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

In the Matter of the Accusation Against:

**T & R MACHINE AND AUTO; THOMAS
LEE GUFFEY
16630 Spruce St., #2
Hesperia, CA 92345
Automotive Repair Dealer Resigtration No.
ARD 265963**

Respondent.

Case No. 77/15-33

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 14, 2015, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 77/15-33 against T & R Machine and Auto; Thomas Lee Guffey (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)
2. On or about July 19, 2011, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration No. ARD 265963 to Respondent. The Automotive Repair Dealer Registration expired on July 31, 2014, and has not been renewed.

1 3. On or about January 22, 2015, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 77/15-33, Statement to Respondent, Notice of Defense,
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
4 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
5 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
6 address of record was and is:

7 16630 Spruce St., #2
8 Hesperia, CA 92345.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. On or about February 11, 2015, the aforementioned documents were returned by the
13 U.S. Postal Service marked "No Forwarding Address." The address on the documents was the
14 same as the address on file with the Bureau. Respondent failed to maintain an updated address
15 with the Bureau and the Bureau has made attempts to serve the Respondent at the address on file.
16 Respondent has not made himself available for service and therefore, has not availed himself of
17 his right to file a notice of defense and appear at hearing.

18 6. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts
21 of the accusation not expressly admitted. Failure to file a notice of defense shall
22 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
23 may nevertheless grant a hearing.

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
26 77/15-33.

27 8. California Government Code section 11520 states, in pertinent part:

28 (a) If the respondent either fails to file a notice of defense or to appear at the
hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

1 a. T & R Machine and Auto charged Torres for an S2 solenoid and a transmission pan
2 gasket that was not replaced as invoiced and paid for .

3 b. Respondent obtained payment from the operator for replacing the S2 solenoid on the
4 Bureau's 2005 Toyota when, in fact, the solenoid had not been replaced, as set forth in paragraph
5 23 below.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Failure to Describe all Service Work and Itemized Price)**

8 3. Respondent is subject to disciplinary action pursuant to Code section 9884.8,
9 subdivision (a)(7), in that Respondent failed to provide Torres with a written invoice describing
10 all service work done and parts supplied that listed service work and parts separately on the
11 invoice, and which also stated separately the subtotal prices for service work and for parts, not
12 including sales tax, and shall state separately the sales tax, if any, applicable to each.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Failure to Provide Written Estimate)**

15 4. Respondent is subject to disciplinary action pursuant to Code section 9884.9,
16 subdivision (a), in that Respondent failed to provide Torres with a written estimate for the work
17 he proposed to perform on the Bureau's 2005 Toyota.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Violations of Regulations)**

20 5. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
21 subdivision (a)(6), in that Respondent failed to comply with the following sections of Title 16,
22 California Code of Regulations:

23 a. Section 3373: Respondent provided Torres with an invoice that contained false
24 information.

25 b. Section 3353, subd. (a): Respondent failed to provide Torres a written estimate for
26 the specific job on the Bureau's 2005 Toyota.

27 c. Section 3356, subd. (a)(1): Respondent failed to show the correct business address
28 on invoice.

1 d. Section 3356, subd. (a)(2)(A): Respondent failed to itemize on his invoice the
2 diagnosis work performed and the price for such.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Automotive Repair Act)**

5 6. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
6 subdivision (a)(6), in that Respondent failed to comply with the Provisions of the Automotive
7 Repair Act. The circumstances are as alleged in the preceding paragraphs 1 through 5 that are
8 incorporated by reference.

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

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

14 a. In an undercover operation with the Bureau's 1997 GMC, conducted on or about
15 January 14, 2013, T & R Machine and Auto provided the undercover operator, Castleman, with
16 an invoice that contained false information on it. The invoice states "Remove and rebuild
17 transmission". This statement is false as the transmission was not rebuilt according to trade
18 standards.

