KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General
JEFFREY M. PHILLIPS
Deputy Attorney General
State Bar No. 154990
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-6292
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: **TJ AUTO REPAIR** **HAI PHUOC HUYNH, OWNER** **1587 Turnpike Road** **Stockton, CA 95206** **Automotive Repair Dealer Reg. No. ARD 261006** Respondent.	Case No. 77/11-03 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Sherry Mehl ("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 March 2, 2010, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 261006 to Hai Phuoc Huynh ("Respondent"), owner of TJ Auto Repair. Respondent's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2012, unless renewed.

///

///

///

JURISDICTION

3. Business and Professions Code ("Code") section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

4. 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 temporarily or permanently invalidating (suspending or revoking) a registration.

STATUTORY AND REGULATORY PROVISIONS

5. 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 that constitutes fraud.
>
> (5) Conduct constituting gross negligence.
>
> (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 . . .

6. Code section 9884.7, subdivision (c), states, in pertinent part, that 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 the laws and regulations pertaining to an automotive repair dealer.

///

///

7. Code section 9884.8 states, in pertinent part:

> 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 . . . One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

8. Code section 9884.9, subdivision (a), states, in pertinent part:

> 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 when 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 . . .

9. Code section 9884.11 states that "[e]ach automotive repair dealer shall maintain any records that are required by regulations adopted to carry out this chapter [the Automotive Repair Act]. 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."

10. Code section 22, subdivision (a), states:

> "Board" as used in any provision 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."

11. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes "registration" and "certificate."

12. Health and Safety Code section 44032 states:

> No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

13. California Code of Regulations, title 16, section ("Regulation") 3340.10, subdivision (f), states that "[n]o person shall operate a smog check station unless a license to do so has been issued by the department."

14. Regulation 3353 states, in pertinent part:

> No work for compensation shall be commenced and no charges shall accrue without specific authorization from the customer in accordance with the following requirements:
>
> . . . .
>
> (d) Estimated Price to Tear Down, Inspect, Report and Reassemble. For purposes of this article, to tear down" shall mean to disassemble, and teardown" shall mean the act of disassembly. If it is necessary to tear down a vehicle component in order to prepare a written estimated price for required repair, the dealer shall first give the customer a written estimated price for the teardown. This price shall include the cost of reassembly of the component. The estimated price shall also include the cost of parts and necessary labor to replace items such as gaskets, seals and O rings that are normally destroyed by teardown of the component. If the act of teardown might prevent the restoration of the component to its former condition, the dealer shall write that information on the work order containing the teardown estimate before the work order is signed by the customer.
>
> The repair dealer shall notify the customer orally and conspicuously in writing on the teardown estimate the maximum time it will take the repair dealer to reassemble the vehicle or the vehicle component in the event the customer elects not to proceed with the repair or maintenance of the vehicle and shall reassemble the vehicle within that time period if the customer elects not to proceed with the repair or maintenance. The maximum time shall be counted from the date of authorization of teardown.
>
> After the teardown has been performed, the dealer shall prepare a written estimated price for labor and parts necessary for the required repair. All parts required for such repair shall be listed on the estimate. The dealer shall then obtain the customer's authorization for either repair or reassembly before any further work is done . . .

15. Regulation 3356 states, in pertinent part:

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

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

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

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

16. Regulation 3358 states:

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

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

(b) All written estimates pertaining to work performed.

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

17. Regulation 3373 states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

COST RECOVERY

18. 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 #1 (SEKHON): 1998 FORD CROWN VICTORIA

19. On or about January 4, 2011, Joga Sekhon ("Sekhon") took his 1998 Ford Crown Victoria to Respondent's facility because the engine would only crank intermittently and at various times when it did crank, it would not start or run. Sekhon signed a repair order, but was not given a written estimate. Later, Sekhon authorized the facility to replace the starter for $340.

20. On or about January 7, 2011, Sekhon went to the facility to pick up the vehicle, paid $320 in cash for the repairs, and was given an invoice. Sekhon asked to see the old starter, but was told by a mechanic that the part was returned to the parts store "for core". As Sekhon was driving the vehicle, he discovered that the intermittent "no start" condition was still present. A few days later, Sekhon returned the vehicle to the facility and requested an additional diagnosis. Sekhon was not provided with a written estimate. Later, the facility told Sekhon that the vehicle needed a new fuel pump and agreed to replace it free of charge.

