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

12 In the Matter of the Accusation Against:

Case No. 77/14-40

13 **ENERGY TRANSMISSIONS,**
ENRIQUE HERNANDEZ, OWNER
14 **2651 Commercial Street**
San Diego, CA 92113

A C C U S A T I O N

15
16 **Automotive Repair Dealer License No. ARD**
258038

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about May 7, 2009, the Bureau of Automotive Repair issued Automotive
24 Repair Dealer License Number ARD 258038 to Energy Transmissions, Enrique Hernandez as
25 Owner (Respondent). The Automotive Repair Dealer License was in full force and effect at all
26 times relevant to the charges brought herein and will expire on March 31, 2014, unless renewed.
27
28

1 **JURISDICTION**

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

5 4. Section 9884.13 of the Code states:

6 "The expiration of a valid registration shall not deprive the director or chief of jurisdiction
7 to proceed with any investigation or disciplinary proceeding against an automotive repair dealer
8 or to render a decision invalidating a registration temporarily or permanently."

9 5. Section 9884.22 of the Code states:

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

15 "..."

16 **STATUTORY PROVISIONS**

17 6. Section 22 of the Code states:

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

22 "(b) Whenever the regulatory program of a board that is subject to review by the Joint
23 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2
24 (commencing with Section 473), is taken over by the department, that program shall be
25 designated as a 'bureau.'"

26 7. Section 9884.7 of the Code states:

27 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
28 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair

1 dealer for any of the following acts or omissions related to the conduct of the business of the
2 automotive repair dealer, which are done by the automotive repair dealer or any automotive
3 technician, employee, partner, officer, or member of the automotive repair dealer.

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

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

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

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

12 “. . .

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

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

18 “. . .

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

23 8. Section 9884.8 of the Code states:

24 “All work done by an automotive repair dealer, including all warranty work, shall be
25 recorded on an invoice and shall describe all service work done and parts supplied. Service work
26 and parts shall be listed separately on the invoice, which shall also state separately the subtotal
27 prices for service work and for parts, not including sales tax, and shall state separately the sales
28 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice

1 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt
2 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
3 statement indicating whether any crash parts are original equipment manufacturer crash parts or
4 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
5 given to the customer and one copy shall be retained by the automotive repair dealer."

6 9. Section 9884.9 of the Code states:

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

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

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

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

27 _____

28 (signature or initials)"

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

3 "(b) The automotive repair dealer shall include with the written estimated price a statement
4 of any automotive repair service that, if required to be done, will be done by someone other than
5 the dealer or his or her employees. No service shall be done by other than the dealer or his or her
6 employees without the consent of the customer, unless the customer cannot reasonably be
7 notified. The dealer shall be responsible, in any case, for any service in the same manner as if the
8 dealer or his or her employees had done the service.

9 "(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto
10 body or collision repairs, shall provide an itemized written estimate for all parts and labor to the
11 customer. The estimate shall describe labor and parts separately and shall identify each part,
12 indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part
13 shall be identified on the written estimate and the written estimate shall indicate whether the crash
14 part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer
15 aftermarket crash part.

16 "(d) A customer may designate another person to authorize work or parts supplied in excess
17 of the estimated price, if the designation is made in writing at the time that the initial
18 authorization to proceed is signed by the customer. The bureau may specify in regulation the
19 form and content of a designation and the procedures to be followed by the automotive repair
20 dealer in recording the designation. For the purposes of this section, a designee shall not be the
21 automotive repair dealer providing repair services or an insurer involved in a claim that includes
22 the motor vehicle being repaired, or an employee or agent or a person acting on behalf of the
23 dealer or insurer."

24 REGULATORY PROVISIONS

25 10. California Code of Regulations, title 16, ("Regulations") section 3353, states:

26 "No work for compensation shall be commenced and no charges shall accrue without
27 specific authorization from the customer in accordance with the following requirements:
28

1 "(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
2 estimated price for labor and parts for a specific job.

3 "...