19 **EIGHTH CAUSE FOR DISCIPLINE**

20 **(Fraud)**

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

23 a. T & R Machine and Auto charged Castleman for a transmission rebuild that was not
24 performed as they did not replace the seals that are bonded to metal parts; a portion of the sealing
25 rings and a portion of the internal and external seals as required by Title 16, California Code of
26 Regulations Section 3361.1

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1 The agency in its discretion may vacate the Decision and grant a hearing on a showing of
2 good cause, as defined in the statute.

3 This Decision shall become effective on November 4, 2015

4 It is so ORDERED October 11, 2015

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TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

51811014.DOCX
DOJ Matter ID:LA2014512197

Attachment:
Exhibit A: Accusation
Exhibit B: Affidavit of Bureau Representative Alfred Denno

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 SHAWN P. COOK
Deputy Attorney General
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5 Los Angeles, CA 90013
Telephone: (213) 897-9954
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 77/15-33

12 **T & R MACHINE AND AUTO; THOMAS**
13 **LEE GUFFEY, Owner**
14 **16630 Spruce St., #2**
Hesperia, CA 92345

A C C U S A T I O N

15 **Automotive Repair Dealer Registration No.**
16 **ARD 265963**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about July 19, 2011, the Bureau of Automotive Repair issued Automotive
23 Repair Dealer Registration Number ARD 265963 to T & R Machine and Auto; Thomas Lee
24 Guffey, Owner (Respondent). The Automotive Repair Dealer Registration expired on July 31,
25 2014, and has not been renewed.

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JURISDICTION

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

STATUTORY AND REGULATORY PROVISIONS

Section 118 of the Code states:

4. "(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

"(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.'"

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

6. Section 9884.7 of the Code 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.

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(4) Any other conduct that constitutes fraud.

(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.

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

8. Section 9884.8 of the Code states:

"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. Service work and parts shall be listed separately on the invoice, which 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 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 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 equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer."

9. Section 9884.9 of the Code states:

"(a) 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

1 customer that shall be obtained at some time after it is determined that the estimated price is
2 insufficient and before the work not estimated is done or the parts not estimated are supplied.
3 Written consent or authorization for an increase in the original estimated price may be provided
4 by electronic mail or facsimile transmission from the customer. The Bureau may specify in
5 regulation the procedures to be followed by an automotive repair dealer if an authorization or
6 consent for an increase in the original estimated price is provided by electronic mail or facsimile
7 transmission. If that consent is oral, the dealer shall make a notation on the work order of the
8 date, time, name of person authorizing the additional repairs and telephone number called, if any,
9 together with a specification of the additional parts and labor and the total additional cost, and
10 shall do either of the following:

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

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

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

17 _____

18 (signature or initials)"

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

21 10. Section 9884.11 of the Code states that "[e]ach automotive repair dealer shall
22 maintain any records that are required by regulations adopted to carry out this chapter [the
23 Automotive Repair Act]. Those records shall be open for reasonable inspection by the chief or
24 other law enforcement officials. All of those records shall be maintained for at least three years."

25 11. California Code of Regulations, title 16, section 3353, states:

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

28

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

3 12. California Code of Regulations, title 16, section 3356, states:

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

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

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

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

13 13. California Code of Regulations, title 16, section 3358, states:

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

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

18 "(b) All written estimates pertaining to work performed.

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

22 14. California Code of Regulations, title 16, section 3361.1, states in pertinent part:

23 "The following minimum requirements specifying accepted trade standards for good and
24 workmanlike rebuilding of automatic transmissions are intended to define terms that have caused
25 confusion to the public and unfair competition within the automotive repair industry. The term
26 'automatic transmission' shall also apply to the automatic transmission portion of transaxles for
27 the purposes of this regulations, unless both the automatic transmission portion and the
28 differential portion of the transaxle share a common oil supply, in which case the term 'automatic

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

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

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

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

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

18 "(4) All the following parts have been replaced with new parts: (A) Lined friction plates.
19 (B) Internal and external seals including seals that are bonded to metal parts. (C) All sealing
20 rings. (D) Gaskets. (E) Organic media disposable type filters (if the transmission is so
21 equipped).

