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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: **ANDREW GARZA** **dba ANDREWS AUTO CENTER** 1873 E. Hedges Avenue Fresno, California 93703 **Automotive Repair Dealer Registration No. ARD 238107** Respondent.	Case No. 77/10-39 **A C C U S A T I O N**

Sherry Mehl ("Complainant") alleges:

PARTIES

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

2. In or about 2005, the Bureau issued Automotive Repair Dealer Registration Number ARD 238107 to Andrew Garza ("Respondent"), doing business as Andrews Auto Center. On or about June 21, 2007, a temporary 150-day registration was issued to Respondent due to family support issues. Respondent failed to resolve the family support issues. The registration expired on November 18, 2007, and renewal was denied based upon Family Code section 17500.

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STATUTORY PROVISIONS

3. Section 9884.7 of the Business and Professions Code ("Code") 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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> (2) Causing or allowing a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.
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> (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.
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> (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 suspend, revoke, or place on probation 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.
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> (c) Notwithstanding subdivision (b), 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 this chapter, or regulations adopted pursuant to it.

4. Code section 9884.6(a) states:

"It is unlawful for any person to be an automotive repair dealer unless that person has registered in accordance with this chapter and unless that registration is currently valid."

5. Code section 9884.8 states:

> 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."

6. Code section 9884.9 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.

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(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.

7. 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 invalidating a registration temporarily or permanently.

COST RECOVERY

8. 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 NO. 1 – 2000 HONDA ODYSSEY

9. On or about January 5, 2009, M.B. ("consumer"), took his 2000 Honda Odyssey to Respondent's facility to repair the check engine light for Code P0401 (low exhaust gas recirculation ("EGR") flow). Respondent inspected the vehicle and told the consumer that the computer was not properly controlling the EGR and needed to be replaced. The consumer refused the repairs because he wanted a second opinion. The vehicle would not run and the consumer had his vehicle towed to Honda North. Honda North determined that the EGR had plugged passages and the computer was damaged, causing the vehicle not to run, and required replacement. The consumer alleged that Respondent damaged the vehicle's computer and asked Respondent to pay for the new computer. Respondent denied damaging the computer and refused to pay to replace it.

10. On or about February 23, 2009, the Bureau received a complaint from the consumer regarding the damage to the vehicle's computer.

11. On or about April 1, 2009, a Bureau representative went to Respondent's facility to discuss the consumer's complaint. The Bureau representative discovered that Respondent's registration had expired on November 18, 2007. The Bureau representative requested Respondent to cease performing any repairs requiring a valid registration.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with the Automotive Repair Act)

12. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about January 5, 2009, Respondent failed to comply with Code section 9884.6(a), by failing to maintain a valid registration, and representing himself as having a valid Automotive Repair Dealer registration.

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SECOND CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

13. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about January 5, 2009, Respondent made untrue or misleading statements, which he knew or which by exercise of reasonable care, should have known were untrue or misleading, in that Respondent generated Invoice Number 2375 using his expired registration number, advertising himself to have a registered facility when, in fact, he did not have a valid registration.

CONSUMER COMPLAINT NO. 2 – 2000 VOLVO S80

14. On or about August 31, 2009, J.R. ("consumer"), took her 2000 Volvo S80 to Respondent's facility for repairs. The repairs were suggested by Fresno Lincoln Mercury Volvo ("FLMV"). Over the following three weeks, Respondent made several repairs. Respondent then said that the computer was defective and needed to be replaced. Respondent told the consumer that she would need to have her vehicle towed back to FLMV. FLMV inspected the vehicle and found that the battery was bad, the wiring had been probed and not correctly sealed, the wrong spark plugs had been installed, and the vehicle's computer was bad. The consumer alleged that the repairs performed by Respondent were substandard, causing the computer to fail. The consumer requested a refund of $1,386.55 from Respondent. Respondent refused. The consumer no longer owns the vehicle for inspection by a Bureau representative.

