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

11
12 In the Matter of the Accusation Against:
SO CAL AUTOMOTIVE, INC.
13 **DBA RAPID TRANSMISSIONS,**
14 **JAMES RAY ALEXANDER,**
PRESIDENT/SECRETARY/TREASURER
15 **859 North Broadway**
Escondido, CA 92026

Case No. **77/15-10**

A C C U S A T I O N

16 **Automotive Repair Dealer Registration No.**
ARD 265066

17
18 **SO CAL AUTOMOTIVE, INC.**
DBA RAPID TRANSMISSIONS,
19 **JAMES RAY ALEXANDER,**
PRESIDENT/SECRETARY/TREASURER
20 **3905 Convoy Street**
San Diego, CA 92111

21 **Automotive Repair Dealer Registration No.**
ARD 265206

22
23 **SO CAL AUTOMOTIVE, INC.**
DBA RAPID TRANSMISSIONS,
24 **JAMES RAY ALEXANDER,**
PRESIDENT/SECRETARY/TREASURER
25 **8861 La Mesa Boulevard**
La Mesa, CA 91941

26 **Automotive Repair Dealer Registration No.**
ARD 265480

27 Respondents.

28

1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration No. ARD 265066 (Escondido Facility)**

6 2. On or about May 13, 2011, the Bureau of Automotive Repair (Bureau) issued
7 Automotive Repair Dealer Registration Number ARD 265066 (Registration) to So Cal
8 Automotive, Inc., dba Rapid Transmissions, James Ray Alexander, President/Secretary/Treasurer
9 (Respondent). The registration was in full force and effect at all times relevant to the charges
10 brought herein and will expire on May 31, 2015, unless renewed.

11 **Automotive Repair Dealer Registration No. ARD 265206 (San Diego Facility)**

12 3. On or about May 23, 2011, the Bureau issued Automotive Repair Dealer Registration
13 Number ARD 265206 (Registration) to So Cal Automotive, Inc. dba Rapid Transmissions, James
14 Ray Alexander, President/Secretary/Treasurer (Respondent). The registration was in full force
15 and effect at all times relevant to the charges brought herein and will expire on May 31, 2015,
16 unless renewed.

17 **Automotive Repair Dealer Registration No. ARD 265480 (La Mesa Facility)**

18 4. On or about June 13, 2011, the Bureau issued Automotive Repair Dealer Registration
19 Number ARD 265480 (Registration) to So Cal Automotive, Inc. dba Rapid Transmissions, James
20 Ray Alexander, President/Secretary/Treasurer (Respondent). The registration was in full force
21 and effect at all times relevant to the charges brought herein and will expire on June 30, 2015,
22 unless renewed.

23 **JURISDICTION**

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

27 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
28 surrender or cancellation of a license shall not deprive the Director of jurisdiction to proceed with

1 a disciplinary action during the period within which the license may be renewed, restored,
2 reissued or reinstated.

3 7. Section 477 of the Code provides, that "Board" includes "bureau," "commission,"
4 "committee," "department," "division," "examining committee," "program," and "agency."
5 "License" includes certificate, registration or other means to engage in a business or profession
6 regulated by the code.

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

11 9. Section 9884.22, subdivision (a), of the Code states:

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

17 STATUTORY PROVISIONS

18 10. Section 9884.7 of the Code states, in pertinent part:

19 (a) The director, where the automotive repair dealer cannot show there was a
20 bona fide error, may deny, suspend, revoke, or place on probation the registration
21 of an automotive repair dealer for any of the following acts or omissions related to
22 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.

23 (1) Making or authorizing in any manner or by any means whatever any
24 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.

25

26 (4) Any other conduct that constitutes fraud.

27

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

2 (7) Any willful departure from or disregard of accepted trade standards for
3 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.

4

5 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
6 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
7 has, or is, engaged in a course of repeated and willful violations of this chapter, or
regulations adopted pursuant to it.