4 "(c) Additional Authorization. The dealer shall obtain the customer's authorization before
5 any additional work not estimated is done or parts not estimated are supplied. This authorization
6 shall be in written, oral, or electronic form, and shall describe additional repairs, parts, labor and
7 the total additional cost.

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

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

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

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

26 "...

27 "(g) Definitions. As used in this section, "written " shall mean the communication of
28 information or information in writing, other than by electronic means; "oral" shall mean the oral

1 communication of information either in person or telephonically; "electronic" shall mean the
2 communication of information by facsimile transmission (fax) or electronic mail (e-mail)."

3 11. Regulations section 3356 states:

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

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

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

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

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

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

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

19 "(E) The applicable sales tax, if any.

20 "(b) If a customer is to be charged for a part, that part shall be specifically listed as an item
21 in the invoice, as provided in subparagraph (B) of paragraph (2) of subsection (a) above. If that
22 item is not listed in the invoice, it shall not be regarded as a part, and a separate charge may not be
23 made for it.

24 "(c) Separate billing in an invoice for items generically noted as shop supplies,
25 miscellaneous parts, or the like, is prohibited.

26 "(d) The automotive repair dealer shall give the customer a legible copy of the invoice and
27 shall retain a legible copy as part of the automotive repair dealer's records pursuant to Section
28 9884.11 of the Business and Professions Code and Section 3358 of this article."

1 12. Regulations section 3361.1 states:

2 "The following minimum requirements specifying accepted trade standards for good and
3 workmanlike rebuilding of automatic transmissions are intended to define terms that have caused
4 confusion to the public and unfair competition within the automotive repair industry. The term
5 'automatic transmission' shall also apply to the automatic transmission portion of transaxles for
6 the purposes of this regulations, unless both the automatic transmission portion and the
7 differential portion of the transaxle share a common oil supply, in which case the term 'automatic
8 transmission' shall apply to both portions of the transaxle. These minimum requirements shall not
9 be used to promote the sale of rebuilt automatic transmissions when a less extensive and/or less
10 costly repair is desired by the customer. Any automotive repair dealer who represents to
11 customers that the following sections require the rebuilding of automatic transmissions is subject
12 to the sanctions prescribed by the Automotive Repair Act. All automotive repair dealers engaged
13 in the repair, sale, and installation of automatic transmissions in vehicles covered under the Act
14 shall be subject to the following minimum requirements:

15 ". . .

16 "(c) Any automotive repair dealer that advertises or performs, directly or through a sublet
17 contractor, automatic transmission work and uses the words 'exchanged,' 'rebuilt,'
18 'remanufactured,' 'reconditioned,' or 'overhauled,' or any expression of like meaning, to describe
19 an automatic transmission in any form of advertising or on a written estimate or invoice shall only
20 do so when all of the following work has been done since the transmission was last used:

21 "(1) All internal and external parts, including case and housing, have been thoroughly
22 cleaned and inspected.

23 "(2) The valve body has been disassembled and thoroughly cleaned and inspected unless
24 otherwise specified by the manufacturer.

25 "(3) All bands have been replaced with new or relined bands.

26 "(4) All the following parts have been replaced with new parts:

27 "(A) Lined friction plates.

28 "(B) Internal and external seals including seals that are bonded to metal parts.

1 15. On the test drive, Enrique told the undercover operator that the vehicle did not have
2 4th gear and that he would have to "fix" the transmission. Enrique gave the undercover operator a
3 verbal estimate of \$1,100.00 to repair the transmission and they returned to the facility.

4 16. After the test drive, the undercover operator asked Enrique if he was going to rebuild
5 or replace the transmission. Enrique said that he would "fix" the transmission and that the cost to
6 repair the transmission would be \$1,160.00 after taxes. Using a fictitious name and address, the
7 undercover operator filled out a work order; Enrique filled out the vehicle's information and
8 wrote "Reparar transmission" under the description of labor. The undercover operator agreed to
9 pick up the vehicle on July 22. Later that day, the undercover operator called Respondent's
10 facility and spoke with Enrique. The undercover operator asked him how much it would cost to
11 rebuild the transmission. Enrique responded that it would cost about \$1,800.00 and that the
12 rebuild would be complete with "sensors and everything brand new." The undercover operator
13 then verbally authorized Enrique to rebuild the transmission.

