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

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

In the Matter of the Accusation Against: **ECO AUTOTECH INC.** **dba AAMCO TRANSMISSION** 2589 E. Waterloo Rd. Stockton, CA 95205 **CHARLES KUANG HSIAO, PR** **Automotive Repair Dealer Registration No. ARD 252249** Respondent.	Case No. 77\10-50 **ACCUSATION**

Sherry Mehl ("Complainant") alleges:

PARTIES

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

2. On or about September 28, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 252249 to Eco Autotech Inc., doing business as Aamco Transmission ("Respondent"), with Charles Kuang Hsiao as President. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2011, unless renewed.

STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 9884.7 states, in pertinent part:

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

(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 which constitutes fraud.

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to it.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

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

4. Code section 9884.8 states:

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

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5. Code section 9884.9 states:

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

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

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

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

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(signature or initials)"

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

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

REGULATORY PROVISIONS

7. California Code of Regulations, title 16, section 3340.10(f) states:

No person shall operate a smog check station unless a license to do so has been issued by the department.

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COST RECOVERY

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

CONSUMER COMPLAINT NO. 1 – 2002 DODGE DURANGO

9. On or about February 5, 2008, the Bureau received a consumer complaint from Bettye Burrell-Olivier ("consumer") regarding repairs to her 2002 Dodge Durango performed by Respondent's facility. On or about November 30, 2007, the consumer contacted Respondent's facility by telephone and spoke with Corbin Norviel ("Norviel"). The consumer told Norviel that the vehicle would not up shift into high gear until 40-45 miles per hour. Norviel told the consumer that he recommended the vehicle be towed to Respondent's facility, and that he could make arrangements to do that at no charge, which he did. Later that same day, Norviel contacted the consumer by telephone and told her that the engine was misfiring and that the misfiring condition would have to be repaired before he could diagnose the transmission problem. Norviel told the consumer the diagnostic evaluation would cost $500. The consumer authorized the diagnostic evaluation. In or about December 2007, the consumer received a telephone call from Norviel stating that the vehicle was ready to be picked up and the total cost of repairs was $1,638.59. When the consumer returned to Respondent's facility to retrieve the vehicle, Norviel told her that he did not recommend that she drive the vehicle on the freeway due to the transmission problem, and that he recommended a further diagnosis of the transmission, in that the repairs performed did not include a diagnosis of the transmission or any transmission repairs. The consumer had her vehicle towed back to her home.

10. On or about February 11, 2008, the consumer had her vehicle towed to Stockton Dodge, located in Stockton, California, for a diagnosis of the transmission. The consumer's vehicle was diagnosed and repaired for $619.31.

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FIRST CAUSE FOR DISCIPLINE

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

11. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about November 30, 2007, regarding the 2002 Dodge Durango, Respondent failed to materially comply with the following provisions of that Code:

a. **Section 9884.9:**

i. Respondent failed to provide the consumer with a written estimated amount on Invoice No. 100068 for additional repairs for a specific job.

ii. Respondent failed to obtain the consumer's authorization for additional repairs on Invoice No. 100068.

iii. Respondent failed to properly document the consumer's initial authorization for diagnosis on Invoice No. 100068.

CONSUMER COMPLAINT NO. 2 – 1994 FORD ECONOLINE E150 VAN

12. On or about January 9, 2009, the Bureau received a consumer complaint from David Wisner ("consumer") regarding repairs to his 1994 Ford Econoline E150 van performed by Respondent's facility. On or about September 30, 2008, the consumer took his vehicle to Respondent's facility because it was running rough and shuddered. Respondent diagnosed the problem and told the consumer that the transmission needed to be overhauled. The consumer authorized the repairs. On or about October 20, 2008, the consumer returned to Respondent's facility to retrieve the vehicle and paid $3,124.09 for the repairs. The consumer noticed the drivability problem was still present and returned the vehicle to Respondent's facility. Respondent performed additional repairs at no charge, which did not resolve the drivability problem. On or about December 31, 2008, the consumer took his vehicle to Big Valley Ford, located in Stockton, California, for a diagnosis. Big Valley Ford diagnosed the vehicle as having an ignition problem, and told the consumer that the cost to repair the vehicle would be $1,025.21.

