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7  
8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
10 **STATE OF CALIFORNIA**

11  
12 In the Matter of the Accusation Against:

13 **M D SERVICE**  
**MICHELE N. SHUTZ, OWNER**  
14 16158 K Street  
Mojave, CA 93501

15  
16 Automotive Repair Dealer Reg. No. ARD 263557

17 Respondent.

Case No. *77/13-74*

**A C C U S A T I O N**

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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 October 29, 2010, the Bureau issued Automotive Repair Dealer  
24 Registration Number ARD 263557 ("registration") to Michele N. Shutz, Owner ("Respondent"),  
25 doing business as M D Service. The registration, which was in full force and effect at all times  
26 relevant to the charges brought herein, expired on October 31, 2012, has not been renewed, and is  
27 now delinquent.

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1 **JURISDICTION**

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

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

8 **STATUTORY PROVISIONS**

9 5. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"  
10 "commission," "committee," "department," "division," "examining committee," "program," and  
11 "agency." "License" includes certificate, registration or other means to engage in a business or  
12 profession regulated by the Code.

13 6. Section 118(b) of the Code states:

14 The suspension, expiration, or forfeiture by operation of law of a license issued  
15 by a board in the department, or its suspension, forfeiture, or cancellation by order of  
16 the board, shall not, during any period in which it may be renewed, restored, reissued,  
17 or reinstated, deprive the board of its authority to institute or continue a disciplinary  
18 proceeding against the licensee upon any ground provided by law or to enter an order  
suspending or revoking the license or otherwise taking disciplinary action against the  
licensee on any such ground.

19 7. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent  
20 part:

21 (a) The director, where the automotive repair dealer cannot show there was a bona  
22 fide error, may refuse to validate, or may invalidate temporarily or permanently, the  
23 registration of an automotive repair dealer for any of the following acts or omissions related  
24 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.

25 (1) Making or authorizing in any manner or by any means whatever any statement  
26 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

27 ...

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

3 (4) Any other conduct which constitutes fraud..

4  
5 (6) Failure in any material respect to comply with the provisions of this chapter [the  
6 Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted  
pursuant to it.

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

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

13 (c) Notwithstanding subdivision (b), the director may refuse to validate, or may  
14 invalidate temporarily or permanently, the registration for all places of business operated in  
15 this state by an automotive repair dealer upon a finding that the automotive repair dealer  
16 has, or is, engaged in a course of repeated and willful violations of this chapter, or  
regulations adopted pursuant to it.

17 8. Bus. & Prof. Code section 9884.8 states, in pertinent part:

18 All work done by an automotive repair dealer, including all warranty work, shall  
19 be recorded on an invoice and shall describe all service work done and parts  
20 supplied. .... One copy of the invoice shall be given to the customer and one  
copy shall be retained by the automotive repair dealer.

21 9. Bus. & Prof. Code section 9884.9, subdivision (a) states, in pertinent part:  
22 The automotive repair dealer shall give to the customer a written estimated price for labor  
23 and parts necessary for a specific job. No work shall be done and no charges shall accrue  
24 before authorization to proceed is obtained from the customer. No charge shall be made  
25 for work done or parts supplied in excess of the estimated price without the oral or  
26 written consent of the customer that shall be obtained at some time after it is determined  
27 that the estimated price is insufficient and before the work not estimated is done or the  
28 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.

1 REGULATORY PROVISIONS

2 10. California Code of Regulations section 3353 states in pertinent part:

3 No work for compensation shall be commenced and no charges shall accrue without specific  
4 authorization from the customer in accordance with the following requirements:

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

7 (c) Additional Authorization. Except as provided in subdivision (f), the dealer shall  
8 obtain the customers authorization before any additional work not estimated is done or parts not  
9 estimated are provided.

10 (e) Revising an Itemized Work Order. If the customer has authorized repairs according to  
11 a work order on which parts and labor are itemized, the dealer shall not change the method of  
12 repair or parts supplied without the written, oral, or electronic authorization of the customer.

