

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
4 State Bar No. 267200
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2634
7 Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

OAH No. 2014090413

13 **FRANCISCO MEJIA, JR., OWNER,**
14 **DOING BUSINESS AS THE AUTOBAHN**
AUTOMOTIVE GROUP
15 **260 Campillo Avenue Unit B**
Calexico, CA 92231

Case No. 77/15-11

FIRST AMENDED
ACCUSATION

16 **Automotive Repair Dealer Registration No.**
17 **ARD 251494**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about July 25, 2007, the Bureau of Automotive Repair issued Automotive
25 Repair Dealer Registration Number ARD 251494 to Francisco Mejia, Jr., Owner, doing business
26 as The Autobahn Automotive Group (Respondent). The Automotive Repair Dealer Registration
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 July 31, 2015, unless renewed.

1 **JURISDICTION**

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed with
7 a disciplinary action during the period within which the license may be renewed, restored,
8 reissued or reinstated.

9 5. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
10 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
11 proceeding against an automotive repair dealer or to render a decision invalidating a registration
12 temporarily or permanently.

13 6. Section 9884.22 of the Code states:

14 "(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny
15 at any time any registration required by this article on any of the grounds for disciplinary action
16 provided in this article. The proceedings under this article shall be conducted in accordance with
17 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
18 Code, and the director shall have all the powers granted therein.

19 "..."

20 **STATUTORY PROVISIONS**

21 7. Section 22 of the Code states:

22 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the
23 administration of the provision is vested, and unless otherwise expressly provided, shall include
24 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and
25 'agency.'

26 "(b) Whenever the regulatory program of a board that is subject to review by the Joint
27 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2
28

1 (commencing with Section 473), is taken over by the department, that program shall be
2 designated as a 'bureau.'"

3 8. Section 23.7 of the Code states:

4 "Unless otherwise expressly provided, 'license' means license, certificate, registration, or
5 other means to engage in a business or profession regulated by this code or referred to in Section
6 1000 or 3600."

7 9. Section 482 of the Code states:

8 "Section 482 of the Code states:

9 "Each board under the provisions of this code shall develop criteria to evaluate the
10 rehabilitation of a person when:

11 "(a) Considering the denial of a license by the board under Section 480; or

12 "(b) Considering suspension or revocation of a license under Section 490.

13 "Each board shall take into account all competent evidence of rehabilitation furnished by
14 the applicant or licensee."

15 10. Section 490 of the Code states:

16 "(a) In addition to any other action that a board is permitted to take against a licensee, a
17 board may suspend or revoke a license on the ground that the licensee has been convicted of a
18 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
19 or profession for which the license was issued.

20 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
21 discipline a licensee for conviction of a crime that is independent of the authority granted under
22 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
23 of the business or profession for which the licensee's license was issued.

24 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
25 conviction following a plea of nolo contendere. An action that a board is permitted to take
26 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
27 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
28

1 made suspending the imposition of sentence, irrespective of a subsequent order under Section
2 1203.4 of the Penal Code.

3 “(d) The Legislature hereby finds and declares that the application of this section has been
4 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
5 554, and that the holding in that case has placed a significant number of statutes and regulations
6 in question, resulting in potential harm to the consumers of California from licensees who have
7 been convicted of crimes. Therefore, the Legislature finds and declares that this section
8 establishes an independent basis for a board to impose discipline upon a licensee, and that the
9 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
10 to, but rather are declaratory of, existing law.”

11 11. Section 493 of the Code states:

12 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
13 the department pursuant to law to deny an application for a license or to suspend or revoke a
14 license or otherwise take disciplinary action against a person who holds a license, upon the
15 ground that the applicant or the licensee has been convicted of a crime substantially related to the
16 qualifications, functions, and duties of the licensee in question, the record of conviction of the
17 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
18 and the board may inquire into the circumstances surrounding the commission of the crime in
19 order to fix the degree of discipline or to determine if the conviction is substantially related to the
20 qualifications, functions, and duties of the licensee in question.

21 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
22 ‘registration.’”

23 12. Section 9884.6 of the Code states:

24 “(a) It is unlawful for any person to be an automotive repair dealer unless that person has
25 registered in accordance with this chapter and unless that registration is currently valid.