8 11. Section 9884.8 of the Code states:

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

16 12. Section 9884.9 of the Code states, in pertinent part:

17 (a) The automotive repair dealer shall give to the customer a written
18 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
19 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
20 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
21 are supplied. Written consent or authorization for an increase in the original
estimated price may be provided by electronic mail or facsimile transmission from
22 the customer. The bureau may specify in regulation the procedures to be followed
by an automotive repair dealer if an authorization or consent for an increase in the
23 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,
24 time, name of person authorizing the additional repairs and telephone number
called, if any, together with a specification of the additional parts and labor and the
total additional cost, and shall do either of the following:

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

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

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

3 _____
4 (signature or initials)"

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

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

15

16 REGULATORY PROVISIONS

17 13. California Code of Regulations, title 16, (CCR) section 3353, states, in pertinent part:

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

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

23

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

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

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

(3) If the authorization from the customer for additional repairs, parts, or
labor in excess of the written estimated price is obtained by electronic mail (e-

1 mail), the dealer shall print and attach to the work order and invoice, the e-mail
2 authorization which shows the date and time of transmission and describes the
3 additional repairs, parts, labor, and the total additional costs.

4 (4) The additional repairs, parts, labor, total additional cost, and a statement
5 that the additional repairs were authorized either orally, or by fax, or by e-mail
6 shall be recorded on the final invoice to Section 9884.9 of the Business and
7 Professions Code. All documentation must be retained pursuant to Section
8 9884.11 of the Business and Professions Code.

9

10 (g) Definitions. As used in this section, "written " shall mean the
11 communication of information or information in writing, other than by electronic
12 means; "oral" shall mean the oral communication of information either in person or
13 telephonically; "electronic" shall mean the communication of information by
14 facsimile transmission (fax) or electronic mail (e-mail).

15 14. CCR section 3356, states, in pertinent part:

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

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

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

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

28 (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.

. . . .

15. CCR section 3361.1, states, in pertinent part:

The following minimum requirements specifying accepted trade standards
for good and workmanlike rebuilding of automatic transmissions are intended to
define terms that have caused confusion to the public and unfair competition
within the automotive repair industry. The term 'automatic transmission' shall also
apply to the automatic transmission portion of transaxles for the purposes of this

1 regulations, unless both the automatic transmission portion and the differential
2 portion of the transaxle share a common oil supply, in which case the term
3 'automatic transmission' shall apply to both portions of the transaxle. These
4 minimum requirements shall not be used to promote the sale of rebuilt automatic
5 transmissions when a less extensive and/or less costly repair is desired by the
6 customer. Any automotive repair dealer who represents to customers that the
7 following sections require the rebuilding of automatic transmissions is subject to
8 the sanctions prescribed by the Automotive Repair Act. All automotive repair
9 dealers engaged in the repair, sale, and installation of automatic transmissions in
10 vehicles covered under the Act shall be subject to the following minimum
11 requirements:

12

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

19 (1) All internal and external parts, including case and housing, have been
20 thoroughly cleaned and inspected.

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

23 (3) All bands have been replaced with new or refined bands.

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

25 (A) Lined friction plates.

26 (B) Internal and external seals including seals that are bonded to metal
27 parts.

28 (C) All sealing rings.

(D) Gaskets.

(E) Organic media disposable type filters (if the transmission is so
equipped).

(5) All impaired, defective, or substantially worn parts not mentioned above
have been restored to a sound condition or replaced with new, rebuilt, or
unimpaired parts. All measuring and adjusting of such parts have been performed
as necessary.

(6) The transmissions's electronic components, if so equipped, have been
inspected and found to be functioning properly or have been replaced with new,
rebuilt, or unimpaired components that function properly.

(7) The torque converter has been inspected and serviced in accordance
with subsection (d) of this regulation.

1 (d) Inspection of Torque Converter. The torque converter is considered to
2 be part of the automatic transmission and shall be examined, cleaned, and made
3 serviceable before the rebuilt, remanufactured or overhauled transmission is
4 installed. If the torque converter cannot be restored to a serviceable condition, then
5 the customer shall be so informed. With the customer's authorization, the converter
6 shall be replaced with a new, rebuilt, remanufactured, reconditioned, overhauled,
7 or unimpaired used torque converter. A torque converter shall not be represented
8 as rebuilt, remanufactured, reconditioned, or overhauled unless the torque
9 converter shell has been opened, all components of the overrunning clutch
10 assembly have been inspected and replaced as required, all friction materials have
11 been replaced as required, all rotating parts have been examined and replaced as
12 required, the shell has been resealed, and the unit has been pressure tested.