14 17. On July 19, 2013, the undercover operator spoke with Enrique and confirmed with
15 him that he was going to rebuild the vehicle's transmission.

16 18. On July 22, 2013, the undercover operator called Respondent's facility and spoke
17 with Rafael, Respondent's employee. Rafael told the undercover operator that she could pick up
18 the vehicle. The undercover operator arrived and spoke with Rafael, who then referred her to
19 another one of Respondent's employees, Jonathan. Jonathan had the undercover operator sign an
20 invoice for the rebuild and gave her a copy. The undercover operator paid \$1,800.00 for the
21 rebuild. Jonathan told the undercover operator that there was a twelve month warranty for the
22 repairs. The undercover operator then drove the vehicle and gave custody of it back to a Bureau
23 representative.

24 19. In August 2013, a Bureau representative inspected the vehicle and found that no seals
25 were replaced and not all of the gaskets were replaced from the rebuild kit listed on the invoice.
26 The second and third clutch bonded pistons were not replaced. Respondent charged for a second
27 clutch piston that in fact was never replaced. The transmission was not rebuilt. Four solenoids
28

1 and the torque converter were replaced unnecessarily because in fact they were in good condition
2 and not in need of service or repair.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statement)**

5 20. Respondent's Registration is subject to disciplinary action under section 9884.7,
6 subdivision (a)(1), in that Respondent made or authorized statements which Respondent knew or
7 in the exercise of reasonable care should have known to be untrue or misleading. Complainant
8 incorporates by reference the allegations set forth above in paragraphs 14-19. The untrue or
9 misleading statements include the following:

10 a. Respondent contracted with the undercover operator to rebuild the transmission
11 and then subsequently did not rebuild the transmission.

12 b. Respondent represented that Respondent had performed a "rebuild
13 transmission" and had installed a "rebuild kit" and a "2nd clutch piston," when in fact Respondent
14 did not rebuild the transmission, did not install all seals and gaskets that would be included in a
15 rebuild kit, and did not install a second clutch piston.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 21. Respondent's Registration is subject to disciplinary action under Code section 9884.7,
19 subdivision (a)(4), in that Respondent committed acts which constitute fraud. Complainant re-
20 alleges and incorporates by reference the allegations set forth above in paragraphs 14-19. The
21 fraud includes the following:

22 a. Respondent misrepresented to the undercover operator that Respondent rebuilt
23 the transmission; Respondent knew that in fact the transmission had not been rebuilt; Respondent
24 intended the undercover operator to rely on his misrepresentation; charged for parts and labor; and
25 accepted payment.

26 b. Respondent misrepresented to the undercover operator that Respondent had
27 installed a "rebuild kit" and "second clutch piston"; Respondent knew that in fact the second
28 clutch piston and all seals/gaskets in the rebuild kit had not been replaced; Respondent intended

1 the undercover operator to rely on his misrepresentation; charged for parts and labor; and accepted
2 payment.

3 c. Respondent misrepresented to the undercover operator that the vehicle needed
4 "tcc solenoid, 2 shift solenoids, pressure solenoids" and a rebuilt torque converter; Respondent
5 knew that in fact these were in good condition and not in need of service or repair; Respondent
6 intended the undercover operator to rely on his misrepresentation; charged for parts and labor; and
7 accepted payment.

8 THIRD CAUSE FOR DISCIPLINE

9 (Willful Departure from or Disregard of Accepted Trade Standards)

10 22. Respondent's Registration is subject to disciplinary action under section 9884.7,
11 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
12 standards for good and workmanlike repair in a material respect which was prejudicial to another
13 without consent of the owner or his or her duly authorized representative. Complainant re-
14 alleges and incorporates by reference the allegations set forth above in paragraphs 14-19. The
15 violations include the following:

16 a. Regulations section 3361.1, subd. (c)(4)(B): Failure to replace all internal and
17 external seals including seals that are bonded to metal parts with new parts.