21. On or about January 17, 2011, Sekhon went to the facility and met with Respondent's employee, "Lo". Lo told Sekhon that the fuel pump had been replaced, but that Sekhon would have to turn the ignition key a few times in order to start the vehicle. Sekhon was not provided with an invoice.

22. On or about January 18, 2011, Sekhon took the vehicle to another repair facility, Sean's Automotive. Sean's Automotive replaced the fuel pump, which corrected the problem with the vehicle, and informed Sekhon that the fuel pump and starter had not been recently replaced.

23. On or about January 19, 2011, Sekhon filed a complaint with the Bureau.

24. On or about March 24, 2011, the Bureau inspected the vehicle and found that the starter had not been replaced as invoiced.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

25. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

//

a. Respondent represented on the invoice that the starter on Sekhon's 1998 Ford Crown Victoria had been replaced. In fact, that part had not been replaced on the vehicle.

b. Respondent's employee, Lo, represented to Sekhon that the fuel pump had been replaced on Sekhon's 1998 Ford Crown Victoria. In fact, that part had not been replaced on the vehicle.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

26. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows: Respondent obtained payment from Sekhon for replacing the starter on his 1998 Ford Crown Victoria. In fact, that part had not been replaced on the vehicle.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Code)

27. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code in the following material respects:

a. **Section 9884.8:** Respondent failed to provide Sekhon with an invoice for the replacement of the fuel pump on his 1998 Ford Crown Victoria.

b. **Section 9884.9, subdivision (a):** Respondent failed to provide Sekhon with written estimates for parts and labor necessary for a specific job.

c. **Section 9884.11**: Respondent failed to maintain all records pertaining to the repairs performed on Sekhon's 1998 Ford Crown Victoria, including the invoice described in paragraph 20 above, or failed to make those records available for inspection by the Bureau.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

28. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following material respects:

a. **Subdivision (a)(1):** Respondent failed to show his registration number on the invoice.

b. **Subdivision (a)(2)(B):** Respondent failed to state on the invoice whether the starter allegedly installed on Sekhon's 1998 Ford Crown Victoria was new, used, reconditioned, or rebuilt.

CONSUMER COMPLAINT #2 (ATWAL): 2003 FORD F-150 PICKUP

29. On or about January 20, 2011, Govinder Atwal ("Atwal") took his 2003 Ford F-150 pickup to Respondent's facility to have the engine replaced because it was smoking. Respondent's employee, "Lo", told Atwal that it would cost $1,300 to install a used engine on the vehicle. Atwal gave Lo a $600 deposit and signed a work order, but was not given a written estimate.

30. On or about January 24, 2011, Atwal returned to the facility to pick up the vehicle, paid an additional $700 for the repairs, and was given an invoice dated January 20, 2011. The facility charged Atwal an additional $172.69 for the installation of a cooling fan, fan clutch, and dip stick, but Atwal refused to pay for those repairs.

31. On or about February 9, 2011, Atwal took the vehicle to A+ Auto service Center for a diagnosis because the "check engine" light was illuminated. The smog check technician retrieved several misfire codes from the on-board computer, and found that the #4 cylinder had 40 pounds less compression than the other cylinders, that the #6 cylinder had a leaking injector seal, and that the PCV (positive crankcase ventilation) valve was missing. The technician informed Atwal that it appeared the engine had not been recently replaced.

32. On or about February 10, 2011, Atwal filed a complaint with the Bureau.

33. On or about March 24, 2011, the Bureau inspected the vehicle and found that the engine had not been replaced.

34. On or about May 4, 2011, a representative of the Bureau went to the Respondent's facility, obtained repair records for Atwal's vehicle, including the invoice dated January 25, 2011, a parts invoice from All Minivan and Minitruck Auto Dismantler for a used engine, and a parts invoice dated January 26, 2011, from Big Valley Ford for a fan and fan clutch.

35. On or about May 5, 2011, the representative went to Big Valley Ford and met with a parts representative. The parts representative stated that the items listed on their invoice dated January 26, 2011, were sold to Respondent, but that Respondent had returned the fan and fan clutch to Big Valley Ford for credit.

36. On or about May 6, 2011, the Bureau re-inspected the vehicle and found that the fan and fan clutch had not been replaced.

FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

37. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent represented on the invoice dated January 20, 2011, that a used engine had been installed on Atwal's 2003 Ford F-150 pickup. In fact, the existing engine had not been replaced on the vehicle.

b. Respondent represented on the invoice dated January 25, 2011, that the fan and fan clutch on Atwal's 2003 Ford F-150 pick had been replaced. In fact, those parts had not been replaced on the vehicle.

c. Respondent represented to the Bureau that his mechanic(s) rebuilt the lower end of the engine on Atwal's 2003 Ford F-150 pickup by replacing the piston rings and bearings. In fact, the piston rings and bearings had not been replaced on the vehicle.

d. Respondent represented to the Bureau that the cylinder heads from the used engine were installed on Atwal's 2003 Ford F-150 pickup when the engine was reassembled. In fact, the existing cylinder heads were never removed from the vehicle.

SIXTH CAUSE FOR DISCIPLINE

(Fraud)

38. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows:

Respondent obtained payment from Atwal for installing a used engine on his 2003 Ford F-150 pickup. In fact, the existing engine was not replaced on the vehicle.

SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Code)

39. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent failed to provide Atwal with a written estimate for parts and labor necessary for a specific job.

EIGHTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

40. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Regulation 3353, subdivision (b):** Respondent failed to provide Atwal with a written estimated price for the teardown of the engine on his 2003 Ford F-150 pickup, including the cost of reassembly of the engine, a statement indicating whether the teardown might prevent the restoration of the engine to its former condition, or the maximum time it would take to reassemble the engine in the event Atwal elected not to proceed with the repair of the vehicle.

b. **Regulation 3356, subdivision (a)(1):** Respondent failed to show his registration number on both invoices.

c. **Regulation 3356, subdivision (a)(2)(B)**: Respondent failed to state on the invoice dated January 25, 2011, whether the fan, fan clutch, dipstick, or dipstick allegedly installed on Atwal's 2003 Ford F-150 pickup were new, used, reconditioned, or rebuilt.

CONSUMER COMPLAINT #3 (CARRUTHERS): 2000 CHEVROLET MALIBU

41. On or about February 2, 2011, Demetria Carruthers ("Carruthers") took her 2000 Chevrolet Malibu to Respondent's facility for a diagnosis because the "check engine" light was on and the engine was overheating. Carruthers signed a repair order, but was not given a written estimate.

42. On or about February 4, 2011, Carruthers went to the facility to pick up the vehicle, paid Respondent $410.88 in cash, and received a copy of an invoice dated February 2, 2011. The invoice indicated that various cooling system components had been replaced on the vehicle, including the water pump.

43. On or about February 5, 2011, Carruthers returned the vehicle to the facility and requested an additional diagnosis because the "check engine" light had come back on and the coolant temperature sensor indicated that the engine was hot. Carruthers was not given a written estimate.

44. On or about February 6, 2011, Carruthers went to the facility to pick up the vehicle, paid them $178 in cash, and received a copy of an invoice dated February 5, 2011. Later that same day, Carruthers returned the vehicle to the facility because her vehicle was making a noise. Respondent charged Carruthers $30, but did not provide her an estimate or an invoice. Later, that same day, the check engine light came back on and the engine overheated again, causing major engine damage. Carruthers sold the vehicle to an automotive recycler because she could not afford to have it repaired.

45. On or about February 25, 2011, Carruthers filed a complaint with the Bureau.

46. On or about March 29, 2011, a representative of the Bureau went to the automotive recycler and inspected the vehicle and determined that he engine showed signs of severe overheating.

47. On or about May 4, 2011, the representative met with Respondent, who provided copies of his repair records on the vehicle. The representative asked Respondent about the invoice dated February 5, 2011, for the replacement of the EGR valve. Respondent admitted that the EGR valve was replaced as the result of a smog inspection failure on the vehicle.

NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

48. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

Respondent and/or his employees represented to Carruthers that the facility could perform an emission related repair on her 2000 Chevrolet Malibu, the replacement of the EGR valve. In fact, Respondent did not have a smog check station license and was legally prohibited from performing, for compensation, repairs of emission control devices or systems on motor vehicles.

TENTH CAUSE FOR DISCIPLINE

(Violations of the Code)

49. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent failed to provide Carruthers with written estimates for parts and/or labor necessary for a specific job.

ELEVENTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

50. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following material respects:

a. **Subdivision (a)(1):** Respondent failed to show his registration number on both invoices.

b. **Subdivision (a)(2)(A):** Respondent failed to separately list, describe, or identify on both invoices all diagnostic work performed on Carruthers' 2000 Chevrolet Malibu or the results or findings from the diagnoses.

c. **Subdivision (a)(2)(E):** Respondent failed to separately list on both invoices the applicable sales tax for the parts installed on Carruthers' 2000 Chevrolet Malibu.

CONSUMER COMPLAINT #4 (PIMENTEL): 2001 FORD F-250 PICKUP

51. On or about February 18, 2011, Frank Pimentel ("Pimentel") took his 2001 Ford F-250 pickup to Respondent's facility because the engine was running rough. One of Respondent's mechanics told Pimentel that the engine needed a tune-up. Pimentel was not given a written estimate for the work. Later that same day, Pimentel paid Respondent $195 for the

tune-up plus an additional $28 for an oil change, and was given an invoice dated February 18, 2011.

52. On or about February 22, 2011, Pimentel returned the vehicle to the facility because the engine was still running rough. Respondent's mechanic told Pimentel that more work was needed on the engine. Pimentel was not given a written estimate for the diagnosis or repair of the vehicle. The facility charged Pimentel $425 to replace the idle air control motor and throttle position sensor ("TPS") and gave Pimentel an invoice dated February 22, 2011, which he paid. Later, Pimentel found that the engine was still running rough. Respondent's mechanic told Pimentel that the vehicle needed a catalytic converter a cost of $3,250, but that he could bypass the catalytic converter for $495.00, if he could not afford the repair. Pimentel declined. Later that day, Pimentel found that the engine was still running rough.

53. On or about February 28, 2011, Pimentel took the vehicle to another repair facility, D & H Auto Tech ("D & H"). D & H replaced two ignition coils and cleaned the mass air flow sensor for $361.82, which resolved the problem with the vehicle.

54. In or about March 2011, Pimentel filed a complaint with the Bureau.

55. On or about May 6, 2011, the representative inspected the vehicle and found that the TPS had not been replaced as invoiced.

TWELFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

56. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent represented on the invoice that the TPS on Pimentel's 2001 Ford F-250 pickup had been replaced. In fact, that part had not been replaced on the vehicle.

b. Respondent represented to the Bureau that the catalytic converter on Pimentel's 2001 Ford F-250 pickup needed replacement in order to resolve the rough running problem on the vehicle. In fact, the catalytic converter was not in need of replacement.

//

THIRTEENTH CAUSE FOR DISCIPLINE

(Fraud)

57. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows: Respondent obtained payment from Pimentel for replacing the TPS on his 2001 Ford F-250 pickup. In fact, that part had not been replaced on the vehicle as invoiced.

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Code)

58. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code in the following material respects:

a. **Section 9884.9, subdivision (a):** Respondent failed to provide Pimentel with written estimates for parts and labor necessary for a specific job.

b. **Section 9884.11**: Respondent failed to maintain all records pertaining to the repairs performed on Pimentel's 2001 Ford F-250 pickup, specifically, the parts receipt for the TPS allegedly replaced on the vehicle, or failed to make that record available for inspection by the Bureau.

FIFTEENTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

59. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following material respects:

a. **Subdivision (a)(1):** Respondent failed to show his registration number on both invoices.

b. **Subdivision (a)(2)(A):** Respondent failed to separately list, describe, or identify on both invoices all diagnostic work performed on Pimentel's 2001 Ford F-250 pickup or the results or findings from the diagnoses.

//

c. **Subdivision (a)(2)(B):** Respondent failed to separately list, describe, or identify on the invoice dated February 18, 2011, the parts that were included in the "full service tune-up"; i.e., spark plugs, fuel filter, and/or air filter.

d. **Subdivision (a)(2)(E):** Respondent failed to separately list on both invoices the applicable sales tax for the parts installed on Pimentel's 2001 Ford F-250.

CONSUMER COMPLAINT #5 (DIEP): 2003 ACURA MDX

60. On or about December 30, 2010, Sum Diep ("Diep") took his 2003 Acura MDX to V & H Auto Repair located in Westminster, California, and had the timing belt and water pump replaced for $550.

61. On or about February 19, 2011, Diep took the vehicle to Respondent's facility for a diagnosis because it would not run well when cold. Diep received a verbal estimate of $600 for the repair of the vehicle.