13 16. CCR section 3371, states, in pertinent part:

14 "No dealer shall publish, utter, or make or cause to be published, uttered, or made any false
15 or misleading statement or advertisement which is known to be false or misleading, or which by
16 the exercise of reasonable care should be known to be false or misleading. . . ."

17 17. CCR section 3373, states:

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

23 COST REIMBURSEMENT

24 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
28 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
may be included in a stipulated settlement.

29 RESPONDENT'S LA MESA FACILITY

30 UNDERCOVER OPERATION – JULY 23, 2013

31 19. On July 23, 2013, a Bureau undercover operator (operator) drove a Bureau
32 documented 2000 Pontiac (Pontiac) to Respondent's facility in La Mesa, California, for repairs.
33 The undercover vehicle had been previously documented as only being in need of a repair to the

1 fourth clutch shaft of the transmission. The damaged shaft would not allow the transmission to
2 provide fourth gear. The operator requested a transmission diagnosis from Mark Sexton, (Mark)
3 the Manager of the facility. Later that same day Mark called the operator and told her that the
4 vehicle did not have a fourth gear and that the transmission had internal problems. Mark told the
5 operator he would have to pull the transmission, disassemble it and inspect it to determine what
6 was wrong. Mark told the operator the cost to reassemble the transmission if the operator decided
7 not to go ahead with the repair would be \$585.00. The operator authorized him to proceed with
8 the diagnosis.

9 20. On July 24, 2013, Mark called the operator and told her that the Pontiac's
10 transmission had a broken fourth clutch hub, worn valves and burned clutches. Mark stated that
11 the vehicle needed a filter kit, a valve body repair kit and a rebuild kit. Mark quoted two prices to
12 rebuild the transmission. One price had a three year warranty, the other price had a one year
13 warranty. The operator verbally authorized Mark to proceed with the repair with the one year
14 warranty for a total price of \$2,589.93.

15 21. On July 26, 2013, the operator received a call from Mark telling her that the vehicle
16 was ready for pick up. The operator arrived and spoke with Mark, who printed out an invoice
17 and had the operator sign it and gave her a copy. The total amount paid by the operator was
18 \$2,719.05 for the rebuild. Mark also told the operator that there was a twelve month warranty for
19 the repairs. The operator then drove the vehicle and gave custody of it back to a Bureau
20 representative.

21 22. In August 2013, a Bureau lab technician re-inspected the Pontiac. He found that
22 Respondent had not rebuilt the transmission as required by California law. Respondent had not
23 replaced the 1-2 manual band, side cover gasket, oil pan gasket, oil filter seal, vehicle speed
24 sensor O-ring seal, two valve body spacer plate gaskets, park pawl actuator guide O-ring and oil
25 pump slide seal as required by regulations during a rebuild.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 23. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in paragraphs 19-22.

5 24. Respondent's Registration is subject to disciplinary action under Code section
6 9884.7, subdivision (a) (1), in that Respondent made or authorized statements which Respondent
7 knew or in the exercise of reasonable care should have known to be untrue or misleading.
8 Respondent charged for a rebuild and did not perform all of the work required to rebuild a
9 transmission as required by CCR section 3361.1. Respondent told the operator the clutches were
10 burnt, when in fact they were not.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 25. Complainant re-alleges and incorporates by reference the allegations set forth above
14 in paragraphs 19-22.

15 26. Respondent's Registration is subject to disciplinary action under Code section
16 9884.7, subdivision (a) (4), in that Respondent committed acts which constitute fraud.
17 Respondent told the operator the transmission was in need of a rebuild, charged for a rebuild and
18 did not perform all of the work required to rebuild a transmission as required by CCR section
19 3361.1.

20 **THIRD CAUSE FOR DISCIPLINE**

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

22 27. Complainant re-alleges and incorporates by reference the allegations set forth above
23 in paragraphs 19-22.

24 28. Respondent's Registration is subject to disciplinary action under Code section
25 9884.7, subdivision (a) (6), in that Respondent failed to comply with the following sections of the
26 Code:

27 ///

28 ///

1 a) **Section 9884.7, subdivision (a) (7):** Respondent failed to follow accepted trade
2 standards in that he did not rebuild the transmission as invoiced and charged. In addition, he
3 failed to rebuild the transmission to meet the minimum standards required.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Violation of Regulations)**

6 29. Complainant re-alleges and incorporates by reference the allegations set forth above
7 in paragraphs 19-22.

