty charging indicator light fuse had been replaced with a 10 amp fuse, instead  
9 of a 7.5 amp fuse. In addition, that repair was not documented on the invoice.

10 b. The alternator was unnecessarily replaced.

11 c. The battery cable terminals had been unnecessarily replaced. In addition, that repair  
12 was not documented on the invoice.

13 d. The brake light switch had not been replaced as invoiced. In addition, that repair was  
14 not necessary.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 12. Respondent's registration is subject to discipline under Code section 9884.7(a)(1),  
18 in that on or about January 3, 2012, regarding the Toyota, Respondent made statements which he  
19 knew or which by exercise of reasonable care should have known were untrue or misleading as  
20 follows:

21 a. Respondent falsely represented to the operator that the alternator and parking relay  
22 needed to be replaced, when in fact, those repairs were not necessary.

23 b. Respondent falsely represented on the invoice dated January 3, 2012, that the brake  
24 light switch had been replaced, when in fact, it had not.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Fraudulent Acts)**

27 13. Respondent's registration is subject to discipline under Code section 9884.7(a)(4),  
28 in that on or about January 3, 2012, regarding the Toyota, Respondent committed fraud when he

1 charged for and received payment from the operator for repairs that were not necessary or  
2 performed, as follows:

3 a. Respondent charged for and received payment from the operator to replace the  
4 alternator and brake light switch when, in fact, those repairs were not necessary.

5 b. Respondent represented on the invoice dated January 3, 2012, that the brake light  
6 switch had been replaced when, in fact, that repair had not been performed.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Provisions of the Automotive Repair Act)**

9 14. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),  
10 in that on or about January 3, 2012, regarding the Toyota, Respondent failed to materially comply  
11 with the following provisions of that Code:

12 a. **Section 9884.8:**

13 i. Respondent failed to properly document on the invoice the additional  
14 repairs authorized by the operator.

15 ii. Respondent failed to describe on the invoice what diagnostic procedures  
16 were performed and the results of the diagnostic procedures.

17 b. **Section 9884.9:** Respondent failed to provide the operator with a written estimate  
18 for repairs (alternator and brake light) prior to performing the repairs.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Failure to Provide a Copy of a Signed Document)**

21 15. Respondent's registration is subject to discipline under Code section 9884.7(a)(3), in  
22 that on or about January 3, 2012, regarding the Toyota, Respondent failed to provide the operator  
23 with a copy of the work order as soon as the operator signed the document.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Disregarded Accepted Trade Standards)**

26 16. Respondent's registration is subject to discipline under Code section 9884.7(a)(7), in  
27 that on or about January 3, 2012, regarding the Toyota, Respondent willfully departed from or  
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1 disregarded the accepted trade standards for good and workmanlike repair by installing the wrong  
2 amperage fuse in the charging system.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations Pursuant to the Automotive Repair Act)**

5 17. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),  
6 in that on or about January 3, 2012, regarding the Toyota, Respondent failed to comply with the  
7 following sections of the California Code of Regulations, title 16:

8 a. **Section 3356(a)(1):** Respondent failed to put his Automotive Repair Dealer  
9 Registration Number on the invoice dated January 3, 2012.

10 b. **Section 3356(a)(2)(A):**

11 i. Respondent failed to describe on the invoice dated January 3, 2012, what  
12 specific diagnostic work was performed.

13 ii. Respondent failed to describe the replacement of the battery terminals and  
14 fuse.

15 **UNDERCOVER OPERATION - 2000 FORD**

16 18. On or about January 11, 2012, a Bureau undercover operator drove a Bureau  
17 documented 2000 Ford to Respondent's facility. The only repair necessary was to reset the  
18 vehicle's inertia fuel cut off switch. The operator called Respondent's facility and spoke with  
19 Respondent. The operator told Respondent that her vehicle would not start and that she needed  
20 the vehicle towed to his facility. Respondent made the arrangements to have the vehicle towed to  
21 Respondent's facility. Respondent had the operator complete a blank work order and sign it. The  
22 operator was not provided with a copy. Later that day, Respondent contacted the operator and  
23 told her that the vehicle needed a part but he could not explain it to her because it was a  
24 complicated part and she would not understand. Respondent further stated that he had the vehicle  
25 started but it would not operate without that part. The cost of the repairs would be \$315. The  
26 operator authorized the repairs.

27 19. On or about January 12, 2012, the operator returned to Respondent's facility to  
28 retrieve the vehicle. The operator paid Respondent \$315 and received a copy of the invoice.





1 filter changed, and the timing belt, water pump, thermostat, and spark plugs needed to be  
2 replaced. The cost of the repairs would be between \$400 and \$500. Shortly thereafter,  
3 Respondent contacted the operator and told her that the diagnostic fee was \$50 and that the brake  
4 work totaled \$180.18. Respondent further stated that additional work (undescribed) may be  
5 needed and could cost an additional \$300. The operator contacted Respondent and authorized the  
6 oil and filter change, and the replacement of the timing belt, water pump, thermostat, and spark  
7 plugs for \$400 to \$500, at which time Respondent told the operator that the repairs would cost  
8 \$800 because the vehicle needed a timing chain<sup>1</sup>. The operator authorized the repairs.  
9 Respondent also told the operator that she needed to return to the facility to complete another  
10 work order, which the operator did. However, after completing the contact information and  
11 signing the second work order, she was not provided a copy. The operator paid Respondent \$180  
12 for the brake repairs and received a copy of the invoice.

