

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

In the Matter of the First Amended
Accusation Against:

**FRANCISCO MEJIA, JR., Owner
DOING BUSINESS AS THE
AUTOBAHN AUTOMOTIVE GROUP**

Automotive Repair Dealer Registration
Number ARD 251494,

Respondent.

Case No. 77/15-11

OAH No. 2014090413

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective February 16, 2016.

DATED: January 13, 2016



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 9, 2015, in San Diego.

Adrian Contreras, Deputy Attorney General, Department of Justice, State of California, represented Complainant Patrick Dorais, Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California.

Douglas Heumann, Attorney at Law, represented Respondent Francisco Mejia, Jr.

At the start of the hearing, Mr. Mejia moved to continue the hearing because he had recently filed for Chapter 7 bankruptcy. Complainant opposed Respondent's motion. The motion was denied. The matter proceeded to hearing; evidence was taken; and the matter was submitted on September 9, 2015.

SUMMARY

Respondent Francisco Mejia was convicted of grand theft on September 25, 2014, in connection with automotive repair work he was paid to perform but did not; he made false and misleading statements to Bureau undercover operators to induce them to pay for auto repairs that were not needed; and he engaged in fraud with respect to the repair work he provided on the operator's vehicles. Mr. Mejia also violated laws governing the

documentation of repair work; on numerous occasions, he operated as an automotive repair dealer when he was not so registered; and he failed to permit the Bureau to inspect documents the Bureau was entitled to inspect. Mr. Mejia offered no evidence of rehabilitation. As a result of Mr. Mejia's misconduct, his registration must be revoked.

FACTUAL FINDINGS

Jurisdictional Matters

1. On November 13, 2014, Complainant signed the First Amended Accusation in his official capacity. Complainant seeks the revocation of Mr. Mejia's Automotive Repair Dealer Registration. Complainant alleges that Mr. Mejia failed to produce records requested by the Bureau of Automotive Repair in violation of Business and Professions Code section 9884.11 and California Code of Regulations (CCR)¹, title 16, section 3358 (First Cause For Discipline); he was convicted of the substantially related crime of grand theft on September 24, 2014 (Second Cause for Discipline); he operated as an automotive repair dealer with an invalid registration on multiple occasions in violation of Code section 9884.5 (Third Cause for Discipline); he made or authorized statements to an undercover operator that he should have known were untrue or misleading in violation of Code section 9884.7 (Fourth Cause for Discipline); he engaged in fraud in violation of Code section 9884.7 (Fifth Cause for Discipline); he willfully departed from or disregarded accepted trade standards in violation of CCR section 3366, subdivision (a)(15) and (16) (Sixth Cause for Discipline); he failed to comply with estimate and authorization requirements in violation of CCR sections 3356, subdivision (a)(1), 3356, subdivision (a)(2)(A), and 3356, subdivision (a)(2)(B) (Seventh Cause for Discipline); and he failed to comply with the rules governing invoice requirements in violation of CCR section 3353, subdivisions (c) and (e) (Eight Cause for Discipline).²

License History

2. On July 25, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 251494 to Mr. Mejia, doing business as "The Autobahn Automotive Group." Bureau records indicate that Mr. Mejia's dealer registration was delinquent during the following periods: July 31, 2008 to April 13, 2009; July 31, 2009 to August 31, 2009; July 31, 2010 to August 16, 2010; July 31, 2011 to September 26, 2011; July 31, 2012 to August 23, 2012; July 31, 2013 to October 21, 2013; and from July 31, 2015 through the present. The registration was in full force and effect at all times relevant to the allegations contained in the First Amended Accusation.

¹ All reference is to Title 16, unless otherwise stated.

² All subsequent references are to the Business and Professions Code, except as otherwise indicated.

Respondent's 2014 Conviction for Grand Theft

3. On September 25, 2014, in the case entitled *People v. Francisco Mejia*, in Superior Court of California, Imperial County, Case No. JCF33148, on his plea of no contest, Mr. Mejia was convicted of violating Penal Code section 487, subdivision (a), grand theft exceeding \$400, a misdemeanor. As a result of the plea, Mr. Mejia was placed on summary probation for three years and ordered to pay victim restitution. He was also barred from engaging, either directly or indirectly, in any activity for which an Automobile Repair Dealer Registration was required. Previously, on July 10, 2014, under Penal Code section 23, the court had barred Mr. Mejia from engaging, either directly or indirectly, in any activity that required an automotive dealer repair registration.