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

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

28

1 UNDERCOVER OPERATION #1: 2005 TOYOTA

2 19. Bureau Representative Michelle M. Oberg documented the condition of the
3 automatic transmission on the Bureau's 2005 Toyota. A faulty S2 solenoid was created by
4 disconnecting the electrical ground portion of the circuit, to cause a shifting problem. With an
5 electrical open in the S2 solenoid the transmission would shift from first to fourth gear in the "D"
6 position, skipping second and third gears. Fifth gear and the torque converter lock-up would be
7 functional. The "check engine" light would illuminate and diagnostic trouble code (DTC) P0977
8 would be present. The only required repair to correct the shifting problem in the vehicle's
9 transmission would be to replace the S2 solenoid.

10 20. On October 1, 2013, Bureau Representative Hector Torres telephoned T & R Ma-
11 chine and Auto and spoke to an individual who identified himself as "Robert, the manager".
12 Torres told him that the automatic transmission in his 2005 Toyota seemed as if it was not
13 shifting right. Robert asked if the transmission was slipping after first gear to which Torres said
14 that it took off fine but seemed to lose power, would occasionally rev up high, and that the
15 "Check engine" light would come on. Torres asked Robert if he thought the repair would be
16 expensive. Robert said that it could be electrical like a solenoid type problem, but that he would
17 need to check it out and said they open at 0800 hours, and that Torres should plan on leaving the
18 vehicle.

19 21. On October 2, 2013, at 0942 hours, Torres arrived at T & R Machine and Auto with
20 an odometer reading of 179,613 miles. Torres was met by a man who identified himself as
21 "Kurt". Torres told Kurt that he called the previous day. Kurt said that Torres must have spoken
22 to Robert, the owner. Torres told Kurt that the truck lost power soon after taking off, it shifts
23 hard, vibrates, and that the engine revs high. Kurt asked Torres if it was like the transmission was
24 slipping. Torres told him that he didn't know, just that it did not feel normal. Kurt told Torres
25 that he would need to leave the vehicle so that Robert would be able to check it out. As Kurt and
26 Torres both walked over to the vehicle, Torres asked Kurt if he wanted to drive it. Kurt agreed to
27 the test drive but asked Torres to drive the vehicle.

28

1 22. During the test drive, Torres pointed out the symptoms that he was experiencing,
2 to which Kurt said that he felt the vehicle vibrating. Torres told Kurt that Robert said that there
3 would be no charge to check the vehicle, which Kurt confirmed. Upon returning to T & R
4 Machine and Auto, Kurt handed Torres a clipboard with a document. Kurt requested that
5 Torres fill out the boxes within the document. The boxes were titled name, address, year,
6 make, and model. Torres wrote the assumed name of "Victor Flores", telephone number 909-
7 420-5059, 2005 Toyota, and the date 10/2/13. Torres then returned the clipboard and document
8 to Kurt. Kurt provided Torres with a business card that read "High Desert Engine LLC" and told
9 Torres that Robert would contact him later. Torres then left T & R Machine and Auto. Other than
10 the business card, Torres did not receive any documents during this visit.

11 23. Later on October 2, 2013, at 1621 hours, Torres telephoned T & R Machine and
12 Auto. Torres identified himself as "Victor Flores, the owner of the 2005 Toyota" to the
13 unidentified individual that answered the phone. The individual said that he needed to speak
14 with the mechanic and that he would call Torres back. Torres did not receive a return call from T
15 & R Machine and Auto.

16 24. On October 3, 2013, at 1215 hours, Torres telephoned T & R Machine and Auto and
17 spoke to an individual who later identified himself as Robert. Torres told Robert that he was
18 Victor Flores, the owner of the 2005 Toyota. Robert said that he suspected the Toyota had a
19 solenoid problem and that it was not an internal transmission problem. Robert went on to say that
20 he needed more time because he needed to run more tests and that he would call Torres in
21 approximately one hour. Later, Robert left two voice-mail messages stating the Toyota needed "A
22 & B shift solenoids" and asked Torres to call him back for authorization.