26 “. . . .”

27 ///

28 ///

1 13. Section 9884.7 of the Code states:

2 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
3 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
4 dealer for any of the following acts or omissions related to the conduct of the business of the
5 automotive repair dealer, which are done by the automotive repair dealer or any automotive
6 technician, employee, partner, officer, or member of the automotive repair dealer.

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

10 “(2) Causing or allowing a customer to sign any work order that does not state the repairs
11 requested by the customer or the automobile's odometer reading at the time of repair.

12 “(3) Failing or refusing to give to a customer a copy of any document requiring his or her
13 signature, as soon as the customer signs the document.

14 “(4) Any other conduct that constitutes fraud.

15 “(5) Conduct constituting gross negligence.

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

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

21 “(8) Making false promises of a character likely to influence, persuade, or induce a
22 customer to authorize the repair, service, or maintenance of automobiles.

23 “(9) Having repair work done by someone other than the dealer or his or her employees
24 without the knowledge or consent of the customer unless the dealer can demonstrate that the
25 customer could not reasonably have been notified.

26 “(10) Conviction of a violation of Section 551 of the Penal Code

27 “...
28

1 "(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
2 probation the registration for all places of business operated in this state by an automotive repair
3 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
4 and willful violations of this chapter, or regulations adopted pursuant to it."

5 14. Section 9884.8 of the Code states:

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

16 15. Section 9884.9 of the Code states:

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

1 together with a specification of the additional parts and labor and the total additional cost, and
2 shall do either of the following:

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

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

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

9 (signature or initials)’

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

12 “(b) The automotive repair dealer shall include with the written estimated price a statement
13 of any automotive repair service that, if required to be done, will be done by someone other than
14 the dealer or his or her employees. No service shall be done by other than the dealer or his or her
15 employees without the consent of the customer, unless the customer cannot reasonably be
16 notified. The dealer shall be responsible, in any case, for any service in the same manner as if the
17 dealer or his or her employees had done the service.

18 “(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto
19 body or collision repairs, shall provide an itemized written estimate for all parts and labor to the
20 customer. The estimate shall describe labor and parts separately and shall identify each part,
21 indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part
22 shall be identified on the written estimate and the written estimate shall indicate whether the crash
23 part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer
24 aftermarket crash part.

25 “(d) A customer may designate another person to authorize work or parts supplied in excess
26 of the estimated price, if the designation is made in writing at the time that the initial
27 authorization to proceed is signed by the customer. The bureau may specify in regulation the form
28 and content of a designation and the procedures to be followed by the automotive repair dealer in

1 recording the designation. For the purposes of this section, a designee shall not be the automotive
2 repair dealer providing repair services or an insurer involved in a claim that includes the motor
3 vehicle being repaired, or an employee or agent or a person acting on behalf of the dealer or
4 insurer.”

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

9 REGULATORY PROVISIONS

10 17. California Code of Regulations, title 16, section 3353, states:

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

13 “(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
14 estimated price for parts and labor for a specific job.

15 “(b) Estimate for Auto Body or Collision Repairs. Every dealer, when doing auto body or
16 collision repairs, shall give to each customer a written estimated price for parts and labor for a
17 specific job. Parts and labor shall be described separately and each part shall be identified,
18 indicating whether the replacement part is new, used, rebuilt, or reconditioned. The estimate shall
19 also describe replacement crash parts as original equipment manufacturer (OEM) crash parts or
20 non-OEM aftermarket crash parts.

21 “(c) Additional Authorization. Except as provided in subsection (f), the dealer shall obtain
22 the customer's authorization before any additional work not estimated is done or parts not
23 estimated are supplied. This authorization shall be in written, oral, or electronic form, and shall
24 describe the additional repairs, parts, labor and the total additional cost.

25 “(1) If the authorization from the customer for additional repairs, parts, or labor in excess of
26 the written estimated price is obtained orally, the dealer shall also make a notation on the work
27 order and on the invoice of the date, time, name of the person authorizing the additional repairs,
28

1 and the telephone number called, if any, together with the specification of the additional repairs,
2 parts, labor and the total additional cost.