The facts and circumstances underlying the conviction are as follows. On January 16, 2014, consumers Jessie P. and Taryn S. submitted a complaint to the Bureau. They claimed that, on September 4, and December 11, 2013, they paid Mr. Mejia \$1,300 to install an automatic transmission and four motor mounts on their 1998 Honda Accord. Mr. Mejia did not install the transmission or the four motor mounts. Bureau Program Representative Pete Kaliszewski's investigation substantiated the consumers' complaint. He interviewed the consumers, obtained documentation and forwarded his report to the Imperial County District Attorney's Office. On May 13, 2014, a felony complaint was filed against Mr. Mejia.

The June 26, 2013 Undercover Operation

4. Before the Bureau received the complaint from the consumers concerning Mr. Mejia's work on their Honda Accord, the Bureau conducted two undercover operations at Mr. Mejia's facility. The first operation occurred on June 26, 2013. On this date, Mr. Kaliszewski instructed Liliana Aguirre, a bureau undercover operator, to drive a 2000 Volkswagen Jetta to Mr. Mejia's facility for repairs and request a diagnosis to explain the poor engine running and to check the air conditioner operation. The only necessary repair was a defective spark plug. Ms. Aguirre drove the vehicle to the facility and spoke with Mr. Mejia and Rosalinda Ruiz. She asked Mr. Mejia to inspect the engine and the vehicle's air conditioning. In a Pre-Service Check in Sheet, Ms. Aguirre's concerns were documented as follows: "When customer starts vehicle it starts shaking or vibrates. Check and advise. Inspect A/C." Ms. Aguirre signed the Pre-Service Check in Sheet under the assumed name "Gabriela Garcia."

Later, Ms. Aguirre spoke with Ms. Ruiz by telephone. Ms. Ruiz told her that the vehicle needed spark plugs, ignition cables, an ignition coil pack, cooling temperature sensor, and an air conditioning service. Mr. Mejia told her that the ignition coil pack was burned because of high resistance in the ignition wires. Mr. Mejia added that the ignition wires appeared to be recently replaced but were of poor quality and were arcing. Also, he said that the coolant temperature sensor needed to be replaced, because there was a Diagnostic Trouble Code related to that sensor that was observed in the vehicle's computer. Mr. Mejia said that the total repairs would be \$458, including tax. Mr. Mejia also told Ms. Aguirre that he would perform air conditioner services that would include cleaning the outside panel. Ms.

Aguirre understood that the air conditioning service and cleaning was at no additional charge and was included in the charge of \$458. Ms. Aguirre authorized Mr. Mejia to proceed with the repairs at a cost of \$458. In a repair order, dated June 28, 2013, the work identified as Job #1" was described as "Spark plugs", "Spark plug cables", "ignition coil pack", "Temp. Coolant Sensor", "Coolant"; "Job #2" was described as "inspect A/C and perform A/C service. Recharge system with new "Freon." Ms. Aguirre did not sign the repair order.

The repair order did not document that the owner had approved the additional repairs, parts, labor, total additional cost, or a statement about whether the repairs were authorized orally or by other means. The repair order did not identify whether the parts for the repair were new, used, or reconditioned. The repair order identified the facility as "Autobahn Performance Group."

On June 28, 2013, Ms. Aguirre returned to the facility and paid \$458 in cash to Rosalinda Ruiz. Ms. Aguirre asked for the return of the old parts. Mr. Mejia told Ms. Aguirre said that the old ignition wires were of a half of resistance and the wires caused all the problems. After Mr. Mejia gave Ms. Aguirre the old parts, she drove from the facility and returned the Volkswagen, paperwork, and parts to Mr. Kaliszewski.

Testimony of Daniell J. Rogers

5. Daniell J. Rogers is employed as a Program Representative I with the Bureau. He has worked in the automotive industry for over 30 years; he is a licensed smog check technician; and he is certified by the National Institute for Automotive Service Excellence as a Master Automotive Technician. His certifications include auto/manual transmission and steering, brakes, electrical/electronic systems, heating and air conditioning, and advanced level engine performance.

6. Prior to the undercover operation, between April 23 2013 and June 7, 2013, Mr. Rogers had custody of the 2000 Volkswagen Jetta. During this time, he removed the spark plugs and ran a compression test. He determined that the engine was in good working order. He obtained new spark plug wires for the vehicle and tested them. He found that the wires were in good condition and within factory specifications before he installed them. He also installed a new set of spark plugs and gapped them at factory specifications before installation. The spark plugs and the spark plug wires were the original equipment brand, in good condition, and did not need to be replaced.

Also, Mr. Rogers tested the vehicle's existing ignition coil pack and determined that the coil pack was in good condition and did not need to be replaced.

Then, Mr. Rogers connected the vehicle to a diagnostic scanner and did not find any diagnostic trouble codes, and the malfunction light was not on. He then replaced the number four cylinder spark plug with a spark plug that he had internally shorted. As a result of this defect, a noticeable engine miss was created which activated the check engine light on the car dash. The diagnostic scanner showed a code indicating a "Cylinder 4 Misfire."