11 11. California Code of Regulations section 3356 states in pertinent part:

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

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

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

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

21 12. California Code of Regulations section 3371 states in pertinent part:

22 No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or  
23 misleading statement or advertisement which is known to be false and misleading, or by which  
24 exercise of reasonable care should be known to be false and misleading.

25 13. California Code of Regulations section 3373 states in pertinent part:

26 No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or  
27 work order, or record required to be maintained by 3340.15(f) of this chapter, withhold  
28 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.

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**COST RECOVERY**

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2           14. Code section 125.3 provides, in pertinent part, that a Board may request the  
3 administrative law judge to direct a licentiate 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.

**CONSUMER COMPLAINT (SPROUL, BA20112231)**

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7           15. On or about January 30, 2011, consumer Heather Sproul (“Sproul”) had her 1999  
8 Chevrolet Suburban towed to Respondent’s facility for a “crank over no start” condition.

9           16. On January 31, 2011, Respondent’s employee, Danny Burgos (“Danny”) agreed to  
10 diagnose Sproul’s vehicle and later advised her that the vehicle needed replacement of the fuel  
11 pump assembly. Danny asked Sproul to purchase the fuel pump assembly from a nearby Napa  
12 Auto Parts store. Sproul ordered the fuel pump assembly from Tehachapi Napa Auto Parts, who  
13 said the part could be delivered to Respondent’s facility. Sproul paid \$352.88 for the part and  
14 authorized the parts store to deliver the part. Later that day, Sproul returned to M D Service and  
15 spoke to Danny who told her the repairs were complete. Sproul paid Respondent \$217.00 and  
16 received a copy of invoice number 708, dated January 31, 2011.

17           17. On or about February 7, 2011, Sproul’s vehicle again cranked over, but would not  
18 start. Sproul then had the vehicle towed to Sam Moore’s Automotive (“Sam”). Sam later  
19 recommended replacing the fuel pump assembly and asked Sproul to inspect the repairs  
20 previously performed at M D Service. Sproul inspected the vehicle and found a universal type  
21 fuel pump had been installed into the original fuel pump assembly and that two fuel vapor lines, a  
22 fuel vapor valve, and the fuel pump supply line had been damaged, then repaired and secured  
23 with hose clamps and a tie-strap. Sam photographed his findings, made hand written notes on  
24 them and gave the photographs to Sproul. Sproul then authorized Sam to replace the fuel pump  
25 assembly and received the pump that had been installed at M D Service from Sam.

26           18. On or about February 9, 2011, the Bureau received a complaint from Sproul against  
27 M D Service.

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1 19. On or about February 14, 2011, Sam completed the repairs and Sproul paid him  
2 \$595.53 and picked up the vehicle.

3 20. Upon investigation, a Bureau representative found that the fuel pump assembly had  
4 not been replaced as invoiced. In fact, a universal type replacement pump had been installed on  
5 the old assembly and two vapor lines, a vapor valve, and a fuel pump supply line had been  
6 damaged, and then repaired. The investigation also showed that the Respondent had not retained  
7 copies of the invoice or estimate for the repairs on Sproul's vehicle.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Untrue or Misleading Statements)**

10 21. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in  
11 that on or about January 31, 2011, Respondent made statements which she knew, or which by  
12 exercise of reasonable care should have known to be untrue or misleading, when she represented  
13 to the consumer that the fuel pump assembly had been replaced on the 1999 Chevrolet Suburban  
14 when in fact, a universal type replacement pump had been installed modifying the old assembly  
15 and that two vapor lines, a vapor valve, and the fuel pump supply line, had been damaged in the  
16 process and subsequently repaired.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Fraud)**

19 22. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in  
20 that on or about January 31, 2011, Respondent committed acts constituting fraud by accepting  
21 payment for installing a new fuel pump assembly on the consumer's vehicle, when in fact, only a  
22 universal type replacement pump had been installed, modifying the original assembly.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with the Code)**

25 23. Respondent has subjected her registration to discipline pursuant to Business and  
26 Professions Code section 9884.7, subdivision (a)(6), in that on January 31, 2011 Respondent  
27 failed to comply with the following sections of that code:

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1 a) Section 9884.7, subdivision (a)(7): Respondent failed to follow accepted trade  
2 standards when her employee installed a universal type fuel pump modifying the original fuel  
3 pump assembly.