23 25. On October 7, 2013, at 1323 hours, Torres telephoned T & R Machine and Auto and
24 spoke to an individual who identified himself as Robert. Robert said the Toyota had an electrical
25 problem, but that the internal transmission parts and fluid were "okay". Robert said, "the
26 transmission needs shift solenoids A & B replaced". Robert said he could not purchase only one
27 solenoid because they come in pairs and that he tried to find a rebuilt solenoid but one was not
28 available. Robert said that replacing the solenoids would cost \$475.00 for the parts and labor

1 and that the parts would be new. Robert said that once he removes the transmission pan to gain
2 access to the solenoids, he would be able to check for any shorts in the transmissions electrical
3 system. Torres asked Robert if replacing the solenoids would repair the transmission problems.
4 Robert said, "yes". Robert said he would order the parts that day and that the vehicle would be
5 ready on October 8, 2013.

6 26. On October 9, 2013, at 1544 hours, Torres telephoned T & R Machine and Auto and
7 spoke to an individual who identified himself as Robert. Robert said that the Toyota was not
8 ready and he did not realize the Toyota had a different transmission. Robert stated that the
9 solenoids he had ordered were not the correct ones for the transmission, and that he expected the
10 correct parts to arrive on October 10, 2013 and that it would be completed then.

11 27. On October 10, 2013, at 0823 hours, Torres again received a telephone call from an
12 individual who identified himself as Robert. Robert said the Toyota was now ready. He
13 explained that he replaced the transmission solenoids, verified the transmission was operating
14 correctly, and that the "check engine" light was off. Torres asked Robert what the total cost was.
15 Robert said \$505.46. Torres told Robert that he would try to pick up the Toyota that day or the
16 following morning. Robert agreed to this.

17 28. On October 11, 2013, Torres went to T & R Machine and Auto and was met by an
18 individual that identified himself as Robert. Robert said that the Toyota was ready and that it ran
19 good. Robert asked for Torres' address. Torres told him it was 14682 Ann Drive, located in the
20 city of Victorville. Robert began typing into his computer and told Torres that the repairs
21 performed included a 12-month/12,000-mile warranty. Robert said the cost was \$505.46. Torres
22 paid Robert \$505.00 in cash. While Robert was counting the money, he said the solenoid, which
23 was located at the transmission valve body (inside the transmission) actually had an open
24 electrical circuit and was the cause of the "check engine" light and the transmission shifting
25 problem. Robert said the internal parts of the transmission were in excellent condition.

26 29. Torres asked Robert if he could see the parts they had changed. Robert said, "sure".
27 It was at this point when Torres realized he owed Robert \$.46 and brought it to his attention.
28

1 Robert said not to worry about it. Robert showed Torres two copies of the invoice, explained
2 the warranty, and explained that he replaced the fluid, pan gasket and one solenoid.

3 30. Torres signed one copy of the invoice as requested using the assumed name Victor
4 Flores. Robert kept the copy of the invoice Torres had signed and provided Torres the other
5 copy of the invoice dated October 2, 2013. Robert then told Torres he did not have the old
6 solenoid because it was an exchange and that the supplier required the old part. Robert said he
7 replaced the solenoid with a rebuilt part and explained that he has had good luck with rebuilt
8 solenoids. Robert picked up a plastic bag and showed him a cylindrical metallic part bronze in
9 color with two wires exposed at one end with a black plastic extension containing an O-ring.
10 Robert said the solenoid was identical to the one he replaced in the Toyota. Torres then left T &
11 R Machine and Auto at approximately 1020 hours. The vehicle's odometer reading was 179,720
12 miles.