Mr. Rogers, further, checked the vehicle's air conditioning system. He determined, consistent with Bureau regulations, that the A/C system was in good condition, without leaks, functioned correctly, and did not need to be serviced or repaired.

Mr. Rogers transported the car to Imperial County and reinstalled the defective spark plug into the number four cylinder. He confirmed that the vehicle's check engine light was activated. He transferred custody of the vehicle to Mr. Kaliszewski.

On June 28, 2013, following the undercover operation, he received custody of the vehicle from Mr. Kaliszewski. He also received a copy of the work order and the parts that were removed from the vehicle. He inspected the vehicle and found that all four spark plugs had been replaced. He retested the spark plug wires that had been installed and determined that the wires remained in good condition, tested within factory specifications, and did not need to be replaced. He also tested the coil pack that was also returned with the vehicle and found that it was in remained in good condition and did not need to be replaced.

In addition, Mr. Rogers tested the vehicle's air conditioning system. He noted that a tamper indicator he had placed on the low side pressure port cap of the air conditioning system remained intact and had not been removed. The presence of the low side pressure cap tamper indicator contradicted Mr. Mejia's work order that represented that the air conditioning system was recharged with freon. Mr. Rogers stated that the air conditioning system could not have been correctly serviced without inspecting the low side readings during the air conditioning servicing. He added that the work order did not contain high or low side readings, or center outlet measurements, all of which were required by CCR section 3366. Also, Mr. Rogers inspected the cabin air filter and found it was dirty and full of leaves, which suggested to Mr. Rogers that it had not been inspected as required by CCR section 3366.

The September 5, 2013 Undercover Operation

7. On September 5, 2013, Randy Mattey, a Program Representative I, participated as an undercover operative at Mr. Mejia's facility. Mr. Kaliszewski instructed Mr. Mattey to drive a 2001 Porsche 911 Carrera 4 to Mr. Mejia's facility and request a diagnosis of the poor running engine. Mr. Mattey drove the vehicle to Mr. Mejia's facility and spoke with Mr. Mejia. He described the vehicle's engine problems, and Mr. Mejia suggested that the vehicle may need an electrical wire harness. Mr. Mattey signed, under the assumed name "Randy Matea," a "Pre-Service Check In Sheet" at the facility; on this form, Mr. Mattey described the concerns as "Vehicle is losing power." He left the vehicle with Mr. Mejia, and Mr. Mejia told him that he would call him later with the results of the inspection.

Later that day, Mr. Mattey called Mr. Mejia. Mr. Mejia told Mr. Mattey that he had inspected the vehicle. He said the engine's running problem was caused by bad spark plugs, two bad ignition coils, and the number 3 and number 4 cylinders were shorting out due to a defective engine wire harness. Mr. Mejia described the wire harness as brittle, melted,

shouted out, and failing apart. Also, he told Mr. Matthey that the alternator was bad and needed to be replaced since it was not charging properly. Mr. Mejia advised Mr. Matthey that he could repair the defective wire harness for a total of \$1,800, or replace it with a new wire harness for approximately \$2,500. Mr. Mejia explained that the latter amount would include the replacement of all quoted parts not including the alternator. Mr. Matthey said he would consult with his wife and call him back. Mr. Matthey called Mr. Mejia back later that afternoon. Mr. Mejia said that the total estimate of repairs including the installation of a new engine wire harness would be \$2,571. Mr. Matthey told Mr. Mejia to perform the work, with the exception of replacing the alternator.

On September 9, 2013, Mr. Matthey called Mr. Mejia to obtain a status on the repairs. Mr. Mejia told him that he discovered a lot of engine oil leaks, that the valve covers were leaking and that some oil hoses came off and caused an additional oil leak. Mr. Matthey asked Mr. Mejia if he fixed the engine problem. Mr. Mejia said that the wrong spark plugs were installed in the vehicle, two coils were bad, and two coil boot ends were bad. Also, he told Mr. Matthey that the engine wire harness was saturated with oil. He said he repaired the engine wire harness instead of replacing it as approved. In addition, he told Mr. Matthey that the engine wire harness was functioning and charging properly.

On September 10, 2013, Mr. Matthey called Mr. Mejia. Ms. Ruiz told him that the vehicle was ready, and the total cost for repairs was \$1,830.50.