8 30. Respondent's Registration is subject to disciplinary action under section 9884.7,
9 subdivision (a) (6), in that Respondent failed to comply with the following sections of the
10 California Code of Regulations, title 16:

11 a) **Section 3356, subdivision (a) (2):** Respondent failed to show the correct dealer
12 registration number on the invoice.

13 b) **Section 3356, subdivision (a) (2) (B):** Respondent failed to describe parts in such a
14 manner that the customer can understand what was purchased.

15 c) **Section 3361.1, subdivision (c) (2):** Respondent failed to rebuild the transmission to
16 meet the minimum requirement standards.

17 d) **Section 3371:** Respondent made false and misleading statements which he knew to
18 be false at the time they were made.

19 e) **Section 3373:** Respondent created a false and misleading record by issuing an
20 invoice and charging for a rebuild, when he did not perform all of the work required to rebuild a
21 transmission as required by CCR section 3361.1.

22 **RESPONDENT'S ESCONDIDO FACILITY**

23 **UNDERCOVER OPERATION – AUGUST 6, 2013**

24 31. On August 6, 2013, a Bureau undercover operator (operator) drove a Bureau
25 documented 1996 Chevrolet (Chevrolet) to Respondent's facility in Escondido, California, for
26 repairs. The undercover vehicle had been previously documented as only being in need of a
27 repair to the faulty reaction sun shell that caused the transmission to have no 2nd, 4th, or reverse
28 gears. The repair necessary to correct the malfunction was to replace the faulty reaction sun shell

1 and related seals and gaskets. The operator requested a transmission diagnosis from Mike
2 O'Brien, (Mike) the Manager of the facility. Later that same day Mike called the operator and
3 told her that he would have to open the transmission to determine why the vehicle did not have a
4 second, fourth or reverse gear. Mike told the operator the cost to reassemble the transmission if
5 the operator decided not to go ahead with the repair would be \$585.00. The operator authorized
6 him to proceed with the diagnosis.

7 32. On August 7, 2013, the operator called Mike. He told her that the Chevrolet's
8 transmission needed to be rebuilt. Mike told the operator she would need a rebuild kit, rebuild
9 valve body, third and fourth gear sprags, steels and clutches, sun gear shell, torque converter and
10 many other parts. Mike quoted a price to perform the repairs with a three year warranty of
11 \$2,994.84 including taxes. The operator verbally authorized Mike to proceed with the repair.

12 33. On August 9, 2013, the operator returned to the facility because the vehicle was ready
13 for pick up. The operator arrived and spoke with Mike, who printed out two documents for the
14 operators signature, one for the initial tear down and the other for the phone approval to rebuild
15 the transmission. The operator signed and was given copies. The total amount paid by the
16 operator was \$3,000.00 for the rebuild. Mike wrote on the documents that there was a three year
17 warranty for the repairs. The operator then drove the vehicle and gave custody of it back to a
18 Bureau representative.

19 34. In August 2013, a Bureau lab technician re-inspected the Chevrolet. He found that
20 Respondent had not rebuilt the transmission as required by California law. Respondent had not
21 replaced the speed sensor O-ring seal, the manual shaft seal, the oil pump slide seal, the pump
22 slide seal support and slide seal to wear plate, the back up O-ring seal, the oil filter seal, two
23 plastic sealing rings on the pump stator shaft and three accumulator pistons as required by
24 regulations during a rebuild.

25 35. The Bureau lab technician also found that Respondent charged for and received
26 payment for the following parts, that were not installed: a steels kit, a servo/cover kit and two
27 pistons.

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 36. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in paragraphs 31-35.

5 37. Respondent's Registration is subject to disciplinary action under Code section
6 9884.7, subdivision (a) (1), in that Respondent made or authorized statements which Respondent
7 knew or in the exercise of reasonable care should have known to be untrue or misleading.
8 Respondent charged for a rebuild and did not perform all of the work required to rebuild a
9 transmission as required by CCR section 3361.1. Respondent charged for and received payment
10 to replace a steels kit, a servo/cover kit and two pistons, when in fact these parts were not
11 replaced.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 38. Complainant re-alleges and incorporates by reference the allegations set forth above
15 in paragraphs 31-35.