18 b. Regulations section 3361.1, subd. (c)(4)(D): Failure to replace all gaskets with
19 new parts.

20 FOURTH CAUSE FOR DISCIPLINE

21 (Invoice Violations)

22 23. Respondent's Registration is subject to disciplinary action under Code section 9884.8
23 in that Respondent failed to comply with invoice requirements. Complainant re-alleges and
24 incorporates by reference the allegations set forth above in paragraphs 14-19. The violations
25 include the following:

26 a. Regulations section 3356, subd. (a)(1): Failure to show the Registration
27 number on the invoice.

28

1 then took the work order and did not give the undercover operator a copy of the estimate. The
2 undercover operator then left.

3 27. Later that day, the undercover operator called Respondent's facility and spoke with
4 Rafael. The undercover operator explained to Rafael that he wanted the transmission rebuilt.
5 Rafael gave the undercover operator an estimate of \$1,700.00 to rebuild the transmission with
6 new parts. The undercover operator authorized the additional cost to rebuild the transmission.

7 28. On October 3, 2013, the undercover operator called Respondent's facility and spoke
8 with Jonathan. The undercover operator confirmed with Jonathan that the transmission had been
9 rebuilt and that the vehicle was ready for pick up. The undercover operator went to pick it up and
10 Rafael handed him an invoice that listed "rebuilt transmission." The undercover operator filled
11 out the name, address, and signed the invoice. The undercover operator paid Rafael \$1,700.00
12 and Rafael gave him a copy of the invoice. The undercover operator then drove the vehicle and
13 gave custody of it back to a Bureau representative.

14 29. Later, a Bureau representative inspected the vehicle and found that twenty-three seals,
15 three bonded pistons, and three gaskets were not replaced with new parts. The transmission was
16 not rebuilt. The case connector was damaged and not replaced with an unimpaired part. The
17 torque converter endplay exceeded the maximum limit. The park neutral switch was misadjusted.
18 The torque converter, four solenoids, pressure switch assembly ("switch manifold") and "piston
19 kit" were replaced unnecessarily because in fact they were in good condition and not in need of
20 service or repair. No transmission pistons were replaced as invoiced.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 **(Untrue or Misleading Statement)**

23 30. Respondent's Registration is subject to disciplinary action under section 9884.7,
24 subdivision (a)(1), in that Respondent made or authorized statements which Respondent knew or
25 in the exercise of reasonable care should have known to be untrue or misleading. Complainant
26 incorporates by reference the allegations set forth above in paragraphs 25-29. The untrue or
27 misleading statements include the following:

28

1 a. Respondent contracted with the undercover operator to rebuild the transmission
2 and then subsequently did not rebuild the transmission.

3 b. Respondent represented that Respondent had rebuilt the transmission and had
4 installed a "rebuild kit" and a "piston kit," when in fact Respondent did not rebuild the
5 transmission, did not install all seals and gaskets that would be included in a rebuild kit, and did
6 not replace any transmission pistons.

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 **(Work Order Violation)**

9 31. Respondent's Registration is subject to disciplinary action under section 9884.7,
10 subdivision (a)(2), in that Respondent caused or allowed a customer to sign a work order that does
11 not state the repairs requested by the customer or the automobile's odometer reading at the time of
12 repair. Complainant incorporates by reference the allegations set forth above in paragraphs 25-29.

13 The violation includes the following:

14 a. Respondent had the undercover operator sign a work order with no listed
15 repairs.

16 **EIGHTH CAUSE FOR DISCIPLINE**

17 **(Failure to Provide Estimate to Customer)**

18 32. Respondent's Registration is subject to disciplinary action under section 9884.7,
19 subdivision (a)(3), in that Respondent did not give the customer a copy of an estimate as soon as
20 the customer signed it. Complainant re-alleges and incorporates by reference the allegations set
21 forth above in paragraphs 25-29.