On September 11, 2013, Mr. Matthey went to Mr. Mejia's facility and met with Mr. Mejia. He paid him \$1,830.50. Mr. Mejia provided him with a final invoice. The invoice identified the facility as "Autobahn Performance Group." It described the work performed as "Job 1" as "Technician perform vehicle inspection and found electrical wiring harness needs to be replaced." The invoice described the parts used in the vehicle repair as "ignition coil", "spark plugs", "Crankcase Ventilation Valve", and "Crankcase Ventilation hose." The invoice also described the work performed as "Job #2" as "Technician repaired electrical harness." The repair order did not document that the operator had approved the additional repairs, parts, labor, additional cost, or a statement whether the repairs were authorized orally, or by other means. The repair order did not document that the operator authorized Mr. Mejia to repair and, not replace, the wire harness. Further, the repair order did not identify whether the parts for the repair were new, used, or reconditioned. The repair order identified the facility as "Autobahn Performance Group." Mr. Matthey did not sign the repair order.

Mr. Mejia told Mr. Matthey that he personally worked on the vehicle. He said that he did not replace the entire wire harness but instead repaired it. Mr. Mejia said that he discovered one ignition coil was leaking electricity and arcing within the body of the coil and that the spark plugs were bad and were a cheap brand. Mr. Mejia returned some of the electrical parts to Mr. Matthey. Mr. Matthey drove the vehicle from the facility and returned it to the custody of Mr. Kaliszewski.

Testimony of Daniell Rogers Regarding the Porsche Carrera

8. Mr. Rogers testified that, on August 8, 2013, before he created any defects in the Porsche Carrera, he inspected the vehicle. First, he inspected the spark plugs. He noted that the spark plugs were the original equipment brand, in good condition, correctly gapped, and did not need to be replaced. In addition, Mr. Rogers removed the vehicle's ignition coils and tested them with a digital voltmeter. They were also in good condition and did not need to be replaced. Mr. Rogers then connected a diagnostic scanner to the vehicle; the vehicle ran smoothly without any diagnostic trouble codes or malfunction indicator light indicating any malfunctions. He noted that the fuel injector's electrical connectors were secure and in good condition. Mr. Rogers also inspected the intake throttle body and cleaned the throttle plate and throttle bore. He marked a line inside the bore to determine whether the bore had been cleaned. He also placed a tamper indicator on the throttle body to the throttle body intake, to detect removal of the air filter housing and intake boot. Mr. Rogers placed additional tamper indicators on the mass air flow connector, one engine mounting bolt, and the two cylinder head covers to detect whether the vehicle's engine had been removed. Mr. Rogers added an additional tamper indicator to the vehicle's gas cap to the fuel filler neck to detect removal of the gas cap in order to add chemical additives.

Then, Mr. Rogers created a defect in the vehicle by removing the injector electrical connector on the number three cylinder fuel injector. As a result, a non-functioning number three cylinder fuel injector defect was created which caused a miss in the engine with a malfunctioning indicator light. He connected a diagnostic scanner to the vehicle, and the scanner showed a "P0303 Cylinder 3 Misfire Detected."

On September 5, 2013, Mr. Rogers transported the vehicle to Imperial County and released it to the custody of Mr. Kaliszewski.

On September 11, 2013, after the undercover operation, Mr. Rogers received custody of the vehicle from Mr. Kaliszewski and inspected the vehicle. In addition, he received a copy of the work order and some of the parts that were replaced, including two ignition coils and six spark plugs.

On October 4, 2013, he reinspected the vehicle. He noted that Mr. Mejia had reconnected the injector connector to the number three cylinder fuel injector. But, Mr. Mejia did not mention this work in the work order. Mr. Rogers also inspected the two ignition coils that Mr. Mejia had removed. They functioned properly and did not need to be replaced. He installed the removed coil packs back into the vehicle. The vehicle ran smoothly with no miss or malfunction. Also, he checked the removed spark plugs; they remained in good condition and did not need to be replaced.

In Mr. Rogers's opinion, Mr. Mejia did not install a crankcase ventilation valve and hose into the vehicle, contrary to what Mr. Mejia wrote in the work order. Mr. Rogers noted that both items were very difficult to locate in the Porsche; and, to access the crankcase valve

and hose, the entire engine needed to be removed. The tamper indicators indicated that the engine had not been removed.

In Mr. Rogers opinion, the vehicle's electrical harness had not been repaired, contrary to what Mr. Mejia told Mr. Matthey and what he wrote in the work order. According to Mr. Rogers, the top of part of the engine had not been removed.

9. In his testimony concerning the work done on both the Volkswagen Jetta and Porsche Carrera, Mr. Rogers said that there were no real trade standards concerning the repair work Mr. Mejia claimed he provided.

Allegation that Respondent Failed to Produce Records to the Bureau

10. On July 10, 2014, Mr. Kaliszewski, on behalf of the Bureau, submitted two requests for documents to Mr. Mejia's attorney. In the requests Mr. Kaliszewski asked Mr. Mejia to produce documents related to the work he performed on two vehicles for the two consumers, including all invoices, all written estimates, authorizations, final invoices, all labor and parts receipts related to the repairs performed on the two vehicles. Mr. Kaliszewski cited Code section 9884.11 and CCR section 3358 in support of the requests.