4 b) Section 9884.11: Respondent failed to maintain and provide access to, copies of  
5 documents required by regulations adopted to carry out this chapter.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Violations of Regulation)**

8 24. Respondent has subjected her registration to discipline pursuant to Business and  
9 Professions Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with:

10 a) California Code of Regulation (CCR) 3353, subdivision (e) in a material respect,  
11 as follows: Respondent failed to receive authorization from the consumer for changing the  
12 method of repair when her employee replaced the fuel pump on the 1999 Chevrolet Suburban  
13 with a universal type fuel pump instead of with the complete fuel pump assembly the consumer  
14 had provided.

15 b) CCR 3358, subdivision (c) in a material respect, as follows: Respondent failed to  
16 maintain and provide access to invoices and estimates for repairs performed on the 1999  
17 Chevrolet Suburban.

18 **UNDERCOVER OPERATION – JULY 28, 2011**

19 25. On July 28, 2011, a Bureau of Automotive Repair representative transported the  
20 Bureau's undercover vehicle to Respondent's facility where it was left with a note on the  
21 windshield indicating that the vehicle had "broke down". The undercover vehicle had been  
22 previously documented as being in need of resetting the fuel shut-off inertia switch only. All  
23 other fuel and ignition system components had been documented to be functioning correctly. The  
24 note also provided a contact telephone number for a Bureau undercover operator (operator). Later  
25 that day the operator received a call from Respondent's employee, Danny, who told the operator  
26 he would diagnose the vehicle's crank over/no start problem and call back in a few hours. Danny  
27 did not provide the operator with an estimate for diagnosing the crank over/no start problem.

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1 Later that day Danny phoned the operator and told him that the vehicle needed a fuel pump and  
2 the total cost would be \$411.82. The operator later authorized the fuel pump replacement.

3 26. On July 29, 2011 the operator returned to the Respondent's facility, paid \$410.00,  
4 signed and received Invoice [REDACTED] and left the facility.

5 27. On August 18, 2011 a Bureau representative re-inspected the undercover vehicle. He  
6 found that the fuel pump had been replaced as invoiced. The only repair necessary was the  
7 resetting of the fuel shut-off inertia switch.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(False and Misleading Statements)**

10 28. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in  
11 that on or about July 28, 2011, Respondent's employee made statements which he knew, or which  
12 by exercise of reasonable care should have known to be untrue or misleading, when he told the  
13 undercover operator that the undercover vehicle needed replacement of the fuel pump, when in  
14 fact the fuel pump was new and in good serviceable condition and the only repair that was  
15 necessary was to reset the fuel shut-off inertia switch.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 29. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in  
19 that on or about July 28, 2011, Respondent made a false and misleading representation to the  
20 operator regarding the condition of the fuel pump on the undercover vehicle as set forth in  
21 paragraphs 25-27 above, and accepted payment for the replacement of the fuel pump when the  
22 only repair necessary was the resetting of the fuel shut-off inertia switch.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with the Code)**

25 30. Respondent has subjected his registration to discipline pursuant to Business and  
26 Professions Code section 9884.7, subdivision (a)(6), in that on July 28, 2011, regarding the  
27 undercover vehicle, Respondent failed to comply with the following sections of that code:

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1 a) Section 9884.9, subdivision (a): Respondent failed to provide the undercover  
2 operator with a written estimated price for parts and labor for a specific job when her facility  
3 diagnosed the crank over no start condition on the undercover vehicle.