22 **NINTH CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 33. Respondent's Registration is subject to disciplinary action under Code section 9884.7,
25 subdivision (a)(4), in that Respondent committed acts which constitute fraud. Complainant re-
26 alleges and incorporates by reference the allegations set forth above in paragraphs 25-29. The
27 fraud includes the following:

28

1 a. Respondent misrepresented to the undercover operator that Respondent rebuilt
2 the transmission; Respondent knew that in fact the transmission had not been rebuilt; Respondent
3 intended the undercover operator to rely on his misrepresentation; charged for parts and labor; and
4 accepted payment.

5 b. Respondent misrepresented to the undercover operator that Respondent had
6 installed a "rebuild kit" and "piston kit"; Respondent knew that in fact the transmission pistons
7 and all seals/gaskets in the rebuild kit had not been replaced; Respondent intended the undercover
8 operator to rely on his misrepresentation; charged for parts and labor; and accepted payment.

9 c. Respondent misrepresented to the undercover operator that the vehicle needed
10 "lock up solenoid, 2 shift solenoids, pressure solenoid," a "piston kit," and a "rebuilt torque
11 converter"; Respondent knew that in fact these were in good condition and not in need of service
12 or repair; Respondent intended the undercover operator to rely on his misrepresentation; charged
13 for parts and labor; and accepted payment.

14 **TENTH CAUSE FOR DISCIPLINE**

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

16 34. Respondent's Registration is subject to disciplinary action under section 9884.7,
17 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
18 standards for good and workmanlike repair in a material respect which was prejudicial to another
19 without consent of the owner or his or her duly authorized representative. Complainant re-
20 alleges and incorporates by reference the allegations set forth above in paragraphs 25-29. The
21 violations include the following:

22 a. **Regulations section 3361.1, subd. (c)(4)(B)**: Failure to replace all internal and
23 external seals including seals that are bonded to metal parts with new parts.

24 b. **Regulations section 3361.1, subd. (c)(4)(D)**: Failure to replace all gaskets with
25 new parts.

26 ///

27 ///

28 ///

1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Invoice Violations)**

3 35. Respondent's Registration is subject to disciplinary action under section Code section
4 9884.8, in that Respondent failed to comply with invoice requirements. Complainant re-alleges
5 and incorporates by reference the allegations set forth above in paragraphs 25-29. The violations
6 include the following:

7 a. **Regulations section 3356, subd. (a)(1)**: Failure to show the Registration
8 number on the invoice.

9 b. **Regulations section 3356, subd. (a)(2)(A)**: Failure to list the itemized service
10 and price for replacing "switch manifold, 2 shift solenoids, pressure solenoid, [and] lock up
11 solenoid"; and failure to list the itemized prices for rebuilding the transmission and rebuilding the
12 torque converter.

13 c. **Regulations section 3356, subd. (a)(2)(B)**: Failure to itemize the price for all
14 parts listed on the invoice; failure to list a part number and brand name for the "rebuild kit"; and
15 failure to list if the parts supplied were new, used, rebuilt, or reconditioned.

16 **TWELFTH CAUSE FOR DISCIPLINE**

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

18 36. Respondent's Registration is subject to disciplinary action under section Code section
19 9884.9 and the Regulations violating the requirements for estimates and authorization.
20 Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs
21 25-29. The violations include the following:

22 a. **Regulations section 3353, subd. (a)**: Failure to provide the undercover
23 operator with an estimate copy of the work order.

24 b. **Regulations section 3353, subd. (a)**: Failure to obtain authorization from the
25 undercover operator to install the "rebuilt torque converter."

26 c. **Regulations section 3353, subd. (c)(1)**: Failure to make a notation on the
27 invoice and work order of the facts of the additional verbal authorization to rebuild the
28 transmission for \$1,700.00.