One consumer had filed a complaint on June 17, 2014, asserting that Mr. Mejia failed to replace the engine on her vehicle for which she paid. Another consumer filed a complaint on July 1, 2014, asserting that Mr. Mejia failed to replace the automatic transmission on the vehicle for which he paid. This consumer also alleged that Mr. Mejia held his vehicle hostage and refused to return it.

11. In a letter, dated July 14, 2014, Mr. Mejia's attorney informed Mr. Kaliszewski that Mr. Mejia would not comply with the Bureau's requests for documents based on the Fifth Amendment's privilege against self-incrimination. She stated that his production of these records would be prejudicial to his pending criminal case and he would not comply with this request during the duration of his criminal case.

Respondent's Evidence, Arguments and Evaluation of His Arguments

12. Mr. Mejia declined to testify, and he refused to answer questions posed to him by Complainant on the basis of his Fifth Amendment privilege against self-incrimination. Mr. Mejia did not present any rehabilitation, mitigation or other evidence.

In his notice of defense, Mr. Mejia asserted several defenses. He claimed that the accusation failed to state acts or omissions upon which the Bureau could proceed, and he objected to the form of the accusation on the basis that the grounds for discipline that were alleged were indefinite and uncertain. Both these arguments are rejected.

In addition, Mr. Mejia objected to the accusation on the basis that there was an ongoing criminal proceeding against him in Imperial County. Mr. Mejia modified this

assertion at the hearing and argued that he was not required to comply with the Bureau's July 10, 2014 request for documents because of his Fifth Amendment privilege against self-incrimination and because, as of July 10, 2014, his auto dealer registration was suspended.

Mr. Mejia's argument that he had a Fifth Amendment privilege against disclosing these records is without merit. The Fifth Amendment privilege is not absolute and "cannot be maintained" in relation to "records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restrictions validly established." (*Shapiro v. United States* (1948) 335 U.S.1, 17 quoting *Davis v. United States* (1946) 328 U.S. 582, 589; *De La Cruz v. Quakenbush* (2000) 80 Cal.App.4th 775, 784 citing *Shapiro* at 33.)³

In order to protect consumers, Code section 9811 and CCR section 3368 require automotive repair dealers to maintain records for three years; these records include "invoices related to automotive repair, all written estimates pertaining to work performed, and all work orders and/or contracts for repairs, parts and labor." On July 10, 2014, the Bureau sent a letter to Mr. Mejia and asked for the invoices, work orders, and other documents related to work he performed on the two vehicles.⁴ Bureau staff were investigating two consumer complaints. In each case, the consumer alleged that Mr. Mejia had not performed work on each vehicle that he agreed to perform. Consistent with the principle articulated in *Shapiro*, these records contained "information of transactions" related to Mr. Mejia's work on the vehicles of the consumers, and the Bureau was entitled to inspect the records as a matter of public protection. (*Shapiro* at 17.) Mr. Mejia did not have a Fifth Amendment privilege to refuse the Bureau access to these records. His refusal to provide the Bureau access to them on Fifth Amendment grounds is not a defense to the allegation that he violated Code section 9811. As a result, discipline may be imposed against him under this section.

³ The court in *De La Cruz* did not address whether the Insurance Commissioner's records request violated Mr. De La Cruz's Fifth Amendment privilege but whether the Commissioner's warrantless inspection of these records violated Mr. De La Cruz's Fourth Amendment rights. (*De La Cruz* at 778.) The court commented that the records exception principle discussed in *Shapiro* applies to the Fifth Amendment privilege and not to the reasonableness of a search under the Fourth Amendment. (*De La Cruz* at 784.)

⁴ The suspension of Mr. Mejia's registration on July 10, 2014, did not deprive the Bureau of jurisdiction to pursue a disciplinary action against him on the basis that he failed to comply with Code section 9811. Code section 118, subdivision (b), provides that the suspension of a license does not deprive the Director of Consumer Affairs of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

Costs of Investigation and Enforcement

13. The administrative hearing took one-half day to complete. Complainant called two witnesses and Mr. Mejia did not testify or present any defense to the allegations. The Deputy Attorney General submitted a declaration, dated September 8, 2015, to which the billing in the matter was attached. The Attorney General's Office billed \$10,302.50 for legal services at an hourly billing rate of \$170 for attorney work, and \$120 for paralegal work. Mr. Contreras's declaration included his "good faith estimate" under Code section 125.3 of three additional hours for the preparation of the case prior to the hearing. This good faith estimate did not include a description of the nature of the work to be performed and is insufficient to allow a finding of reasonable costs. Otherwise, the billing summary provided a detailed accounting of the Attorney General's work on the case, except for a half hour of legal work billed as "case management" by a paralegal totaling \$60. Because no description concerning "case management" was provided, this description is insufficient to allow for a finding that \$60 of the \$9,792.50 sought in costs was reasonable. As a result, \$9,732.50 is found to be the reasonable prosecution costs in this matter.