13 31. On October 15, 2013, Bureau Documentation Lab Representative Michelle Oberg
14 began her inspection and documentation of the Bureau's 2005 Toyota. When she had completed
15 her inspection and documentation of the vehicle she determined the following: The minimum
16 repair necessary to correct the defect that was created was to repair or replace the S2 solenoid. T
17 & R Machine and Auto did not remove the valve body, did not replace the S2 solenoid with a
18 rebuilt solenoid or replace the transmission pan gasket. T & R Machine and Auto repaired the
19 existing solenoid with solder and it remained on the transmission. In addition, T & R Machine
20 and Auto's invoice listed the incorrect transmission fluid for this vehicle was used during the
21 repair.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Untrue or Misleading Statements)**

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

27 a. T & R Machine and Auto provided Torres with an invoice that contained false
28 information on it. The invoice states "pull pan and valve body replace s-2 solenoid". This

1 statement is false as the S2 solenoid and pan gasket were not replaced and the valve body was
2 not removed.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Fraud)

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

7 a. T & R Machine and Auto charged Torres for an S2 solenoid and a transmission pan
8 gasket that was not replaced as invoiced and paid for .

9 b. Respondent obtained payment from the operator for replacing the S2 solenoid on the
10 Bureau's 2005 Toyota when, in fact, the solenoid had not been replaced, as set forth in paragraph
11 23 below.

12 **THIRD CAUSE FOR DISCIPLINE**

13 (Failure to Describe all Service Work and Itemized Price)

14 34. Respondent is subject to disciplinary action pursuant to Code section 9884.8,
15 subdivision (a)(7), in that Respondent failed to provide Torres with a written invoice describing
16 all service work done and parts supplied that listed service work and parts separately on the
17 invoice, and which also stated separately the subtotal prices for service work and for parts, not
18 including sales tax, and shall state separately the sales tax, if any, applicable to each.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 (Failure to Provide Written Estimate)

21 35. Respondent is subject to disciplinary action pursuant to Code section 9884.9,
22 subdivision (a), in that Respondent failed to provide Torres with a written estimate for the work
23 he proposed to perform on the Bureau's 2005 Toyota.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 (Violations of Regulations)

26 36. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
27 subdivision (a)(6), in that Respondent failed to comply with the following sections of Title 16,
28 California Code of Regulations:

1 a. Section 3373: Respondent provided Torres with an invoice that contained false
2 information.

3 b. Section 3353, subd. (a): Respondent failed to provide Torres a written estimate for
4 the specific job on the Bureau's 2005 Toyota.

5 c. Section 3356, subd. (a)(1): Respondent failed to show the correct business address
6 on invoice.

7 d. Section 3356, subd. (a)(2)(A): Respondent failed to itemize on his invoice the
8 diagnosis work performed and the price for such.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with Automotive Repair Act)**

11 37. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
12 subdivision (a)(6), in that Respondent failed to comply with the Provisions of the Automotive
13 Repair Act. The circumstances are as alleged in the preceding paragraphs 32 through 36 that are
14 incorporated by reference.

15 **UNDERCOVER OPERATION #2: 1997 GMC**

16 38. Bureau Representative Michelle M. Oberg documented the condition of the
17 automatic transmission on the Bureau's 1997 GMC. Oberg deliberately broke the splined flange
18 off the reaction sun shell. With the reaction sun shell broken in this manner, the vehicle will not
19 engage into reverse gear, second gear, or fourth gear. The only required repair to correct the
20 shifting problem in the vehicle's transmission would be to replace the broken reaction sun shell.

21 39. On January 14, 2013, at approximately 0918, Bureau Representative Randy
22 Castleman arrived at T & R Machine and Auto with an odometer reading of 122,776.
23 Castleman was met by an individual that later identified himself as "Mondo". Castleman
24 informed Mondo that he was having transmission issues, no reverse, and abnormal shifting with
25 the vehicle. Mondo asked Castleman for the year and model of the vehicle. Castleman told him it
26 was a 1997 Chevrolet.