4 **EIGHTH CAUSE FOR DISCIPLINE**

5 **(Violations of Regulation)**

6 31. Respondent has subjected her registration to discipline pursuant to Business and  
7 Professions Code section 9884.7, subdivision (a)(6), in regard to the undercover vehicle in that  
8 Respondent failed to comply with:

9 a) CCR 3353, subdivision (a) in a material respect, as follows, Respondent failed to  
10 provide a written estimate prior to the diagnostic work being performed on July 28, 2011.

11 b) CCR 3356, subdivision (a)(2)(B), in a material respect, as follows, Respondent  
12 failed to describe, on invoice number [REDACTED] dated July 28, 2011, all service work and parts in such  
13 a manner that the customer can understand what was purchased.

14 c) CCR 3373 in a material respect, as follows, Respondent provided a false  
15 and misleading document to the operator in that she failed to document the resetting of the fuel  
16 shut-off inertia switch on the undercover vehicle on invoice number [REDACTED] dated July 28, 2011.

17 **UNDERCOVER OPERATION – NOVEMBER 17, 2011**

18 32. On or about November 17, 2011, a Bureau representative transported a Bureau  
19 documented undercover vehicle to Respondent's facility leaving it on the street in front of the  
20 facility. The undercover vehicle had been previously documented as only needing the fuel shut-  
21 off inertia switch reset. A Bureau undercover operator (operator) later contacted the Respondent's  
22 employee, Danny, and requested he diagnose a crank over/no start condition. Danny told the  
23 operator that he would diagnose the problem and the cost would be \$65.00. The operator  
24 authorized the diagnosis. Later that day Danny called the operator and told him that the problem  
25 was in the fuel pump circuit, caused by the tripped fuel inertia switch. Danny then said that he  
26 reset the fuel inertia switch and that the vehicle was operating properly. The operator was then  
27 told the final bill was \$75.00 and when he asked why the bill had increased from \$65.00 to  
28 \$75.00, Danny told him that he had worked on the vehicle for an hour and the shop's labor rate

1 was \$75.00 an hour. The operator returned to Respondent's facility the same day, paid  
2 Respondent \$75.00, signed and received a copy of an unnumbered invoice dated November 17,  
3 2011 and retrieved the undercover vehicle.

4 33. On or about November 30, 2011 a Bureau representative re-inspected the 2000  
5 undercover vehicle and found the fuel shut-off inertia switch had been reset, as invoiced.

6 **NINTH CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with the Code)**

8 34. Respondent has subjected her registration to discipline pursuant to Business and  
9 Professions Code section 9884.7, subdivision (a)(6), in that on November 17, 2011 in regard to  
10 the undercover vehicle, Respondent failed to comply with the following sections of that code:

11 a) Section 9884.9, subdivision (a): Respondent failed to revise the original  
12 estimated price and to obtain authorization for the increase in estimate prior to the work not  
13 estimated being done.

14 **TENTH CAUSE FOR DISCIPLINE**

15 **(Violation of Regulation)**

16 35. Respondent has subjected her registration to discipline pursuant to Business and  
17 Professions Code section 9884.7, subdivision (a)(6), in regard to the undercover vehicle in that  
18 Respondent failed to comply with:

19 a) CCR 3353, subdivision (c) in a material respect, as follows: Respondent failed  
20 to revise the original estimate of \$65.00 and to obtain authorization from the operator for the  
21 additional \$10.00 charged.

22 b) CCR 3373 in a material respect, as follows: Respondent created a false and  
23 misleading document by stating, on the unnumbered invoice dated November 17, 2011, that they  
24 obtained initial authorization from the operator for \$75.00, when in fact they had only received  
25 authorization for \$65.00.

26 **UNDERCOVER OPERATION – FEBRUARY 22, 2012**

27 36. On or about February 22, 2012, a Bureau undercover operator drove a Bureau  
28 documented undercover vehicle to Respondent's facility, told Respondent's employee, Danny,

1 that the battery was draining overnight (going dead) and requested that he diagnose and repair the  
2 vehicle. A Bureau representative had previously replaced the alternator and had documented the  
3 electrical system as being in good and serviceable condition. The only repair necessary was to  
4 replace the broken wiring connector at the alternator. The operator signed and received a copy of  
5 an estimate number [REDACTED] for \$70.00, for the diagnosis of the electrical problem. Later that day the  
6 operator was contacted by Respondent's employee Danny, who said the vehicle needed an  
7 alternator. Danny later called the operator with an estimated price for replacement of the  
8 alternator of \$329.88. The operator authorized the repair and was told that this repair would be  
9 completed and that the vehicle would be ready on the following day.