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SECOND CAUSE FOR DISCIPLINE

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

13. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about September 30, 2008, regarding the 1994 Ford Econoline E150 van, Respondent failed to materially comply with section 9884.8 of that Code, in that Respondent failed to describe on Invoice No. 100650 what diagnostic procedures were performed and the results of the diagnostic procedures.

CONSUMER COMPLAINT NO. 3 – 2006 PONTIAC TORRENT

14. On or about August 24, 2009, the Bureau received a consumer complaint from D. Starks ("consumer") regarding repairs to her 2006 Pontiac Torrent performed by Respondent's facility. On or about August 17, 2009, the consumer contacted Respondent's facility by telephone and spoke with Ken ("Ken"). The consumer told Ken that the vehicle was overheating. Ken told the consumer he would perform a complete diagnostic of the vehicle at no charge. Ken told the consumer that he recommended the vehicle be towed to Respondent's facility, and that he could make arrangements to do that at no charge, which he did. The next day, Ken contacted the consumer and stated that the water pump and temperature sensor switch needed to be replaced. The total cost of the repairs would be $374.95 (the consumer supplied the parts). On or about August 19, 2009, the consumer returned to Respondent's facility to retrieve her vehicle and paid Respondent $374.95 for the repairs. The consumer immediately noticed that the vehicle was still overheating. The consumer drove the vehicle home, called Respondent's facility and spoke with Ken. Ken arranged for the consumer's vehicle to be towed back to Respondent's facility for further diagnosis. Upon further diagnosis, it was determined that the cylinder head gaskets were blown. The consumer declined the repairs.

THIRD CAUSE FOR DISCIPLINE

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

15. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about August 17, 2009, regarding the 2006 Pontiac Torrent, Respondent failed to

materially comply with Code section 9884.8, in that Respondent failed to describe on Invoice No. 101921 what diagnostic procedures were performed and the results of the diagnostic procedures.

UNDERCOVER OPERATION - 1994 BUICK CENTURY

16. On or about September 9, 2009, at 0956 hours, a Bureau undercover operator drove a Bureau documented 1994 Buick Century to Respondent's facility. The only repair necessary was the replacement of the engine coolant temperature ("ECT") sensor. The operator arrived at Respondent's facility and was greeted by an employee who identified himself as Ken. The operator told Ken that the vehicle had failed a smog inspection, showed Ken the VIR, and asked him to diagnose why the "check engine light" was illuminated. The operator also provided Ken with a coupon for a "Free Transcan." The operator signed a work order but did not receive a copy. At 1552 hours, the operator received a telephone call from Ken who stated that he needed more time to diagnose the vehicle and would cost an additional $95. The operator authorized the additional diagnostic charge.

17. On or about September 10, 2009, at 0959 hours, the operator received a telephone call from Ken informing him that the vehicle needed a new thermostat, coolant temperature sensor, and coolant. The total cost of the repairs would be $312.57. The operator authorized the repairs and requested the old parts be returned to him. Later that day, the operator returned to Respondent's facility to retrieve the vehicle. The operator paid $320.45 for the repairs, and was provided with the old temperature sensor, not the thermostat. On or about September 16, 2009, a Bureau representative reinspected the vehicle using Invoice No. 101982 as a reference. The inspection revealed that Respondent failed to replace the thermostat and seal as invoiced. In addition, those repairs were not necessary to repair the vehicle.

FOURTH CAUSE FOR DISCIPLINE

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

18. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about September 9, 2009, regarding the 1994 Buick Century, Respondent failed to materially comply with California Code of Regulations, title 16, section 3340.10(f), in that

Respondent acted in the capacity of a licensed smog check station by performing smog related repairs without being licensed to do so.

FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

19. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about September 9, 2009, Respondent made statements which it knew or which by exercise of reasonable care should have known were untrue or misleading as follows:

a. Respondent falsely represented to the operator that the thermostat and seal needed to be replaced, when in fact, the only repair necessary was to replace the ECT.

b. Respondent falsely represented on Invoice No. 101982, that the thermostat had been replaced, when in fact, it had not.

