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

11 In the Matter of the Accusation Against:
12
13 **PHOENIX AUTOMOTIVE GROUP**
14 **MARK DWIGHT LAWRENCE, Partner**
15 **KIMBERLEY LYNN LAWRENCE, Partner**
16 **4381 Gateway Park Boulevard, Unit 500**
17 **Sacramento, CA 95834**
18
19 **Automotive Repair Dealer Registration No. ARD**
20 **255863**
21
22 Respondents.

Case No. 7711-51
ACCUSATION

19 John Wallauch ("Complainant") alleges:

20 **PARTIES**

- 21 1. Complainant brings this Accusation solely in his official capacity as the Chief of the
22 Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
23 2. On or about August 19, 2008, the Bureau issued Automotive Repair Dealer
24 Registration Number ARD 255863 to Phoenix Automotive Group ("Respondent") with Mark
25 Dwight Lawrence and Kimberley Lynn Lawrence as Partners. The registration was in full force
26 and effect at all times relevant to the charges brought herein and will expire on August 31, 2012,
27 unless renewed.

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1 COST RECOVERY

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

6 CONSUMER COMPLAINT NO. 1 – 2001 VOLKSWAGEN BEETLE

7 8. On or about June 11, 2009, the Bureau received a consumer complaint from Ramona
8 Gonzalez (“consumer”) regarding repairs to her 2001 Volkswagen Beetle performed by
9 Respondent’s facility. On or about May 18, 2009, the consumer had her vehicle towed to
10 Respondent’s facility for a diagnosis because the vehicle would die out when it was put in gear.
11 On or about May 20, 2009, the consumer spoke with Service Manager, Phil (“Phil”), who told her
12 that the vehicle’s oxygen sensor and main computer needed to be replaced and would cost \$1,286.
13 The consumer told Phil that she only wanted to replace the oxygen sensor. Phil told the consumer
14 that she had to replace both parts in order for the vehicle to run. The consumer authorized the
15 repairs.

16 9. On or about May 28, 2009, Phil contacted the consumer and told her that it would be
17 an extra \$80 for the main computer.

18 10. On or about June 1, 2009, the consumer returned to Respondent’s facility to retrieve
19 the vehicle. The consumer paid \$1,200. When the consumer left Respondent’s facility, the
20 vehicle would only go 5 miles per hour. The consumer turned around and went back to
21 Respondent’s facility and spoke to Phil. Phil told the consumer that the vehicle needed additional
22 repairs and to return the vehicle as soon as possible.

23 11. On or about June 2, 2009, the consumer drove her vehicle to Roseville Volkswagen
24 for a diagnosis. Roseville Volkswagen told the consumer that the vehicle’s fuel pump and
25 manifold absolute pressure (MAP) sensor needed to be replaced, and that the repairs performed
26 by Respondent were unnecessary. The consumer paid Roseville Volkswagen \$1,306.86 for the
27 repairs.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 12. Respondent's registration is subject to discipline under Code section 9884.7(a)(7),
4 in that Respondent willfully departed from or disregarded accepted trade standards for good and
5 workmanlike repair in a material respect without the consent of the owner or the owner's duly
6 authorized representative, by failing to follow the recommended diagnostic procedures when
7 replacing the vehicle's computer, resulting in the replacement of unnecessary parts.

8 **SECOND CAUSE FOR DISCIPLINE**

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

10 13. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
11 in that on or about May 18, 2009, regarding the 2001 Volkswagen Beetle, Respondent failed to
12 materially comply with the following provisions of that Code:

13 a. **Section 9884.8:**

14 i. Respondent failed to record all repairs performed to the vehicle on Invoice
15 No. 1674.

16 ii. Respondent failed to properly record diagnostic test and repair procedures
17 for codes PO606 and PO605 on Invoice No. 1674.

18 b. **Section 9884.9:** Respondent failed to properly record authorization for additional
19 repairs on Invoice No. 1674.

20 **CONSUMER COMPLAINT NO. 2 – 2002 PONTIAC GRAND PRIX**

21 14. On or about December 2, 2009, the Bureau received a consumer complaint from Eric
22 Warfield ("consumer") regarding repairs to his 2002 Pontiac Grand Prix performed by
23 Respondent's facility. On or about November 12, 2009, the consumer drove his vehicle to
24 Respondent's facility to have an overheating problem diagnosed. Respondent inspected the
25 vehicle and found that the intake manifold appeared to be leaking water. Later, the consumer
26 received a telephone call from Phil, who told him that the intake manifold needed to be replaced
27 and would cost \$850. The consumer authorized the repairs. On the same day, the consumer
28 returned to Respondent's facility to pay for the repairs. The consumer paid Respondent \$849.96.