62. On or about February 22, 2011, one of Respondent's mechanics called Diep and told him that the camshaft and crankshaft sensors needed replacement at an additional cost of $500. Diep went to the facility and gave them a cash deposit of $200. Diep was not given a written estimate.

63. On or about February 25, 2011, Diep returned to the facility to retrieve the vehicle. Diep was informed that the timing belt and water pump were replaced in addition to the camshaft and crankshaft sensors. Diep asked the facility why the vehicle needed a new timing belt and water pump since those parts were just replaced. One of Respondent's mechanics told Diep that the previous repair facility had not actually replaced the parts. Diep paid Respondent $900 in cash and was given a final invoice. Later, as Diep was driving the vehicle, he noticed that none of the dash lights worked.

64. On or about February 26, 2011, Diep returned the vehicle to the facility and told one of the mechanics that the original problem had not been resolved and now the dash lights did not work. Diep left the vehicle for repair, but did not receive a written estimate.

65. On or about March 2, 2011, Diep went to the facility to pick up the vehicle and was informed that the vehicle needed a new electronic box to fix the dash board lights. Diep declined

the repair and requested the olds parts on the vehicle. Diep was given the old parts with the exception of the timing belt.

66. On or about March 8, 2011, Diep filed a complaint with the Bureau.

67. On or about March 29, 2011, Diep provided the Bureau with the old parts that had been removed from the vehicle.

68. On or about April 14, 2011, a representative of the Bureau inspected the vehicle and found that 18 diagnostic trouble codes were stored in the power train control module. The representative also found that Respondent's facility had removed and damaged the vehicle's multiplex body control module, as set forth in paragraph 72 below.

69. On or about May 4, 2011, the representative met with Respondent and obtained copies of his repair records on the vehicle, including an invoice dated February 19, 2011, and an invoice dated February 22, 2011. The representative asked Respondent why he replaced the water pump on the vehicle. Respondent told the representative that the original water pump had not been replaced by the previous repair facility; i.e., V & H Auto Repair. The representative showed Respondent the water pump that Diep had provided the Bureau, and told Respondent that the part had obviously been replaced by V & H Auto Repair. Respondent told the representative that he had to replace the water pump because it was making noise.

SIXTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

70. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent represented to the Bureau that he had replaced the water pump on Diep's 2003 Acura MDX because the original water pump had not been replaced by V & H Auto Repair. When Respondent was shown the water pump which his facility had removed from the vehicle, Respondent represented that he had replaced the part because it was making noise.

//

//

SEVENTEENTH CAUSE FOR DISCIPLINE

(Gross Negligence)

71. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(5), in that Respondent committed acts constituting gross negligence, as follows: Respondent removed and damaged the multiplex body control module on Diep's 2003 Acura MDX, preventing the air bag and anti-lock brake systems from operating and exposing the vehicle's occupants to possible risk of harm.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

72. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, as follows: Respondent removed the "check engine" light bulb from Diep's 2003 Acura MDX.

NINETEENTH CAUSE FOR DISCIPLINE

(Violations of the Code)

73. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent failed to provide Diep with written estimates for parts and labor necessary for a specific job.

TWENTIETH CAUSE FOR DISCIPLINE

(Violations of Regulations)

74. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following material respects:

a. **Subdivision (a)(1):** Respondent failed to show his registration number on both invoices.

//

b. **Subdivision (a)(2)(A):** Respondent failed to separately list, describe, or identify on both invoices all diagnostic work performed on Diep's 2003 Acura MDX or the results or findings from the diagnoses.

c. **Subdivision (a)(2)(B):** Respondent failed to list on both invoices the prices for each part installed on Diep's 2003 Acura MDX.

d. **Subdivision (a)(2)(E):** Respondent failed to separately list on both invoices the applicable sales tax for the parts installed on Diep's 2003 Acura MDX.

CONSUMER COMPLAINT #6 (ATWAL): 2001 MERCEDES BENZ ML320

75. On or about January 27, 2011, Govinder Atwal ("Atwal") took his 2001 Mercedes Benz ML320 to Respondent's facility because the engine was making a squealing noise. Respondent's employee, "Lo", lifted the vehicle's hood and told Atwal that the noise was coming from the water pump, which needed replacement. While Atwal waited, the owner of TJ's Auto, Hai, requested and obtained authorization from Atwal for $800 to replace the cylinder head gaskets because there was coolant in the engine oil. Later, Atwal paid the facility $400 (the facility agreed to allow Atwal to pay the remaining balance by February 15, 2011) and was given an invoice. The invoice stated that the facility found oil mixed with water during their inspection of the vehicle and had recommended replacing the intake manifold gaskets.