27 40. Mondo stated it would be \$350.00 to perform a teardown and that they would inspect
28 the internal parts and would call Castleman with a price to repair it. Castleman asked for an

1 approximate cost to fix the transmission. Mondo responded by saying it would be \$1,400.00,
2 worst case scenario. Mondo then asked Castleman to fill out a document that had blank spaces
3 asking for the following information: name, address, (cell) phone number, and vehicle
4 information. This document did not describe what was to be performed, and did not contain a
5 dollar amount. Castleman wrote the assumed name "Randy Wayne", P.O. Box 1342, Hesperia,
6 CA, telephone number 909- 420-5059, 1997 Chevy, and the date 1/15/14. Castleman then
7 returned the document to Mondo. Castleman was not asked to sign this or any other document
8 nor was he given any document.

9 41. Mondo told Castleman that a person named "Robert" would call him once the
10 transmission was taken apart with a specific price for repairs. Castleman asked Mondo who
11 Robert was. Mondo stated that Robert was the owner. Castleman then asked Mondo when he
12 would be hearing from Robert. Mondo stated that Castleman should hear from Robert the
13 following day. Castleman gave Mondo the vehicle's ignition keys and left Respondent's facility.

14 42. On January 15, 2014, at approximately 1512 hours, Castleman received a voice mail
15 message from a person identifying himself as "Robert from High Desert Engine". The voice
16 message stated that he (Robert) had the transmission disassembled and that he had a full
17 assessment for Castleman. Robert left a call back phone number of (760) 947-4044.

18 43. On January 15, 2014 at approximately 1533 hours, Castleman called (760) 947-4044
19 and asked to speak to Robert. The individual that answered sounded like the same individual that
20 had left the voice mail message requesting a call back. This individual identified himself as
21 Robert. Robert stated that the transmission was completely torn apart and that a broken sun shell
22 was found to be the problem. Robert told Castleman that in order to repair the transmission, he
23 would have to completely rebuild the transmission, which includes installing a sun shell, a new
24 torque converter along with a couple of bushings for a total cost of \$1,120.00. Furthermore,
25 Robert stated that the rebuild includes an 18 month/18,000 mile warranty. Castleman verbally
26 authorized the repairs and asked when the truck would be ready. After a brief discussion, both
27 agreed the vehicle could be picked up on January 21, 2014 and the phone conversation was
28 ended.

1 44. On January 21, 2014, Castleman arrived at T & R Machine and Auto at
2 approximately 1032 hours and entered the office. A few minutes later, Mondo approached the
3 counter and stated that Robert was not present and that Castleman would have to wait for
4 approximately five (5) minutes for "Kurt" to arrive at the facility to help him. Castleman asked
5 Mondo if he or someone else had diagnosed and/or repaired the transmission. Mondo replied that
6 he was unsure who had worked on the transmission as he walked back into the shop area.
7 Castleman waited at the facility until approximately 1047 when a man arrived wearing a shirt
8 with the nametag "Kurt". Kurt and Castleman briefly spoke and then Kurt walked away toward
9 the shop area of the facility. Kurt came back to the customer area, made a brief phone call, and
10 then began working on a computer near the counter.

11 45. Kurt asked Castleman if he wanted to see the failed sun shell part to which
12 Castleman replied, "yes". Castleman then asked Kurt for any and all parts that had been
13 removed from the transmission. Kurt went back into the shop area and returned with a single
14 part. Kurt stated that it was the broken sun shell and that it was the only part he could find that
15 had been removed from the transmission. Kurt pointed to the center area of the broken sun shell
16 and stated that it was a common failure for GM transmissions. Kurt added that he could not
17 locate the broken gear piece associated with the sun shell.

18 46. Castleman asked Kurt if he knew or could find out if the sun shell failure was a result
19 of abuse as Castleman had recently loaned the vehicle to a relative. Kurt stated that he would get
20 Mondo to answer Castleman's questions. Kurt went back into the shop area and then returned
21 and stated that Mondo had worked on the transmission, but that he was currently busy. Kurt
22 stated that the gear failure was not unusual and that he did not think the failure was
23 caused by abuse.