10 37. On February 23, 2012, the operator contacted Respondent and spoke with Danny.  
11 Danny informed her that he had installed the new alternator, but it had not corrected the problem.  
12 He then said he further diagnosed the problem and found a broken wire at the alternator. Danny  
13 said he removed the new alternator, reinstalled the original alternator and repaired the wire.  
14 Danny said the charge system was now operating properly and the final bill was for \$150.00. The  
15 operator then returned to the facility and paid Respondent \$150.00. She then signed and received  
16 a copy of invoice number [REDACTED], dated February 22, 2012 and retrieved the vehicle.

17 38. On or about March 8, 2012, a Bureau representative re-inspected the undercover  
18 vehicle and found the original alternator was still in place but the electrical connector at the  
19 alternator had not been repaired, but instead had been secured in place with tie straps.

### 20 THIRTEENTH CAUSE FOR DISCIPLINE

#### 21 (Untrue or Misleading Statements)

22 39. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in  
23 that on or about February 22, 2012, Respondent made statements which she knew or which by  
24 exercise of reasonable care should have known to be untrue or misleading when she told the  
25 undercover operator that the alternator wire on the Bureau's undercover vehicle had been  
26 repaired, when in fact, no repairs had been made and the connector had been held in place with tie  
27 straps.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Code)**

3 40. Respondent has subjected his registration to discipline pursuant to Business and  
4 Professions Code section 9884.7, subdivision (a)(6), in that on February 22, 2012, regarding the  
5 Bureau's undercover vehicle, Respondent failed to comply with the following sections of that  
6 code:

7 a) Section 9884.7, subdivision (a)(7): Respondent failed to follow accepted trade  
8 standards when her employee installed tie straps to hold the alternator wiring connector in  
9 position on the alternator when the accepted repair, is to replace the broken harness connector and  
10 reconnect it to the alternator.

11 b) Section 9884.9, subdivision (a): Respondent failed to record the undercover  
12 operator's authorization for the revised estimate amount on invoice.

13 **SIXTEENTH CAUSE FOR DISCIPLINE**

14 **(Violation of Regulation)**

15 41. Respondent has subjected her registration to discipline pursuant to Business and  
16 Professions Code section 9884.7, subdivision (a)(6), in regard to the undercover vehicle in that  
17 Respondent failed to comply with:

18 a) CCR 3353, subdivision (c) in a material respect, as follows, Respondent failed to  
19 properly document the operator's authorization for additional repairs on invoice number [REDACTED]

20 b) CCR 3373 in a material respect as follows, Respondent created a false and  
21 misleading record when she recorded on invoice number [REDACTED], dated February 22, 2012, that her  
22 employee repaired a broken wire to the alternator, when in fact, no wire repair had been  
23 performed.

24 **OTHER MATTERS**

25 42. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on  
26 probation the registrations for all places of business operated in this state by Michele N. Shutz,  
27 upon a finding that she has, or is, engaged in a course of repeated and willful violation of the laws  
28 and regulations pertaining to an automotive repair dealer.

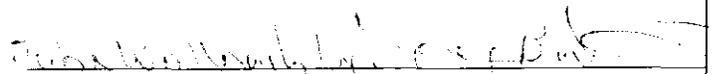
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**PRAYER**

**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, suspending, or placing on probation Automotive Repair Dealer Registration No. ARD 263557, issued to Michele N. Shutz, doing business as M D Service;
2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Michele N. Shutz;
3. Ordering Michele N. Shutz, doing business as M D Service to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
4. Taking such other and further action as deemed necessary and proper.

DATED: June 13, 2013

  
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*