76. In or about April 2011, Atwal filed a complaint with the Bureau, stating that there was still milky looking oil in the oil cap.

77. On or about March 13, 2011, a representative of the Bureau inspected the vehicle and determined that the intake manifold gaskets had not been replaced and determined that it is common for the 2001 Mercedes Benz ML 320 to show signs of condensation (milky oil) in the oil cap and that no repairs are recommended for this condition.

78. On or about May 4, 2011, the representative met with Respondent and obtained copies of his repair records on the vehicle, including a parts invoice from Kragen O'Reilly for an intake manifold gasket set.

79. On or about May 5, 2011, the representative went to Kragen O'Reilly and met with the manager. The manager stated that the intake manifold gasket set listed on the above parts

invoice was sold to Respondent, but that Respondent had returned the gaskets to Kragen O'Reilly for credit.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

80. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent represented on the invoice that the intake manifold gaskets on Atwal's 2001 Mercedes Benz ML320 had been replaced. In fact, those parts had not been replaced on the vehicle.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Fraud)

81. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows: Respondent obtained payment from Atwal for replacing the intake manifold gaskets on Atwal's 2001 Mercedes Benz ML320. In fact, those parts had not been replaced on the vehicle.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Violations of Regulations)

82. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following material respects:

a. **Subdivision (a)(1)**: Respondent failed to show his registration number on the invoice.

b. **Subdivision (a)(2)(B)**: Respondent failed to state on the invoice whether the water pump and intake manifold gaskets allegedly installed on Atwal's 2001 Mercedes Benz ML320 were new, used, reconditioned, or rebuilt.

//

//

c. **Subdivisions (a)(2)(A), (B), and (E):** Respondent failed to separately list on the invoice the subtotals price(s) for labor for the installation of the water pump and intake manifold gaskets, the subtotal prices for each part, and the applicable sales tax, if any.

CONSUMER COMPLAINT #7 (BROWDER): 1998 CHEVROLET C1500 PICKUP

83. On or about March 30, 2011, Antonio Browder ("Browder") took his 1998 Chevrolet C1500 pickup to Respondent's facility because the Service Engine Soon (SES) lamp was illuminated and a spark plug wire was arcing or loose. Browder signed a repair order, but was not given a written estimate. Later, a man who identified himself as the owner of the facility called Browder and obtained his authorization to perform a tune-up, replace the spark plug wires, a knock sensor, and ignition control module on the vehicle for $400. That same day, Browder returned to the facility to retrieve the vehicle, paid $400 in cash for the repairs, and was given an invoice. Browder continued experiencing problems with the vehicle in that the engine cranked slowly while starting.

84. On or about April 21, 2011, Browder filed a complaint with the Bureau. That same day, a representative of the Bureau inspected the vehicle and found that the knock sensor and ignition control module had not been replaced as invoiced on Respondent's invoice dated March 30, 2011.

85. On or about May 4, 2011, the representative met with Respondent. Respondent could not provide the representative with copies of any part invoices for the vehicle.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

86. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent represented on the invoice that the knock sensor on Browder's 1998 Chevrolet C1500 pickup had been replaced. In fact, that part had not been replaced on the vehicle.

//

b. Respondent represented on the invoice that the ignition control module on Browder's 1998 Chevrolet C1500 pickup had been replaced. In fact, that part had not been replaced on the vehicle.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Fraud)

87. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:

a. Respondent obtained payment from Browder for replacing the knock sensor on his 1998 Chevrolet C1500 pickup. In fact, that part had not been replaced on the vehicle.

b. Respondent obtained payment from Browder for replacing the ignition control module on his 1998 Chevrolet C1500 pickup. In fact, that part had not been replaced on the vehicle.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Violations of the Code)

88. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code in the following material respects:

a. **Section 9884.9, subdivision (a):** Respondent failed to provide Browder with a written estimate for parts and labor necessary for a specific job. Further, Respondent failed to document on the invoice Browder's authorization for the tune-up and the replacement of the spark plug wires, knock sensor, and ignition control module on his 1998 Chevrolet C1500 pickup.

b. **Section 9884.11**: Respondent failed to maintain all records pertaining to the repairs performed on Browder's 1998 Chevrolet C1500 pickup, specifically, parts receipts or parts invoices, or failed to make those records available for inspection by the Bureau.