16 39. Respondent's Registration is subject to disciplinary action under Code section
17 9884.7, subdivision (a) (4), in that Respondent committed acts which constitute fraud.
18 Respondent told the operator the transmission was in need of a rebuild, charged for a rebuild and
19 did not perform all of the work required to rebuild a transmission as required by CCR section
20 3361.1. Respondent charged for and received payment to replace a steels kit, a servo/cover kit
21 and two pistons, when in fact these parts were not replaced.

22 **SEVENTH CAUSE FOR DISCIPLINE**

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

24 40. Complainant re-alleges and incorporates by reference the allegations set forth above
25 in paragraphs 31-35.

26 41. Respondent's Registration is subject to disciplinary action under Code section
27 9884.7, subdivision (a) (6), in that Respondent failed to comply with the following sections of the
28 Code:

1 a) **Section 9884.7, subdivision (a) (7):** Respondent failed to follow accepted trade
2 standards in that he did not rebuild the transmission as invoiced and charged. In addition, he
3 failed to rebuild the transmission to meet the minimum standards required. The vehicle was
4 returned to the operator with a fluid leaking from an improperly tightened cooler line and the
5 vehicle had a loud rattling noise because bolts were left loose.

6 b) **Section 9884.9, subdivision (a):** Respondent exceeded the estimate, without prior
7 authorization, when he charged the Bureau's operator \$3,000.00 after telling her the total, with
8 tax, would be \$2,994.84.

9 **EIGHTH CAUSE FOR DISCIPLINE**

10 **(Violation of Regulations)**

11 42. Complainant re-alleges and incorporates by reference the allegations set forth above
12 in paragraphs 31-35.

13 43. Respondent's Registration is subject to disciplinary action under section 9884.7,
14 subdivision (a) (6), in that Respondent failed to comply with the following sections of the
15 California Code of Regulations, title 16:

16 a) **Section 3353, subdivision (a):** Respondent exceeded the estimate without prior
17 authorization.

18 b) **Section 3353, subdivision (c):** Respondent failed to receive authorization before
19 performing additional work.

20 c) **Section 3356, subdivision (a) (2) (B):** Respondent failed to describe parts in such a
21 manner that the customer can understand what was purchased.

22 d) **Section 3361.1, subdivision (c) (2):** Respondent failed to rebuild the transmission to
23 meet the minimum requirement standards.

24 e) **Section 3371:** Respondent made false and misleading statements which he knew to
25 be false at the time they were made.

26 f) **Section 3373:** Respondent created a false and misleading record by issuing an
27 invoice and charging for a rebuild, when he did not perform all of the work required to rebuild a
28 transmission as required by CCR section 3361.1. In addition, Respondent charged for and

1 received payment to replace a steels kit, a servo/cover kit and two pistons, when in fact these
2 parts were not replaced.

3 **RESPONDENT'S SAN DIEGO FACILITY**

4 **UNDERCOVER OPERATION -- SEPTEMBER 13, 2013**

5 44. On September 13, 2013, a Bureau undercover operator (operator) drove a Bureau
6 documented 1997 Pontiac (Pontiac) to Respondent's facility in San Diego, California, for repairs.
7 The undercover vehicle had been previously documented as only being in need of a repair to the
8 fourth clutch shaft of the transmission. The damaged shaft would not allow the transmission to
9 provide fourth gear. The operator requested a transmission diagnosis from Dave Irwin, (Dave)
10 the Manager of the facility. Later that same day Dave called the operator and told her that the
11 vehicle did not have a fourth gear. Dave told the operator he would have to pull the transmission,
12 disassemble it and inspect it to determine what was wrong. Dave told the operator the cost to
13 reassemble the transmission if the operator decided not to go ahead with the repair would be
14 \$580.00. The operator authorized him to proceed with the diagnosis.

15 45. On September 16, 2013, Dave called the operator and told her that the Pontiac's
16 transmission's clutch drive and shaft were damaged. Dave quoted two prices to rebuild the
17 transmission. One price had a two year warranty, the other price had a one year warranty. The
18 operator verbally authorized Dave to proceed with the repair with the one year warranty for a
19 total price of \$1,839.05, including tax.