THIRD UNDERCOVER RUN-OCTOBER 22, 2013

1
2 37. On October 22, 2013, a Bureau undercover operator drove a Bureau-documented
3 1996 Chevrolet to Respondent's facility for repairs. The only necessary repair was the broken and
4 inoperable reaction sun shell that was installed into the transmission that caused the transmission
5 to have no 2nd, 4th, or reverse gears. The undercover operator drove to the facility and spoke
6 with Rafael. The undercover operator said that the transmission was taking a long time to shift
7 from first gear to second gear and that it would not go into reverse. Rafael gave the undercover
8 operator a verbal estimate for repairs of \$1,000.00. The undercover operator asked if the estimate
9 was to rebuild or exchange the transmission. Rafael said he would rebuild the transmission. The
10 undercover operator confirmed with Rafael that it would cost \$1,000.00 to rebuild the
11 transmission and Rafael said that there would also be a charge for tax. The undercover operator
12 verbally authorized rebuilding the transmission for \$1,000.00.

13 38. Using a fictitious name and address, the undercover operator filled out a work order.
14 The undercover operator asked Rafael to write down the total on the work order. Rafael then
15 wrote \$1,000.00 in the "Estimate Amount, Parts & Labor" section and had the undercover
16 operator sign the work order with no repairs listed. The undercover operator then left.

17 39. On October 25, 2013, the undercover operator called Respondent's facility and spoke
18 with one of Respondent's employees. The employee said that the vehicle was ready for pick up
19 and that the cost was \$1,040.00. The undercover operator arrived and spoke with Rafael. The
20 undercover operator paid Rafael \$1,040.00. Rafael gave the undercover operator a copy of the
21 invoice that listed "reparar transmission" under the description of labor; however, Rafael had
22 verbally contracted with the undercover operator to rebuild the transmission and the invoice listed
23 a "rebuilding kit" under the description of parts. The undercover operator then drove the vehicle
24 and gave custody of it back to a Bureau representative.

25 40. Later, a Bureau representative inspected the vehicle and found that the vehicle had an
26 illuminated malfunction indicator lamp with two diagnostic trouble codes stored in the powertrain
27 control module that were related to the intake air temperature sensor. No parts from a
28 transmission rebuild kit were installed in the transmission. The torque converter was not

1 replaced, examined, or cleaned. The transmission was not rebuilt. The forward sprag and
2 transmission filter were not replaced. The 2-4 band was replaced with a substantially worn, used
3 part. The reaction sun shell was replaced with a used, obsolete part that was worn.

4 **THIRTEENTH CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 41. Respondent's Registration is subject to disciplinary action under section 9884.7,
7 subdivision (a)(1), in that Respondent made or authorized statements which Respondent knew or
8 in the exercise of reasonable care should have known to be untrue or misleading. Complainant
9 incorporates by reference the allegations set forth above in paragraphs 37-40. The untrue or
10 misleading statements include the following:

11 a. Respondent contracted with the undercover operator to rebuild the transmission
12 and then subsequently did not rebuild the transmission.

13 b. Respondent represented that Respondent had rebuilt the transmission, had
14 installed parts that would be included in a rebuild kit, and had replaced the forward sprag and
15 transmission filter, when in fact Respondent did not perform these services and repairs.

16 **FOURTEENTH CAUSE FOR DISCIPLINE**

17 **(Work Order Violation)**

18 42. Respondent's Registration is subject to disciplinary action under section 9884.7,
19 subdivision (a)(2), in that Respondent caused or allowed a customer to sign a work order that does
20 not state the repairs requested by the customer or the automobile's odometer reading at the time of
21 repair. Complainant incorporates by reference the allegations set forth above in paragraphs 37-40.
22 The violation includes the following:

23 a. Respondent had the undercover operator sign a work order with no listed repairs
24 or odometer reading.