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

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

12 “(4) The additional repairs, parts, labor, total additional cost, and a statement that the
13 additional repairs were authorized either orally, or by fax, or by e-mail shall be recorded on the
14 final invoice pursuant to Section 9884.9 of the Business and Professions Code. All documentation
15 must be retained pursuant to Section 9884.11 of the Business and Professions Code.

16 “(d) Estimated Price to Tear Down, Inspect, Report and Reassemble. For purposes of this
17 article, to “tear down” shall mean to disassemble, and “teardown” shall mean the act of
18 disassembly. If it is necessary to tear down a vehicle component in order to prepare a written
19 estimated price for required repair, the dealer shall first give the customer a written estimated
20 price for the teardown. This price shall include the cost of reassembly of the component. The
21 estimated price shall also include the cost of parts and necessary labor to replace items such as
22 gaskets, seals and O rings that are normally destroyed by teardown of the component. If the act of
23 teardown might prevent the restoration of the component to its former condition, the dealer shall
24 write that information on the work order containing the teardown estimate before the work order
25 is signed by the customer.

26 “The repair dealer shall notify the customer orally and conspicuously in writing on the
27 teardown estimate the maximum time it will take the repair dealer to reassemble the vehicle or the
28 vehicle component in the event the customer elects not to proceed with the repair or maintenance

1 of the vehicle and shall reassemble the vehicle within that time period if the customer elects not to
2 proceed with the repair or maintenance. The maximum time shall be counted from the date of
3 authorization of teardown.

4 "After the teardown has been performed, the dealer shall prepare a written estimated price
5 for labor and parts necessary for the required repair. All parts required for such repair shall be
6 listed on the estimate. The dealer shall then obtain the customer's authorization for either repair or
7 reassembly before any further work is done.

8 "(e) Revising an Itemized Work Order. If the customer has authorized repairs according to a
9 work order on which parts and labor are itemized, the dealer shall not change the method of repair
10 or parts supplied without the written, oral, or electronic authorization of the customer. The
11 authorization shall be obtained from the customer as provided in subsection (c) and Section
12 9884.9 of the Business and Professions Code.

13 "..."

14 18. California Code of Regulations, title 16, section 3356, states:

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

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

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

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

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

28 "(C) The subtotal price for all service and repair work performed.

1 “(D) The subtotal price for all parts supplied, not including sales tax.

2 “(E) The applicable sales tax, if any.

3 “...”

4 19. California Code of Regulations, title 16, section 3358, states:

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

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

9 "(b) All written estimates pertaining to work performed.

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

13 20. California Code of Regulations, title 16, section 3395, states:

14 “... ”

15 “(b) When considering the suspension or revocation of a license or a registration on the
16 grounds that the licensee or registrant has been convicted of a crime, the bureau, in evaluating the
17 rehabilitation of such person, will consider the following criteria:

18 “(1) Nature and severity of the act(s) or offense(s).

19 “(2) Total criminal record.

20 “(3) The time that has elapsed since commission of the act(s) or offense(s).

21 “(4) Whether the licensee or registrant has complied with any terms of parole, probation,
22 restitution, or any other sanctions lawfully imposed against the licensee or registrant.

23 “(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
24 Penal Code.

25 “(6) Evidence, if any, of rehabilitation submitted by the licensee or registrant.

26 “...”

27 ///

28 ///

1 21. California Code of Regulations, title 16, section 3360, states:

2 “This article shall apply to accepted trade standards for good and workmanlike automotive
3 repair as performed by automotive repair dealers.”

4 22. California Code of Regulations, title 16, section 3366, states:

5 “(a) Except as provided in subsection (b) of this section, any automotive repair dealer that
6 advertises or performs, directly or through a sublet contractor, automotive air conditioning work
7 and uses the words service, inspection, diagnosis, top off, performance check or any expression or
8 term of like meaning in any form of advertising or on a written estimate or invoice shall include
9 and perform all of the following procedures as part of that air conditioning work:

10 “... ”

11 “(15) High and low side system operating pressures, as applicable, have been measured and
12 recorded on the final invoice; and,

13 “(16) The center air distribution outlet temperature has been measured and recorded on the
14 final invoice.