//

//

//

//

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

89. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following material respects:

a. **Subdivision (a)(1):** Respondent failed to show his registration number on the invoice.

b. **Subdivision (a)(2)(B):** Respondent failed to state on the invoice whether the knock sensor and ignition control module allegedly installed on Browder's 1998 Chevrolet C1500 pickup were new, used, reconditioned, or rebuilt. Further, Respondent failed to separately list, describe, or identify on the invoice the parts that were included in the tune-up.

c. **Subdivisions (a)(2)(A), (B), and (E):** Respondent failed to separately list on the invoice the subtotals price(s) for labor, the subtotal prices for each part, or the applicable sales tax, if any.

CONSUMER COMPLAINT #8 (PIERRO): 2000 CHEVROLET MALIBU

90. On or about April 5, 2011, Morrvan Pierro ("Pierro") took his 2000 Chevrolet Malibu to Respondent's facility because the engine was overheating. One of Respondent's mechanics told Pierro that the vehicle needed a new water pump. Pierro did not receive a written estimate for the diagnosis or repair of the vehicle.

91. On or about April 6, 2011, Pierro went to the facility. One of Respondent's mechanics told Pierro that the vehicle also needed a new heater core. Pierro authorized the additional repair, but did not receive a written estimate.

92. On or about April 12, 2011, Pierro returned to the facility to retrieve the vehicle, paid $675 in cash for the repairs, and received an invoice dated April 5, 2011. The invoice indicated that the drive belt had been replaced in addition to the water pump and heater core.

93. On or about April 18, 2011, Pierro took the vehicle to another repair facility, K & J Auto Repair ("K & J"), because it was still overheating and leaking coolant. K & J's mechanic determined that the engine had a blown head gasket.

94. On or about April 20, 2011, representatives of the Bureau inspected the vehicle at K & J's facility. The representative found that one of the head gaskets was damaged and leaking combustion gas into the coolant, which had caused the overheating problem.

95. On or about April 22, 2011, Pierro went to K & J to retrieve the vehicle and paid them $775 for the replacement of the head gaskets, which resolved the overheating problem on the vehicle.

96. On or about May 4, 2011, Respondent provided the Bureau with copies of his repair records on the vehicle, including various parts invoices.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

97. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in the following material respects: Respondent failed to properly diagnose and repair the overheating condition and coolant leak on Pierro's 2000 Chevrolet Malibu in that Respondent determined that the water pump and heater core were in need of replacement. In fact, the actual cause of the overheating problem and coolant leak was a blown head gasket, as set forth above.

TWENTY-NINTH CAUSE FOR DISCIPLINE

(Violations of the Code)

98. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code in the following material respects:

a. **Section 9884.9, subdivision (a):** Respondent failed to provide Pierro with written estimates for parts and labor necessary for a specific job. Further, Respondent failed to document on the invoice Pierro's authorization for the replacement of the water pump, heater core, and drive belt.

//

b. **Section 9884.11**: Respondent failed to maintain all records pertaining to the repairs performed on Pierro's 2000 Chevrolet Malibu, specifically, the parts receipt or parts invoice for the replacement of the drive belt, or failed to make those records available for inspection by the Bureau.

THIRTIETH CAUSE FOR DISCIPLINE

(Violations of Regulations)

99. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following material respects:

a. **Subdivision (a)(1)**: Respondent failed to show his registration number on the invoice.

b. **Subdivision (a)(2)(A)**: Respondent failed to separately list, describe, or identify on the invoice all diagnostic work performed on Pierro's 2000 Chevrolet Malibu.

c. **Subdivision (a)(2)(E)**: Respondent failed to separately list on the invoice the applicable sales tax for the parts installed on Pierro's 2000 Chevrolet Malibu.

OTHER MATTERS

100. 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 Hai Phuoc Huynh, owner of TJ Auto Repair, 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.

//

//

//

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 Number ARD 261006, issued to Hai Phuoc Huynh, owner of TJ Auto Repair;

2. Revoking or suspending any other automotive repair dealer registration issued to Hai Phuoc Huynh;

3. Ordering Hai Phuoc Huynh, owner of TJ Auto Repair, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 8/15/11

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

SA2011101692