25 **FIFTEENTH CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 43. Respondent's Registration is subject to disciplinary action under Code section 9884.7,
28 subdivision (a)(4), in that Respondent committed acts which constitute fraud. Complainant re-

1 alleges and incorporates by reference the allegations set forth above in paragraphs 37-40. The
2 fraud includes the following:

3 a. Respondent misrepresented to the undercover operator that Respondent rebuilt
4 the transmission; Respondent knew that in fact the transmission had not been rebuilt; Respondent
5 intended the undercover operator to rely on his misrepresentation; charged for parts and labor; and
6 accepted payment.

7 b. Respondent misrepresented to the undercover operator that Respondent had
8 installed a "rebuild kit," a "filter," and a "forward sprag"; Respondent knew that in fact, no part of
9 a rebuilding kit had been installed and no filter or forward sprag had been replaced; Respondent
10 intended the undercover operator to rely on his misrepresentation; charged for parts and labor; and
11 accepted payment.

12 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

14 44. Respondent's Registration is subject to disciplinary action under section 9884.7,
15 subdivision (a)(7), in that Respondent willfully departure from or disregarded accepted trade
16 standards for good and workmanlike repair in a material respect which was prejudicial to another
17 without consent of the owner or his or her duly authorized representative. Complainant re-
18 alleges and incorporates by reference the allegations set forth above in paragraphs 37-40. The
19 violations include the following:

20 a. **Regulations section 3361.1, subd. (c)(3)**: Failure to replace the 2-4 band with a
21 new or relined part.

22 b. **Regulations section 3361.1, subd. (c)(4)(A)**: Failure to replace the lined
23 friction plates.

24 c. **Regulations section 3361.1, subd. (c)(4)(B)**: Failure to replace all internal and
25 external seals including seals that are bonded to metal parts with new parts.

26 d. **Regulations section 3361.1, subd. (c)(4)(C)**: Failure to replace all sealing
27 rings.

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1 e. **Regulations section 3361.1, subd. (c)(4)(D)**: Failure to replace all gaskets with
2 new parts.

3 f. **Regulations section 3361.1, subd. (c)(4)(E)**: Failure to replace the filter.

4 g. **Regulations section 3361.1, subd. (c)(5)**: Failure to replace the sun shell with a
5 new, rebuilt, or unimpaired part.

6 i. **Regulations section 3361.1, subd. (c)(7)**: Failure to examine, service, or
7 replace the torque converter.

8 **SEVENTEENTH CAUSE FOR DISCIPLINE**

9 **(Invoice Violations)**

10 45. Respondent's Registration is subject to disciplinary action under section Code section
11 9884.8, in that Respondent failed to comply with invoice requirements. Complainant re-alleges
12 and incorporates by reference the allegations set forth above in paragraphs 37-40. The violations
13 include the following:

14 a. **Regulations section 3356, subd. (a)(1)**: Failure to show the Registration
15 number and address of record on the invoice.

16 b. **Regulations section 3356, subd. (a)(2)(A)**: Failure to list the itemized service
17 and price for installing the "rebuilding kit," "band," "filter," "shell," and "sprag."

18 c. **Regulations section 3356, subd. (a)(2)(B)**: Failure to itemize the price for all
19 parts listed on the invoice; failure to list a part number and brand name for the "rebuild kit"; and
20 failure to list if the parts supplied were new, used, rebuilt, or reconditioned.

21 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

23 46. Respondent's Registration is subject to disciplinary action under section Code section
24 9884.9 and the Regulations violating the requirements for estimates and authorization.
25 Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs
26 37-40. The violations include the following:

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a. **Regulations section 3353, subd. (a):** Failure to provide the undercover operator with an estimate listing the specific parts and labor to rebuild the transmission per the verbal agreement.

OTHER MATTERS

47. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or place on probation the registration for all places of business operated in this state by Respondent upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

48. Pursuant to Health & Safety Code section 44072.8, if Respondent's Smog Check Station License is revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of the Health and Safety Code in the name of Respondent or Enrique Hernandez.

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 License Number ARD 258038, issued to Energy Transmissions, Enrique Hernandez as Owner;
- 2. Ordering Energy Transmissions, Enrique Hernandez as Owner to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: February 13, 2014


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