15 “... ”

16 23. California Code of Regulations, title 16, section 3395.2, states:

17 “A crime or act shall be considered to be substantially related to the qualifications,
18 functions, or duties of a registrant if to a substantial degree it shows that the registrant is presently
19 or potentially unfit to perform the functions authorized by the registration in a manner consistent
20 with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to,
21 any violation of the provisions of Article 3 of Chapter 20.3 of Division 3 of the Business and
22 Professions Code.”

23 24. California Code of Regulations, title 16, section 3395.4, states:

24 “In reaching a decision on a disciplinary action under the Administrative Procedure Act
25 (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of
26 Administrative Hearing, the Bureau of Automotive Repair shall consider the disciplinary
27 guidelines entitled ‘Guidelines for Disciplinary Penalties and Terms of Probation’ [May, 1997]
28 which are hereby incorporated by reference. The ‘Guidelines for Disciplinary Penalties and Terms

1 of Probation' are advisory. Deviation from these guidelines and orders, including the standard
2 terms of probation, is appropriate where the Bureau of Automotive Repair in its sole discretion
3 determines that the facts of the particular case warrant such deviation -for example: the presence
4 of mitigating factors; the age of the case; evidentiary problems.”

5 **COSTS**

6 25. Section 125.3 of the Code provides, in pertinent part, that the Director may request
7 the administrative law judge to direct a licentiate found to have committed a violation or
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
9 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
10 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
11 may be included in a stipulated settlement.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Failure to Produce Records)**

14 26. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
15 (a)(6), in conjunction with Code section 9884.11 and California Code of Regulations, title 16,
16 section 3358 for failure to produce records upon the Bureau's request. The circumstances are as
17 follows:

18 27. On July 10, 2014, a Bureau representative sent a written request to Respondent's
19 counsel for Respondent to produce records. Specifically, the Bureau representative requested all
20 written estimates, authorizations, final invoices, and labor and parts receipts related to the
21 following two transactions at Respondent's facility: Mayela Andalon's 2008 Volkswagen Jetta;
22 and Celestino Salcedo's 2008 Mercedes-Benz ML63 AMG 6.2 Liter.

23 28. On July 14, 2014, Respondent's counsel responded that Respondent will not produce
24 the requested records.

25 29. After meeting and conferring about the Bureau's records request, Respondent,
26 through counsel, again refused to produce the requested records. They were never produced.

27 ///

28 ///

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(September 25, 2014, Criminal Conviction for Grand Theft on November 4, 2013)**

3 30. Respondent is subject to disciplinary action under Code section 490 in that
4 Respondent was convicted of a crime that is substantially related to the qualifications, functions,
5 and duties of a licensee. The circumstances are as follows:

6 31. On September 25, 2014, in a criminal proceeding entitled *People v. Mejia* in
7 California Superior Court, Imperial County, Case Number JCF33148, Respondent was convicted
8 on his plea of no contest of violating Penal Code section 487, subdivision (a), grand theft
9 exceeding \$400, a misdemeanor in conjunction with Penal Code section 17, subdivision (b). As a
10 result of a plea agreement, the following counts were dismissed: one count of violating Penal
11 Code section 487, subdivision (a), grand theft, a felony; one count of violating Penal Code section
12 532, subdivision (a), obtaining money, labor, or property by false pretenses, a felony; and one
13 count of violating Penal Code section 484, subdivision (a), petty theft, a misdemeanor.

14 32. As a result of his conviction, on or about September 25, 2014, Respondent was
15 sentenced to three years summary probation; ordered to pay victim restitution; and prohibited
16 from engaging, either directly or indirectly, in any activity for which an Automotive Repair Dealer
17 Registration is required.

18 33. The facts that led to the conviction are that in 2013 consumers Jesse P. and Taryn S.
19 hired Respondent to perform repairs on their 1998 Honda Accord. The consumers paid
20 Respondent \$1,300.00 for the installation of an automatic transmission that ultimately
21 Respondent never installed. The consumers also provided Respondent four new motor mounts
22 that were to be installed during the transmission replacement; these mounts were neither installed
23 nor returned to the consumers.