1 18. On or about January 28, 2010, while the consumer was driving the vehicle, he found
2 that the clutch pedal became harder and harder to depress. Ultimately, the clutch pedal went all
3 the way down to the floor and the vehicle would not shift. The consumer had the vehicle towed
4 to Respondent's facility for repairs.

5 19. On or about February 11, 2010, the consumer returned to Respondent's facility to
6 retrieve the vehicle. While driving the vehicle, the consumer found that the clutch was not
7 working properly.

8 20. On or about February 18, 2010, the consumer took his vehicle to another repair
9 facility where it was determined that Respondent failed to properly bleed the clutch hydraulic
10 system. The consumer paid \$95 for the repair.

11 **FOURTH CAUSE FOR DISCIPLINE**

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

13 21. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
14 in that in or about January 2010, regarding the 1993 Ford Ranger, Respondent failed to materially
15 comply with the following provisions of that Code:

16 a. **Section 9884.8:** Respondent failed to document the findings of the warranty
17 inspection on Invoice No. 3528, dated January 19, 2010, and on Invoice No. 3592, dated
18 January 28, 2010.

19 b. **Section 9884.9:** Respondent failed to provide the consumer with a written
20 estimate for the replacement of the throw out bearing.

21 **CONSUMER COMPLAINT NO. 4 – 2005 DODGE NEON**

22 22. On or about April 5, 2010, the Bureau received a consumer complaint from Jessica
23 Conley ("consumer") regarding repairs to her 2005 Dodge Neon performed by Respondent's
24 facility. On or about April 2, 2010, the consumer took her vehicle to Respondent's facility to
25 have the timing belt replaced in her vehicle. Prior to completion of the repairs, Respondent told
26 the consumer that her radiator had a leak and needed to be replaced. The consumer purchased a
27 radiator and had Respondent install it for \$80.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 23. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
4 in that in or about April 2010, regarding the 2005 Dodge Neon, Respondent failed to materially
5 comply with Code section 9884.9, by failing to document the consumer's authorization to install
6 the radiator on Invoice No. 4148.

7 **CONSUMER COMPLAINT NO. 5 – 1995 NISSAN MAXIMA GLE**

8 24. On or about February 3, 2011, the Bureau received a consumer complaint from Amy
9 Craft ("consumer") regarding repairs to her 1995 Nissan Maxima GLE performed by
10 Respondent's facility. On or about January 5, 2011, the consumer drove her vehicle to
11 Respondent's facility to have the vehicle diagnosed because the vehicle would die at stops and
12 buck when driving on the freeway. Respondent inspected the vehicle and found that the
13 ignition coil and the number three cylinder fuel injector needed to be replaced. On or about
14 January 7, 2011, the consumer returned to Respondent's facility to retrieve the vehicle. The
15 consumer paid \$153.26, but was told that the vehicle was still idling rough and needed more
16 work, including replacing the #3 cylinder fuel injector and would cost an additional \$450. On or
17 about January 21, 2011, the consumer spoke with Phil, who told her that the vehicle's engine had
18 seized up, the timing chain broke, and the clutch was bad. The total cost of the repairs would be
19 approximately \$7,500. On or about January 26, 2011, the consumer returned to the Respondent's
20 facility to retrieve the vehicle. The consumer paid \$246.63.

21 **SIXTH CAUSE FOR DISCIPLINE**

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

23 25. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
24 in that in or about January 2011, regarding the 1995 Nissan Maxima GLE, Respondent failed to
25 materially comply with the following provisions of that Code:

26 a. **Section 9884.8:** Respondent failed to describe on Invoice No. 6447 all service
27 work performed and parts supplied, including the diagnostic routine for a misfire condition, or the
28 steps used to determine that the vehicle's ignition coil was faulty.

1 b. **Section 9884.9:** Respondent failed to document the consumer's authorization for
2 the repair of the ignition coil and fuel injector.