20 46. On September 18, 2013, the operator received a call from Dave telling her that the
21 vehicle was ready for pick up. The operator arrived on September 20, 2013 to pick up the
22 vehicle. and spoke with Dave, who had another employee named Chad finalize the transaction.
23 Chad printed out an invoice and had the operator sign it and gave her an unsigned copy. The total
24 amount paid by the operator was \$1,826.35 for the rebuild. The operator then drove the vehicle
25 and gave custody of it back to a Bureau representative.

26 47. In September 2013, a Bureau lab technician re-inspected the Pontiac. He found that
27 Respondent had not repaired the vehicle as required by California law. Respondent had not
28 replaced the side cover gasket, the upper case cover gasket, the vehicle speed sensor seal, the

1 park pawl, the manual shaft, the forward servo cover seals, the oil pump slide seal, the oil pump
2 seal support, the oil pump exhaust screen, the wiring harness seal, the second and third clutch
3 bonded pistons and three fiber lined bands as required by regulations during a rebuild.

4 **NINTH CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 48. Complainant re-alleges and incorporates by reference the allegations set forth above
7 in paragraphs 44-47.

8 49. Respondent's Registration is subject to disciplinary action under Code section
9 9884.7, subdivision (a) (1), in that Respondent made or authorized statements which Respondent
10 knew or in the exercise of reasonable care should have known to be untrue or misleading.
11 Respondent charged for a rebuild and did not perform all of the work required to rebuild a
12 transmission as required by CCR section 3361.1.

13 **TENTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 50. Complainant re-alleges and incorporates by reference the allegations set forth above
16 in paragraphs 44-47.

17 51. Respondent's Registration is subject to disciplinary action under Code section
18 9884.7, subdivision (a) (4), in that Respondent committed acts which constitute fraud.
19 Respondent told the operator the transmission was in need of a rebuild, charged for a rebuild and
20 did not perform all of the work required to rebuild a transmission as required by CCR section
21 3361.1.

22 **ELEVENTH CAUSE FOR DISCIPLINE**

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

24 52. Complainant re-alleges and incorporates by reference the allegations set forth above
25 in paragraphs 44-47.

26 53. Respondent's Registration is subject to disciplinary action under Code section
27 9884.7, subdivision (a) (6), in that Respondent failed to comply with the following sections of the
28 Code:

1 a) **Section 9884.7, subdivision (a) (7):** Respondent failed to follow accepted trade
2 standards in that he did not rebuild the transmission as invoiced and charged. In addition, he
3 failed to rebuild the transmission to meet the minimum standards required.

4 **TWELVETH CAUSE FOR DISCIPLINE**

5 **(Violation of Regulations)**

6 54. Complainant re-alleges and incorporates by reference the allegations set forth above
7 in paragraphs 44-47.

8 55. Respondent's Registration is subject to disciplinary action under section 9884.7,
9 subdivision (a) (6), in that Respondent failed to comply with the following sections of the
10 California Code of Regulations, title 16:

11 a) **Section 3356, subdivision (a) (2) (B):** Respondent failed to describe parts in such a
12 manner that the customer can understand what was purchased.

13 b) **Section 3361.1, subdivision (c) (2):** Respondent failed to rebuild the transmission to
14 meet the minimum requirement standards.

15 c) **Section 3371:** Respondent made false and misleading statements which he knew to
16 be false at the time they were made.

17 d) **Section 3373:** Respondent created a false and misleading record by issuing an
18 invoice and charging for a rebuild, when he did not perform all of the work required to rebuild a
19 transmission as required by CCR section 3361.1.

20 **PRAYER**

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

23 1. Revoking or suspending Automotive Repair Dealer Number ARD 265066, issued to
24 So Cal Automotive, Inc. dba Rapid Transmissions, James Ray Alexander,
25 President/Secretary/Treasurer;

26 2. Revoking or suspending Automotive Repair Dealer Number ARD 265206, issued to
27 So Cal Automotive, Inc. dba Rapid Transmissions, James Ray Alexander,
28 President/Secretary/Treasurer;

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3. Revoking or suspending Automotive Repair Dealer Number ARD 265480, issued to So Cal Automotive, Inc. dba Rapid Transmissions, James Ray Alexander, President/Secretary/Treasurer;

4. Revoking or suspending the registrations for all places of business operated in this state by James Ray Alexander;

5. Ordering James Ray Alexander 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;

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

DATED: August 14, 2014 Patrick Dorais

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

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