24 **ADDITIONAL INVESTIGATION**

25 34. Respondent's Registration had the following periods of delinquency:

26 FROM:	TO:
27 JULY 31, 2008	APRIL 13, 2009
28 JULY 31, 2009	AUGUST 31, 2009

1	JULY 31, 2010	AUGUST 16, 2010
2	JULY 31, 2011	SEPTEMBER 26, 2011
3	JULY 31, 2012	AUGUST 23, 2012
4	JULY 31, 2013	OCTOBER 21, 2013

5 35. At all times alleged in this First Amended Accusation, Rosalinda Ruiz and Francisco
6 “Frank” Mejia, Jr. were acting in the course and within the scope of a technician, employee,
7 partner, officer, or member of Respondent.

8 **36. First Undercover Operation – July 26, 2013**

9 On July 26, 2013, a Bureau undercover operator drove a Bureau-documented 2000
10 Volkswagen to the Autobahn’s facility for repairs. The only necessary repairs were to replace one
11 defective spark plug and to clear the Diagnostic Trouble Codes from the vehicle computer’s
12 memory. The undercover operator drove to the facility and spoke with a woman named “Rosy,”
13 later identified as Rosalinda Ruiz. Later, a man named “Frank” appeared at the facility during the
14 transaction. The undercover operator requested an inspection of the engine and a check of the air
15 conditioner. Frank told the undercover operator that the vehicle might need injectors. Per
16 Frank’s request, the undercover operator left the vehicle at the facility to await a telephone call for
17 an update on the inspection.

18 37. After the undercover operator left, she spoke with Rosalinda Ruiz by telephone.
19 Rosalinda Ruiz told the undercover operator that the vehicle needed spark plugs, ignition cables,
20 ignition coil pack, cooling temperature sensor, and an air conditioner service. Frank then spoke
21 with the undercover operator and told her that the ignition coil pack was burned because of high
22 resistance in the ignition wires. Frank said that the ignition wires appeared to be recently replaced
23 but were of poor, cheap quality, and arcing. Frank said that the coolant temperature sensor
24 needed to be replaced because there was a Diagnostic Trouble Code related to that sensor in the
25 vehicle’s computer. Frank said that the total for the repairs would be \$458.00 including tax.
26 Frank told the undercover operator that he would also perform the air conditioner services that
27 would include cleaning the outside panel. The undercover operator then authorized the \$458.00
28 in repairs.

1 38. On June 28, 2013, the undercover operator returned to the facility to pick up the
2 vehicle because the repairs were done. The undercover operator met with Rosalinda Ruiz and
3 paid \$458.00. The undercover operator asked for the old parts. Frank said that the old ignition
4 wires were of a half of resistance and the wires caused all the problems. After Frank gave the
5 undercover operator the old parts, the undercover operator drove out of the facility and gave
6 custody of it back to a Bureau representative.

7 39. On July 19, 2013, a Bureau representative began inspecting the undercover vehicle.
8 He found the following:

- 9 i. All four of the spark plugs had been replaced with news one even though the only
10 defective plug was the #4 cylinder spark plug.
- 11 ii. The spark plug wires had been replaced with new ones even though the old wires were
12 in good condition, tested within factory specifications, and did not need to be replaced.
- 13 iii. The original ignition coil pack had been replaced even though the old coil pack was in
14 good condition, functioned property, and did not need to be replaced.
- 15 iv. The Engine Coolant Temperature sensor had been replaced even though the old sensor
16 was in good condition, within factory specifications, and did not need to be replaced.
- 17 v. During the undercover run, the air conditioner system was purportedly serviced and
18 recharged with new Freon even though the system was already in good condition and
19 not in need of service or recharge. A tamper indicator on the low side pressure port cap
20 was still intact. A proper service requires inspecting the low side readings. The cabin
21 air filter was dirty and full of leaves.

22 **40. Second Undercover Run – September 5, 2013**

23 On September 5, 2013, a Bureau undercover operator drove a Bureau-documented 2001
24 Porsche to the Autobahn's facility for repairs. The only necessary repair was to reconnect the
25 number three fuel injector connector and to clear the Diagnostic Trouble Code from the vehicle
26 computer's memory. The undercover operator drove to the facility, spoke with Frank, and
27 requested an inspection for engine running problems. Frank told the undercover operator that the
28

1 vehicle might need an electrical wire harness. The undercover operator left the vehicle at the
2 facility and to await a call from the Autobahn for the results of the engine inspection.