3 **CONSUMER COMPLAINT NO. 6 – 2000 NISSAN MAXIMA**

4 26. On or about March 9, 2011, the Bureau received a consumer complaint from Damon
5 Finch ("consumer") regarding repairs to his 2000 Nissan Maxima performed by Respondent's
6 facility. On or about December 30, 2010, the consumer took his vehicle to Respondent's facility
7 to have the vehicle diagnosed because the vehicle was running rough and the engine wiring
8 harness had been damaged by rodents. On or after December 30, 2010, Respondent told the
9 consumer that the engine wiring harness needed to be replaced. The consumer filed a claim with
10 his insurance company, Delos Insurance Company ("Delos") for the repairs. Delos sent out
11 Capital City Appraisal Service to inspect the vehicle. Delos approved the claim and issued a
12 check in the amount of \$1,885.74 to the consumer and Respondent for the replacement of an
13 engine wiring harness. The consumer returned to Respondent's facility to retrieve the vehicle.
14 While driving the vehicle, the consumer found that the vehicle continued to run rough.

15 27. On or about March 17, 2011, a Bureau representative inspected the consumer's
16 vehicle and found that the engine wiring harness Respondent installed was used. On that same
17 day, a Bureau representative went to Respondent's facility and requested a copy of the invoice for
18 the purchase of the engine wiring harness. Respondent provided the Bureau representative with a
19 copy of Invoice No. 18864 from Hanlees Nissan dated January 17, 2011, in the amount of
20 \$1,331.27; however, the invoice had been altered, in that the word "VOID" that had been stamped
21 on the invoice was covered up.

22 28. On or about March 18, 2011, a Bureau representative went to Hanlees Nissan and
23 spoke with the parts manager, Tom Nguyen ("Nguyen"), who told the Bureau representative that
24 Respondent returned the engine wiring harness on March 4, 2011. On that same day, a Bureau
25 representative went to Now Ventures Inc. (auto dismantler) and learned that Respondent
26 purchased an engine wiring harness for a 2000 Nissan Maxima on February 9, 2011. New
27 Ventures Inc. provided the Bureau representative with a copy of the invoice.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 29. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in
4 that on or about December 30, 2010, regarding the 2000 Nissan Maxima, Respondent made
5 statements which it knew or which by exercise of reasonable care it should have known to be
6 untrue or misleading as follows:

7 a. Respondent falsely represented to Delos Insurance Company and the consumer
8 that the vehicle had been repaired pursuant to Capital City Appraisal Service's estimate dated
9 January 31, 2011, when, in fact, it was not.

10 b. Respondent falsely represented on Invoice No. 6659, that the engine wiring
11 harness had been replaced with a new engine wiring harness when, in fact, it was not.

12 **EIGHTH CAUSE FOR DISCIPLINE**

13 **(Fraudulent Acts)**

14 30. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
15 that on or about December 30, 2010, regarding the 2000 Nissan Maxima, Respondent committed
16 fraud when it charged for and received payment from Delos Insurance Company for the
17 installation of a new engine wiring harness when, in fact, Respondent installed a used engine
18 wiring harness.

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Provisions of the Code)**

21 31. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in
22 that on or about December 30, 2010, regarding the 2000 Nissan Maxima, Respondent failed to
23 materially comply with Code section 9884.9(a) by failing to obtain the consumer's authorization
24 to change the method of repair, in that Respondent installed a used engine wiring harness instead
25 of a new engine wiring harness.

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1 **OTHER MATTERS**

2 32. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
3 probation the registrations for all places of business operated in this state by Phoenix Automotive
4 Group, and Mark Dwight Lawrence and Kimberley Lynn Lawrence, Partners, upon a finding that
5 it has, or is, engaged in a course of repeated and willful violation of the laws and regulations
6 pertaining to an automotive repair dealer.

7 **PRAYER**

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

10 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD
11 255863, issued to Phoenix Automotive Group, and Mark Dwight Lawrence and Kimberley Lynn
12 Lawrence, Partners;

13 2. Revoking or suspending any other automotive repair dealer registration issued to
14 Phoenix Automotive Group, and Mark Dwight Lawrence and Kimberley Lynn Lawrence,
15 Partners;

16 3. Ordering Phoenix Automotive Group, and Mark Dwight Lawrence and Kimberley
17 Lynn Lawrence, Partners to pay the Bureau of Automotive Repair the reasonable costs of the
18 investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

20 DATED: 2/23/12

John Wallauch by [Signature]
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
Doug BALATT
Assist. Chief

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