Two declarations were introduced regarding the Bureau's investigation services in the amounts of \$27,293.65 and \$13,569. William D. Thomas, Program Manager II, Case Management & Enforcement Statistics, certified that the Bureau incurred \$27,293.65 in "Investigator Costs", and "Undercover Vehicle Operator & Evidence Costs", related to the Bureau's investigation into the allegations in the accusation against Mr. Mejia. Mr. Thomas's declaration merely recited that unnamed Program Representatives I and II spent a total of 329 hours between 2013 and 2015 at varying rates per hour on the investigation. There is no description of the nature of the work performed. This description is insufficient to allow a finding that the costs sought for the Bureau's investigation services are reasonable costs.

Regarding the undercover vehicle and operator and evidence costs, Mr. Thomas identified the operator fees as \$200 per day and "Expenses" for "Undercover Run #1" and "Undercover Run #2" as \$458 and \$1,830.50 respectively. Based on the record, the later expenses refer to the payments the Bureau made to Mr. Mejia related to his work on the Volkswagen Jetta and on the Porsche Carrera. The descriptions of these costs totaling \$2,488.50 are sufficient and are deemed reasonable.

The second declaration is from Wayne Ramos, Program Manager II, with the Bureau's Forensic Documentation Program. In his declaration, Mr. Ramos certified that the Bureau incurred \$13,569.99 in "Vehicle Preparation Cost Record". Specifically, he certified that a Program Representative I spent 189 hours between the fiscal years 2012 and 2013 at the rates of \$73.20 and \$71.26 per hour on the investigation. Again, no description was provided regarding the nature of the work performed to allow for a determination whether these costs are reasonable.

It is thus concluded that the Bureau's reasonable costs of investigation and prosecution total \$12,220.70.

14. Mr. Mejia did not testify that he is presently unable to pay the costs or is only able to pay a portion of the costs. His bankruptcy petition, by itself, does not lead to the conclusion that he is unable to pay any, or a portion of, costs.

LEGAL CONCLUSIONS

Purpose of Administrative Disciplinary Proceedings

1. Administrative proceedings to revoke, suspend, or impose discipline on a licensee are noncriminal and nonpenal; they are not intended to punish the licensee, but to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

Burden and Standard of Proof

2. In determining the standard of proof in license revocation proceedings, courts have drawn a distinction between professional licenses such as those held by doctors, lawyers, and real estate brokers on the one hand, and nonprofessional or occupational licenses such as those held by food processors and vehicle salespersons on the other hand. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies, while in proceedings to revoke nonprofessional or occupational licenses, the preponderance of the evidence standard of proof applies. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.)

Disciplinary Statutes

3. Code section 490 states as follows:

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

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

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

4. Code section 9884.7 states as follows:

(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.

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

[¶] . . . [¶]

(4) Any other conduct that constitutes fraud.

[¶] . . . [¶]

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

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

5. Code section 9884.6 provides:

(a) 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.

(b) A person who, for compensation, adjusts, installs, or tests retrofit systems for purposes of Chapter 6 (commencing with Section 44200) of Part 5 of Division 26 of the Health and Safety Code is an automotive repair dealer for purposes of this chapter.

Applicable Laws Governing Maintenance and Inspection of Records

6. Code section 9884.11 provides:

Each automotive repair dealer shall maintain any records that are required by regulations adopted to carry out this chapter. 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.

7. CCR section 3358 requires every automotive dealer to maintain copies for inspection and/or reproduction during normal business hours by the bureau or other law enforcement agency of the following: invoices relating to automotive repair, all written estimates pertaining to work performed, and all work orders and/or contracts for repairs, parts and labor.

Applicable Laws Governing Invoices

8. Code section 9884.8 provides:

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.

9. As authorized under Code section 9884.9, CCR section 3356 states:

(1) The invoice shall show the automotive repair dealer's registration number and the corresponding business name and address as shown in the Bureau's 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.

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

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

(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. . . .

Regulation Governing Customer Authorization of Additional Work

10. CCR section 3353, subdivisions (c) and (e), provides:

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

(1) If the authorization from the customer for additional repairs, parts, or labor in excess of the written estimated price is obtained orally, the dealer shall also make a notation on the work order and on the invoice of the date, time, name of the person authorizing the additional repairs, and the telephone number called, if any, together with the specification of the additional repairs, parts, labor and the total additional cost.

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

is signed and dated by the customer and shows the date and time of transmission and describes the additional repairs, parts, labor and the total additional cost.