3 41. Later that afternoon, the undercover operator called and spoke with Frank. Frank told
4 the undercover operator that bad spark plugs, two bad ignition coils, and a defective engine wire
5 harness were causing the engine problems. Frank said that the engine harness was brittle, melted,
6 shorted out, and falling apart. Frank told the undercover operator that he tested the alternator and
7 battery and that the alternator needed to be replaced. He told the undercover operator that he
8 could repair the wire harness for \$1,800.00 or replace it with a new one for \$2,500.00. He
9 explained that this latter price would include replacing all quoted parts except the alternator. The
10 undercover operator told Frank that he would call back with an answer.

11 42. Later that day, the undercover operator called Frank. Frank told the undercover
12 operator that the total estimate with a new engine wire harness would be \$2,571.00. The
13 undercover operator authorized all repairs except for replacing the alternator.

14 43. On September 9, 2013, the undercover operator called Frank. Frank said that he found
15 engine oil leaks; that the valve covers were leaking; that some oil hose came off; and that this
16 caused an oil leak. Frank said that the wrong spark plugs had been installed on the vehicle; that
17 two coils were bad; and that two coil boot ends were bad. Frank said that the engine wire harness
18 was saturated with motor oil. He said that he repaired the engine wire harness instead of
19 replacing it as previously authorized. Frank said that the alternator was functioning and charging
20 properly.

21 44. On September 11, 2013, the undercover operator went to the facility to pick up the
22 vehicle. The undercover operator paid Frank \$1,830.50 for the repairs. Frank told the undercover
23 operator that he personally worked on the vehicle. He told the undercover operator that he found
24 one ignition coil leaking electricity and arcing in body of coil. Frank said that the spark plugs
25 were bad and were of a cheap brand. The undercover operator then drove the vehicle and gave
26 custody of it back to a Bureau representative.

27 45. On October 4, 2013, a Bureau representative began inspecting the undercover vehicle.
28 He made the following five findings:

- 1 i. The injector connector on cylinder number 3 injector was reconnected but it was not
2 memorialized on the invoice.
- 3 ii. Two ignition coils were replaced even though the old ones were in good condition,
4 functioned properly, and did not need to be replaced.
- 5 iii. Six spark plugs were replaced even though the old ones were in good condition and
6 did not need to be replaced.
- 7 iv. The crankcase ventilation hose and crankcase ventilation valve were not new, had dirt
8 on them, and were not replaced as represented on the invoice.
- 9 v. The electrical harness was repaired even though it was in good condition and did not
10 need repairs.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Delinquent Registration)**

13 46. Complainant re-alleges and incorporates by reference the allegations set forth above
14 in paragraphs 34-45.

15 47. Respondent is subject to disciplinary action under Code section 9884.6, subdivision
16 (a) in that Respondent operated as an automotive repair dealer with a registration that was not
17 valid.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statement)**

20 48. Complainant re-alleges and incorporates by reference the allegations set forth above
21 in paragraphs 34-47.

22 49. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
23 (a)(1), in that Respondent made or authorized statements which Respondent knew or in the
24 exercise of reasonable care should have known to be untrue or misleading. The violation includes
25 the following:

26 50. Respondent told an undercover operator that all spark plugs, coil pack, and ignitions
27 wires on a 2000 Volkswagen needed to be replaced because of high resistance in the ignition
28 wires, and that the coolant temperature sensor needed replacing because there was a fault code

1 related to that sensor in the vehicle's computer. In fact and in truth, as Respondent well knew,
2 these were false statements. The undercover operator reasonably relied on Respondent's
3 representations and authorized additional repairs and services. As a result, Respondent charged
4 and was paid to perform unnecessary services and repairs and services and charged was paid for
5 repairs that were never performed or for parts never supplied.

6 51. Respondent told an undercover operator that the spark plugs, ignition coils, and
7 crankcase ventilation valve and hose needed to be replaced on a 2001 Porsche and that the engine
8 wire harness was defective and needed replacement. In fact and in truth, as Respondent well
9 knew, these were false statements. The undercover operator reasonably relied on Respondent's
10 representations and authorized additional repairs and services. As a result, Respondent charged
11 and was paid to perform unnecessary services and repairs and services and charged was paid for
12 repairs that were never performed or for parts never supplied.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 52. Complainant re-alleges and incorporates by reference the allegations set forth above
16 in paragraphs 34-51.