24 47. Castleman then gave Kurt \$1,180.00 in cash. Kurt asked Castleman to sign two
25 printed invoices, which he did. Kurt then gave Castleman one of the invoice copies and a
26 \$5.00 bill as change. Kurt stated he would pull Castleman's truck around to the front of the
27 building and walked away. Kurt obtained the vehicle and wiped some grease from the fenders
28 and floor mat areas. Castleman then left T & R Machine and Auto.

1 a. T & R Machine and Auto provided Castleman with an invoice that contained false
2 information on it. The invoice states "Remove and rebuild transmission". This statement is false
3 as the transmission was not rebuilt according to trade standards.

4 **EIGHTH CAUSE FOR DISCIPLINE**

5 **(Fraud)**

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

8 a. T & R Machine and Auto charged Castleman for a transmission rebuild that was not
9 performed as they did not replace the seals that are bonded to metal parts; a portion of the sealing
10 rings and a portion of the internal and external seals as required by Title 16, California Code of
11 Regulations Section 3361.1

12 **NINTH CAUSE FOR DISCIPLINE**

13 **(Failure to Describe all Service Work and Itemized Price)**

14 52. Respondent is subject to disciplinary action pursuant to Code section 9884.8,
15 subdivision (a)(7), in that he failed to provide Castleman with a written invoice describing all
16 service work done and parts supplied that listed service work and parts separately on the invoice,
17 and which also stated separately the subtotal prices for service work and for parts, not including
18 sales tax, and shall state separately the sales tax, if any, applicable to each.

19 **TENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Provide Written Estimate)**

21 53. Respondent is subject to disciplinary action pursuant to Code section 9884.9,
22 subdivision (a), in that Respondent failed to provide Castleman with a written estimate for the
23 work he proposed to perform on the Bureau's 1997 GMC.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

25 **(Wilful Departure from or Disregard of Accepted Trade Standards)**

26 54. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
27 subdivision (a)(7), in that he willfully departed from or disregarded accepted trade standards for
28 good and workmanlike repair in a material respect that was prejudicial to another without consent

1 of the owner when he failed to replace the seals that are bonded to metal parts; a portion of the
2 sealing rings and a portion of the internal and external seals as required by Title 16, California
3 Code of Regulations Section 3361.1 on the Bureau's 1997 GMC.

4 **TWELFTH CAUSE FOR DISCIPLINE**

5 **(Violations of Regulations)**

6 55. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
7 subdivision (a)(6), in that Respondent failed to comply with the following sections of Title 16,
8 California Code of Regulations:

9 a. Section 3373: Respondent provided Castleman with an invoice that contained
10 false information.

11 b. Section 3353, subd. (a): Respondent failed to provide Castleman a written estimate
12 for the work on the Bureau's 1997 GMC.

13 c. Section 3356, subd. (a)(1): Respondent failed to show the correct business address
14 on the invoice.

15 d. Section 3356, subd. (a)(2)(A): Respondent failed to itemize on his invoice the
16 diagnosis work performed and the price for such.

17 e. Section 3361.1, subd. (c): Respondent failed to rebuild the automatic transmission
18 on the Bureau's 1997 GMC to meet the minimum requirements standard.

19 **THIRTEENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Automotive Repair Act)**

21 56. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
22 subdivision (a)(6), in that Respondent failed to comply with the Provisions of the Automotive
23 Repair Act. The circumstances are as alleged in the preceding paragraphs 50 through 55 that are
24 incorporated by reference.

25 **PRAYER**

26 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Director of Consumer Affairs issue a decision:
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1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 265963, issued to T & R Machine and Auto; Thomas Lee Guffey, Owner

2. Ordering Thomas Lee Guffey 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;

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

DATED: January 14, 2015 

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

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