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

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

[¶] . . . [¶]

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

Applicable Regulation Governing Automotive Air Conditioning Work

11. CCR section 3366 states:

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

[¶] . . . [¶]

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

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

Conduct that Constitutes Fraud

12. A fraudulent business practice under consumer protection laws is distinct from common law fraud. A common law fraudulent deception must be actually false, known to be false and reasonably relied upon by a victim who incurs damages. (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 748.) In contrast, a fraudulent business practice is a practice that is likely to deceive members of the public. This distinction reflects a focus on a wrongdoer's conduct, rather than the consumer's damage, in service of the larger purpose of protecting the general public from unscrupulous business practices. (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 252-253.)

Cause Exists to Impose Discipline Against Mr. Mejia's Automotive Repair Dealer Registration Under the First Cause for Discipline

13. Cause exists to impose discipline against Automotive Repair Dealer Registration issued to Mr. Mejia for violations of Code section 9884.11 and CCR section 3358.

On July 14, 2014, in response to the Bureau's July 10, 2014 request, Mr. Mejia refused to permit the Bureau to inspect invoices, written estimate authorizations, final invoices, and labor and all parts receipts related to the repairs purportedly performed on the vehicles of two consumers who filed complaints with the Bureau in June 2014. Mr. Mejia was required to maintain these records for three years and provide these documents to bureau staff under Code section 9811 and CCR section 3358, and as discussed above, Mr. Mejia did not have a Fifth Amendment privilege that permitted him to refuse to produce these records to Bureau staff for inspection.

Cause Exists to Discipline Mr. Mejia's Registration under the Second Cause for Discipline

14. Cause exists to impose discipline against the Automotive Repair Dealer Registration issued to Mr. Mejia because he was convicted of a crime substantially related to the qualifications, functions, and duties of a registered automotive repair dealer under Code section 490. On September 25, 2014, Mr. Mejia was convicted of grand theft, in violation of Penal Code section 487, subdivision (a). This conviction arose because Mr. Mejia failed to install an automatic transmission and engine mounts into a vehicle that a consumer paid him to install.

Cause Exists to Discipline Mr. Mejia's Registration Under the Third Cause for Discipline

15. Cause exists to impose discipline against Mr. Mejia's Automotive Repair Dealer Registration under Code sections 9884.6, subdivision (a), and 9887, subdivision (6). Mr. Mejia operated an automotive repair dealership without a valid registration on the following dates: July 31, 2008 to April 13, 2009; July 31, 2009 to August 31, 2009; July 31, 2010 to August 16, 2010; July 31, 2011 to September 26, 2011; July 31, 2012 to August 23, 2012; and July 31, 2013 to October 21, 2013.

Cause Exists to Discipline Mr. Mejia's Registration Under the Fourth Cause for Discipline

16. Cause exists to impose discipline against Mr. Mejia's Automotive Repair Dealer Registration under section 9884.7, subdivision (a)(1). Mr. Mejia made untrue and misleading statements to undercover operators. He stated that repair work was necessary for the two vehicles. In truth and in fact, the automotive repair work was not necessary. On June 26, 2013, Mr. Mejia told an undercover operator that all the spark plugs, coil pack, ignition wires, and coolant sensor in the Volkswagen Jetta needed to be replaced; in fact, these items did not need to be replaced. On September 5, 2013, Mr. Mejia told an undercover operator that the spark plugs, ignition coils, wire harness, and crankcase ventilation valve and hose needed to be replaced on the 2001 Porsche; in fact, these items did not need to be replaced.

Cause Exists to Discipline Mr. Mejia's Registration Under the Fifth Cause for Discipline

17. Cause exists to impose discipline against Mr. Mejia's Automotive Repair Dealer Registration under Code section 9884.7, subdivision (a)(4). Mr. Mejia engaged in fraudulent conduct when he made false and misleading statements on June 13, 2013 and September 5, 2013 to undercover operators in an effort to induce them to pay for unnecessary automotive repairs.

Cause Does Not Exist to Impose Discipline Against Mr. Mejia's Registration Under the Sixth Cause for Discipline

18. Cause does not exist to impose discipline against Mr. Mejia's registration under section Code 9884.7, subdivision (7), and CCR section 3366, subdivisions (a)(15) and (16). A preponderance of the evidence did not show that Mr. Mejia departed from accepted trade standards in the work that he performed on the two undercover vehicles, including his failure to record on the invoice the high and low side system operating pressures and the center air distribution outlet temperature on the Volkswagen Jetta. Mr. Rogers testified that there were no real trade standards in the industry with respect to this work in general. Also, while it is found that Mr. Mejia violated CCR section 3366, subdivisions (a)(15) and (16), it cannot also be concluded that Mr. Mejia's violations of this rule necessarily constitutes a departure from accepted industry trade standards. Mr. Rogers did not testify that this rule represents an accepted industry trade standard.