17 53. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
18 (a)(1), in that Respondent committed acts which constitute fraud.

19 54. Respondent told an undercover operator that all spark plugs, coil pack, and ignitions
20 wires on a 2000 Volkswagen needed to be replaced because of high resistance in the ignition
21 wires, and that the coolant temperature sensor needed replacing because there was a fault code
22 related to that sensor in the vehicle's computer. In fact and in truth, as Respondent well knew,
23 these were false statements. The undercover operator reasonably relied on Respondent's
24 representations and authorized additional repairs and services. As a result, Respondent charged
25 and was paid to perform unnecessary services and repairs and services and charged was paid for
26 repairs that were never performed or for parts never supplied.

27 55. Respondent told an undercover operator that the spark plugs, ignition coils, and
28 crankcase ventilation valve and hose needed to be replaced on a 2001 Porsche and that the engine

1 wire harness was defective and needed replacement. In fact and in truth, as Respondent well
2 knew, these were false statements. The undercover operator reasonably relied on Respondent's
3 representations and authorized additional repairs and services. As a result, Respondent charged
4 and was paid for repairs that were never performed or for parts that were never supplied.

5 **SIXTH CAUSE FOR DISCIPLINE**

6 **(Willful Departure from or Disregard of Accepted Trade Standards)**

7 56. Complainant re-alleges and incorporates by reference the allegations set forth above
8 in paragraphs 34-55.

9 57. Respondent's Registration is subject to disciplinary action under section 9884.7,
10 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
11 standards for good and workmanlike repair in any material respect which was prejudicial to
12 another without consent of the owner or his or her duly authorized representative. Under
13 Regulations section 3366, subd. (a)(15)-(16), Respondent include and perform the following
14 procedures as part of that air conditioning work: high and low side system operating pressures, as
15 applicable, have been measured and recorded on the final invoice; and the center air distribution
16 outlet temperature has been measured and recorded on the final invoice.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Violation of Estimate and Authorization Requirements)**

19 58. Complainant re-alleges and incorporates by reference the allegations set forth above
20 in paragraphs 32-57.

21 59. Respondent's Registration is subject to disciplinary action under section Code section
22 9884.9 and the Regulations violating the requirements for estimates and authorization.

23 Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs
24 37-40. The violations include the following:

25 a. **Regulations section 3356, subd. (a)(1)**: Failure to show business name as
26 registered.

27 b. **Regulations section 3356, subd. (a)(2)(A)**: Failure to record all service work
28 performed and the price for each service or repair.

1 c. **Regulations section 3356, subd. (a)(2(B))**: Failure to identify parts as new,
2 used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

3 **EIGHT CAUSE FOR DISCIPLINE**

4 **(Invoice Violations)**

5 60. Complainant re-alleges and incorporates by reference the allegations set forth above
6 in paragraphs 34-59.

7 61. Respondent's Registration is subject to disciplinary action under Code section 9884.8
8 in that Respondent failed to comply with invoice requirements. The violations include the
9 following:

10 a. **Regulations section 3353, subd. (c)**: Failure to record the additional repairs,
11 parts, labor, total additional cost, and a statement that the additional repairs were authorized
12 orally, by fax, or by email on the final invoice.

13 b. **Regulations section 3353, subd. (e)**: Failure to obtain authorization to change
14 method of repair for the repair to the engine wire harness.

15 **OTHER MATTERS**

16 62. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily
17 or permanently or refuse to validate, the registrations for all places of business operated in this
18 State by Respondent upon a finding that Respondent has engaged in a course of repeated and
19 willful violations of the laws and regulations pertaining to an automotive repair dealer.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 251494, issued to Francisco Mejia, Jr., Owner, doing business as The Autobahn Automotive
25 Group;

26 2. Revoking or suspending the registrations for all places of business operated in this
27 state by Francisco Mejia, Jr., Owner, doing business as The Autobahn Automotive Group;

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Ordering Francisco Mejia, Jr. 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

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

DATED: November 13, 2014



PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SD2014706765
70959965.doc