SIXTH CAUSE FOR DISCIPLINE

(Fraudulent Acts)

20. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about September 9, 2009, Respondent committed fraud when it charged for and received payment for repairs to the 1994 Buick Century that were not necessary or performed, as follows:

a. Respondent unnecessarily sold the operator a thermostat.

b. Respondent failed to replace the thermostat and seal as invoiced.

SEVENTH CAUSE FOR DISCIPLINE

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

21. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about September 9, 2009, regarding the 1994 Buick Century, Respondent failed to materially comply with the following provisions of that Code:

a. **Section 9884.8:**

i. Respondent failed to describe on Invoice No. 101982 what diagnostic procedures were performed and the results of the diagnostic procedures.

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b. **Section 9884.9:**

ii. Respondent failed to properly document on Invoice No. 101982 the additional repairs authorized.

iii. Respondent failed to provide the operator with a written estimate for repairs prior to the repairs being performed.

UNDERCOVER OPERATION - 1993 MERCURY VILLAGER

22. On or about January 4, 2010, at 1453 hours, a Bureau undercover operator drove a Bureau documented 1993 Mercury Villager to Respondent's facility. The only repair necessary was the replacement of the ECT sensor. The operator arrived at Respondent's facility and was greeted by an employee who identified himself as Ken. The operator asked Ken to diagnose why the "check engine light" was illuminated. The operator signed a work order but did not receive a copy. At 1619 hours, the operator received a telephone call from Ken who stated that two fault codes had been retrieved and it would cost $90 to diagnose the exact problem. The operator authorized the additional diagnostic charge.

23. On or about January 5, 2010, at 0837 hours, the operator received a telephone call from Ken informing her that the vehicle needed a coolant sensor and a throttle position switch/sensor ("TPS"). The total cost of the repairs would be $403. The operator authorized the repairs and requested the old parts be returned to her. Later that day, the operator received a telephone call from Ken informing her that the vehicle was repaired and ready to be picked up. At 1335 hours, the operator returned to Respondent's facility to retrieve the vehicle. The operator paid $427.04 for the repairs, and was provided with the old parts. On or about January 7, 2010, a Bureau representative reinspected the vehicle using Invoice No. 102232 as a reference. The inspection revealed that Respondent unnecessarily replaced the TPS, in that it was in good functioning condition and not in need of replacement.

EIGHTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

24. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about January 4, 2010, regarding the 1993 Mercury Villager, Respondent made

statements which it knew or which by exercise of reasonable care should have known were untrue or misleading, in that Respondent falsely represented to the operator that the TPS needed to be replaced, when in fact, the only repair necessary was to replace the ECT.

NINTH CAUSE FOR DISCIPLINE

(Fraudulent Acts)

25. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about January 4, 2010, regarding the 1993 Mercury Villager, Respondent committed fraud when it charged for and received payment for replacement of the TPS, when that repair was not necessary.

TENTH CAUSE FOR DISCIPLINE

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

26. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about January 4, 2010, regarding the 1993 Mercury Villager, Respondent failed to materially comply with the following provisions of that Code:

a. **Section 9884.8:**

i. Respondent failed to describe on Invoice No. 102232 what diagnostic procedures were performed and the results of the diagnostic procedures.

b. **Section 9884.9:**

ii. Respondent failed to properly document on Invoice No. 102232 the additional repairs authorized.

iii. Respondent failed to provide the operator with a written estimate for repairs prior to performing the repairs.

OTHER MATTERS

27. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on probation the registrations for all places of business operated in this state by Eco Autotech Inc., doing business as Aamco Transmissions, upon a finding that it has, or is, engaged in a course of repeated and willful violation of the laws and regulations pertaining to an automotive repair dealer.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 252249, issued to Eco Autotech Inc., doing business as Aamco Transmissions;

2. Revoking or suspending any other automotive repair dealer registration issued to Eco Autotech Inc., doing business as Aamco Transmissions;

3. Ordering Eco Autotech Inc., doing business as Aamco Transmissions, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 5/10/11

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

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