13 27. On or about February 24, 2012, the operator returned to Respondent's facility to  
14 retrieve the vehicle. The operator paid Respondent \$800 and received a copy of the invoice.

15 28. On or about March 19, 2012, a Bureau representative reinspected the vehicle using  
16 the invoices received February 23, 2012, and February 24, 2012, as a reference. The inspection  
17 revealed the following:

18 a. The timing belt, water pump, and air filter were not replaced as invoiced. In  
19 addition, those repairs were not necessary.

20 b. The radiator flush and replacement of the valve cover gasket, front brake pads,  
21 distributor cap, distributor rotor, and spark plug wires were not necessary.

## 22 **TWELFTH CAUSE FOR DISCIPLINE**

### 23 **(Untrue or Misleading Statements)**

24 29. Respondent's registration is subject to discipline under Code section 9884.7(a)(1),  
25 in that on or about February 23, 2012, regarding the Honda, Respondent made statements which  
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27 \_\_\_\_\_  
28 <sup>1</sup> There is no timing chain on a 1998 Honda Accord.

1 he knew or which by exercise of reasonable care should have known were untrue or misleading,  
2 as follows:

3 a. Respondent falsely represented to the operator that the front brake pads, timing  
4 belt, timing chain, water pump, thermostat, and spark plugs needed to be replaced when, in fact,  
5 the only repair needed was the addition of brake fluid to the brake fluid reservoir.

6 b. Respondent falsely represented to the operator that the rear brakes needed to be  
7 cleaned and adjusted when, in fact, the only repair needed was the addition of brake fluid to the  
8 brake fluid reservoir.

9 c. Respondent falsely represented to the operator that the oil and oil filter needed to  
10 be changed when, in fact, the only repair needed was the addition of brake fluid to the brake fluid  
11 reservoir.

12 d. Respondent falsely represented on the invoice dated February 24, 2012, that the  
13 timing belt, water pump, and air filter had been replaced when, in fact, they had not.

14 **THIRTEENTH CAUSE FOR DISCIPLINE**

15 **(Fraudulent Acts)**

16 30. Respondent's registration is subject to discipline under Code section 9884.7(a)(4),  
17 in that on or about February 23, 2012, regarding the Honda, Respondent committed fraud when  
18 he charged for and received payment from the operator for repairs that were not necessary and/or  
19 performed, as set forth

20 a. Respondent unnecessarily sold the operator front brake pads, timing belt, timing  
21 chain, water pump, thermostat, and spark plugs; rear brake adjustment and cleaning; and oil and  
22 oil filter change.

23 b. Respondent failed to replace the timing belt, water pump, and air filter as invoiced.

24 **FOURTEENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Provisions of the Automotive Repair Act)**

26 31. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),  
27 in that regarding the Honda, Respondent failed to materially comply with the following  
28 provisions of that Code:

1 a. **Section 9884.8:**

2 i. Respondent failed to describe on the invoices received on February 23,  
3 2012, and February 24, 2012, what diagnostic and repair work was performed.

4 ii. Respondent failed to separately list the cost of each part on the invoice  
5 received on February 24, 2012.

6 b. **Section 9884.9:**

7 i. Respondent failed to provide the operator with a written estimate to  
8 diagnose the brake system, and to replace the spark plugs, cables, distributor cap, rotor, oil filter,  
9 air filter, valve cover gasket, water pump, timing belt, radiator flush, and anti-freeze.

10 ii. Respondent failed to properly document on the invoice received on  
11 February 23, 2012, the operator's authorization for replacement of the front brake pads.

12 **FIFTEENTH CAUSE FOR DISCIPLINE**

13 **(Failure to Record the Vehicle's Current Odometer Reading on Repair Order)**

14 32. Respondent's registration is subject to discipline under Code section 9884.7(a)(2),  
15 regarding the Honda, Respondent failed to record the odometer reading on the invoices received  
16 on February 23, 2012, and February 24, 2012, at the time the operator signed them.

17 **SIXTEENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Provide a Copy of a Signed Document)**

19 33. Respondent's registration is subject to discipline under Code section 9884.7(a)(3), in  
20 that on or about February 23, 2012, and February 24, 2012, regarding the Honda, Respondent  
21 failed to provide the operator with a copy of the work order as soon as the operator signed the  
22 document.

23 **SEVENTEENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with Regulations Pursuant to the Automotive Repair Act)**

25 34. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),  
26 regarding the Honda, Respondent failed to comply with California Code of Regulations, title 16,  
27 section 3356(a)(1), in that Respondent failed to put his Automotive Repair Dealer Registration  
28 Number on the invoices received on February 23, 2012, and February 24, 2012.

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**OTHER MATTERS**

35. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on probation the registrations for all places of business operated in this state by Felix Garcia, upon a finding that he has, or is, engaged in a course of repeated and willful violation 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, suspending or placing on probation Automotive Repair Dealer Registration No. ARD 228333, issued to Felix Garcia, doing business as Garcia Tire Shop;
- 2. Revoking or suspending any other automotive repair dealer registration issued to Felix Garcia;
- 3. Ordering Felix Garcia to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 4. Taking such other and further action as deemed necessary and proper.

DATED: May 21, 2013      John Wallauch by Doug Balatt  
 JOHN WALLAUCH  
 Chief  
 Bureau of Automotive Repair  
 Department of Consumer Affairs  
 State of California  
*Complainant*

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