Cause Exists to Impose Discipline Against Mr. Mejia's Registration Under the Seventh Cause for Discipline

19. Cause exists to impose discipline against Mr. Mejia under Code section 9884.9, subdivisions (a)(1), (a)(2)(A), and (a)(2)(B). The repair orders Mr. Mejia completed on June 26, 2013 and September 5, 2013 failed to correctly identify his business name as registered with the Bureau; the repair orders did not itemize the price for each described service and repair and did not identify the parts used as new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

Cause Exists to Impose Discipline Against Mr. Mejia's Registration Under the Eighth Cause for Discipline

20. Cause exists to impose discipline against Mr. Mejia under Code section 9884.9 and CCR section 3353, subdivisions (c) and (e). Mr. Mejia did not record the additional work, repairs, and labor he performed on the Jetta and Porsche. He did not record a change in the method of repair to the Porsche. Mr. Mejia failed to document that the operator of the Jetta had authorized the replacement of the spark plugs, ignition coil, and coolant sensor, and he failed to document that the operator of the Porsche had approved the replacement of the ignition coil, spark plugs, crankcase ventilation valve, and crankcase ventilation hose. Also, Mr. Mejia did not document that the operator of the Porsche had authorized Mr. Mejia to repair, and not replace, the wire harness.

Discussion Regarding the Degree of Penalty

21. The Bureau in its Disciplinary Guidelines recommends a penalty range for the individual violations of the Business Code sections at issue here between 90 days suspension with two years' probation to outright revocation. To determine the appropriate penalty, the Guidelines identify specific aggravating factors. These factors include conduct which constitutes fraud evidence that the unlawful act was part of a pattern of practice, consideration of whether respondent is currently on probation for improper acts, and whether the respondent failed to permit the Bureau to inspect records. Factors in mitigation include evidence that a respondent has voluntarily participated in retraining and evidence that the shop has taken specific steps to minimize the possibility of recurrence.

Mr. Mejia presented no evidence of mitigation or rehabilitation. In aggravation, the evidence showed that Mr. Mejia engaged in fraud as a pattern of his business; between June 26, 2013 and December 2013, on three occasions, Mr. Mejia failed to install parts and perform repair work for which he was paid; he performed repairs that were not necessary. Also, Mr. Mejia refused to cooperate with the Bureau when he failed to permit the Bureau to inspect invoices and documents related to work he did on two vehicles. Further, Mr. Mejia is on criminal probation for grand theft; the terms of his probation prohibit him from working directly or indirectly in any activity where an automotive dealer repair registration may be required.

Considering these aggravating factors and the lack of evidence mitigation or rehabilitation evidence, public protection requires that Mr. Mejia's registration be revoked.

Assessment of the Reasonable Costs of Investigation and Prosecution Under Zuckerman

22. Code section 125.3 states, in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may 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.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

23. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court decided that in order to determine whether the actual costs of investigation and prosecution sought by a regulatory board under a statute substantially identical to Business and Professions Code 125.3 are "reasonable," the agency must decide: (a) Whether the licensee has been successful at hearing in getting charges dismissed or reduced, (b) the licensee's subjective good faith belief in the merits of his position, (c)

whether the licensee has raised a colorable challenge to the proposed discipline, (d) the financial ability of the licensee to pay, and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

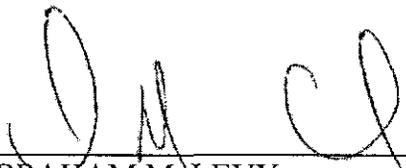
24. Complainant seeks costs related to the investigation and prosecution of this matter in the amount of \$51,166.14. As noted, the reasonable costs based on the submitted declarations are found to be \$12,220.70. A further reduction is required consistent with the *Zuckerman* factors because one of the eight causes for discipline was not sustained. Therefore, the costs are reduced by \$1,527.59 or one-eighth of \$12,220.70. Reasonable costs, related to the investigation and prosecution of this matter, are awarded in the amount of \$10,693.11.

ORDER

Automotive Repair Dealer Registration No. ARD No. 251494 issued to Francisco Mejia, Jr., owner of The Autobahn Automotive Group, is revoked.

Francisco Mejia, Jr. shall pay \$10,693.11 for the cost of investigation and enforcement to the Bureau of Automotive Repair.

DATED: October 9, 2015


ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

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

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

18 Respondent.

OAH No. 2014090413

Case No. 77/15-11

F I R S T A M E N D E D
A C C U S A T I O N

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.

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JURISDICTION

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

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

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

6. Section 9884.22 of the Code states:

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

“....”

STATUTORY PROVISIONS

7. Section 22 of the Code states:

“(a) 'Board' as used in any provisions 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.'

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

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
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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 ///

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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