15. On or about February 22, 2010, the Bureau received a complaint from the consumer regarding the repairs to her vehicle and damage to the vehicle's computer.

16. On or about March 11, 2010, a Bureau representative went to Respondent's facility to discuss the consumer's complaint. The Bureau representative discovered that Respondent's registration had expired on November 18, 2007. The Bureau representative requested Respondent to cease performing repairs requiring a valid registration.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with the Automotive Repair Act)

17. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about August 31, 2009, Respondent failed to comply with Code section 9884.6(a), by performing repairs on the consumer's vehicle for compensation without a valid registration.

FOURTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

18. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about August 31, 2009, Respondent made untrue or misleading statements, which he knew or which by exercise of reasonable care, should have known were untrue or misleading, in that Respondent generated Invoice Number 2580 using his expired registration number, thereby representing himself as having a validly registered facility when, in fact, he did not have a valid registration.

UNDERCOVER OPERATION NO. 1 - 2000 PONTIAC TRANS-AM

19. On or about May 11, 2010, a Bureau undercover operator ("operator") drove a Bureau documented 2000 Pontiac Trans-Am to Respondent's facility. The only repair necessary was the replacement of the vehicle's alternator. The operator spoke with Respondent and asked him to diagnose the vehicle because the battery was going dead every day. The operator completed estimate number 2666 and left the facility. On May 12, 2010, the operator received a voice mail message from Respondent telling him that the alternator was defective and needed to be replaced. The operator was quoted $246. The operator called Respondent back and authorized the repairs.

20. Later that same day, the operator received a telephone call from Respondent stating that the vehicle repairs had been completed and the total was $441.61. The operator asked Respondent why the cost was different from what he had quoted him earlier. Respondent told the operator that the $246 did not include the diagnostic fee or labor fee. The operator told Respondent that he would pick up the vehicle the following day.

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21. On or about May 13, 2010, the operator returned to Respondent's facility to retrieve the vehicle. The operator paid Respondent $440, and received a copy of Invoice Number 2666.

22. On or about May 17, 2010, a Bureau representative inspected the vehicle and determined that the alternator had been replaced as invoiced.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Automotive Repair Act)

23. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about May 11, 2010, Respondent failed to comply with Code section 9884.6(a), by performing repairs on the operator's vehicle for compensation without a valid registration.

SIXTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

24. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about May 11, 2010, Respondent made untrue or misleading statements, which he knew or which by exercise of reasonable care, should have known were untrue or misleading, in that Respondent generated Invoice Number 2666 using his expired registration number, thereby representing himself to have a validly registered facility when, in fact, he did not have a valid registration.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Record the Vehicle's Odometer Reading)

25. Respondent's registration is subject to discipline under Code section 9884.7(a)(2), in that on or about May 11, 2010, Respondent provided the consumer with a copy of estimate number 2666 that did not contain the vehicle's current odometer reading.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Automotive Repair Act)

26. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about May 11, 2010, Respondent failed to comply with provisions of that Code in the following material respects:

a. **Section 9884.8:** Respondent failed to record the results of the diagnosis of the vehicle on Invoice Number 2666.

b. **Section 9884.9(a):**

i. Respondent failed to provide the operator with a written estimate for a specific job, in that he failed to record the diagnostic fee and labor fee on estimate number 2666.

ii. Respondent failed to obtain and record the operator's authorization for additional labor costs for repairs on estimate number 2666.

OTHER MATTERS

27. Under Code section 9884.7(c), the director may deny, suspend, revoke, or place on probation the registrations for all places of business operated in this state by Andrew Garza, doing business as Andrews Auto Center, 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 238107, issued to Andrew Garza, doing business as Andrews Auto Center;

2. Revoking or suspending any other automotive repair dealer registration issued to Andrew Garza;

3. Ordering Andrew Garza 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: 2/22/11

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

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