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

12 In the Matter of the Accusation Against:

Case No. 77/14-53

13 **FORTUNA HOLDINGS, INC.**
14 **dba MEINEKE CAR CARE CENTER**
15 **VIVIAN C. YUNG, PRESIDENT**
1355 Santa Rosa Avenue
Santa Rosa, CA 95404

ACCUSATION

16 **Mailing Address**
17 145 Plaza Drive #207-323
Vallejo, CA 94591

18 **Automotive Repair Dealer Registration No.**
ARD 268426

19 Respondent.

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21 Complainant alleges:

22 **PARTIES**

- 23 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
24 the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.
25 2. On or about March 21, 2012, the Bureau issued Automotive Repair Dealer
26 Registration Number ARD 268426 to Fortuna Holdings, Inc., dba Meineke Car Care Center,
27 Vivian C. Yung, President (Respondent). The Automotive Repair Dealer Registration was in full
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1 force and effect at all times relevant to the charges brought herein and will expire on March 31,
2 2015, unless renewed.

3 JURISDICTION

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

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

11 5. Section 118 of the Code states:

12 The suspension, expiration, or forfeiture by operation of law of a license issued by
13 a board in the department, or its suspension, forfeiture, or cancellation by order of
14 the board or by order of a court of law, or its surrender without the written consent
15 of the board, shall not, during any period in which it may be renewed, restored,
16 reissued, or reinstated, deprive the board of its authority to institute or continue a
disciplinary 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.

17 STATUTORY PROVISIONS

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

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

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

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

28 (4) Any other conduct which constitutes fraud.

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

5 ...

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

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12 7. Section 9884.9, subdivision (a) of the Code states, in pertinent part: "The automotive
13 repair dealer shall give to the customer a written estimated price for labor and parts necessary for
14 a specific job. . . ."

15 REGULATORY PROVISIONS

16 8. California Code of Regulations, title 16, section 3353 states, in pertinent part:

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

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

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23 9. California Code of Regulations, title 16, section 3371 states, in pertinent part: "No
24 dealer shall publish, utter, or make or cause to be published, uttered, or made any false or
25 misleading statement or advertisement which is known to be false or misleading, or which by the
26 exercise of reasonable care should be known to be false or misleading. . . ."

27 10. California Code of Regulations, title 16, section 3373 states:

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

COSTS

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

FACTUAL BACKGROUND

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12. Between August 13 and 15, 2013, Bureau employees performed an undercover operation at the subject facility using a 2002 Dodge. Prior to initiating the undercover operation, a Bureau employee inspected and documented the Dodge. The only repairs needed for the Dodge to be safely driven were the replacement of the vehicle's front brake pads and Oxygen Sensor Downstream Relay.

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13. On or about August 13, 2013, a Bureau undercover operator drove the Dodge to the subject facility and spoke with an employee by the name of Lance. The operator requested that the facility determine why the vehicle's check engine light was on and check the overall condition of the vehicle. Lance generated some paperwork and instructed the operator to sign it. The operator signed the paperwork but did not receive a copy of what he had signed. Lance did not inform the operator of the cost of the inspection. Lance told the operator that he would call the operator once the facility had inspected the vehicle.

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14. Later in the day on August 13, 2013, the operator received a voice message from Lance. The operator then called the subject facility and spoke with Lance. Lance informed the operator that the front brake pads, brake rotors, and rear shocks needed to be replaced. Lance also informed the operator that one of the vehicle's oxygen sensors may need to be replaced. The operator authorized the repairs.

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15. On or about August 15, 2013, the operator returned to the facility to pick up the Dodge. The operator paid Lance \$1,376.20 for the repairs and received invoice [REDACTED].

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1 16. A Bureau representative later inspected the Dodge and invoice [REDACTED] and
2 determined the following:

3 a. The facility replaced the vehicle's front brake rotors. The vehicle's front brake
4 rotors, however, were in good working condition and did not need to be replaced.

5 b. The facility replaced the vehicle's bank one oxygen sensor two. That sensor,
6 however, was in good working condition and did not need to be replaced.

7 c. Invoice [REDACTED] lists a charge for an "accessory Keep Alive relay." The Dodge does
8 not have an Accessory Keep Alive Relay.

9 d. The facility replaced the vehicle's front and rear shocks. The Dodge's front and rear
10 shocks, however, were in good working condition and did not need to be replaced.

11 17. Bureau personnel determined that Respondent's facility charged the operator
12 \$1,140.46 in unnecessary parts and labor. The costs paid for these unnecessary parts and labor
13 are shown in Table #1 below.

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TABLE #1

Description	Parts Cost	Service/installation cost
Brake rotors (2) (\$119.95 each)	\$239.90	none
Oxygen sensor (1)	\$148.38	\$94.40
Front shocks (2) (\$98.62 each)	\$197.24	\$106.20
Rear shocks (2) (\$95.96 each)	\$191.92	\$94.40
Tax	\$68.02	
Total Parts	\$777.44	
Total Labor	\$295.00	
Total Fraud	\$1,140.46	

FIRST CAUSE FOR DISCIPLINE

(Untrue and/or Misleading Statements)

18. Respondent's registration is subject to discipline under section 9884.7, subdivisions (a)(1) and (a)(6) of the Code, and California Code of Regulations, title 16, sections 3371 and 3373, in that Respondent made or authorized statements that it knew or in the exercise of reasonable care should have known to be untrue and/or misleading, as follows:

a. Respondent's employee told the Bureau's operator that the Dodge needed certain parts and/or repairs that were not necessary.

b. Respondent's employee listed on the invoice for the repairs to the Dodge certain parts and repairs that were not necessary.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Provide Customer with Written Estimate)**

3 19. Respondent's registration is subject to discipline under section 9884.7, subdivisions
4 (a)(3) and (a)(6), and/or section 9884.9, subdivision (a) of the Code, and California Code of
5 Regulations, title 16, section 3353, subdivision (a), in that Respondent failed to provide the
6 Bureau's operator with a written estimated price for parts and labor for the work to be done on the
7 Dodge.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 20. Respondent's registration is subject to discipline under section 9884.7, subdivisions
11 (a)(4) and (a)(6) of the Code in that Respondent committed acts constituting fraud by accepting
12 payment for the installation of two (2) front brake rotors, one (1) bank one oxygen sensor two,
13 two (2) front shocks, and two (2) rear shocks, even though those parts were not in need of
14 replacement.

15 **OTHER MATTERS**

16 21. Pursuant to section 9884.7, subdivision (c) of the Code, the Director may suspend,
17 revoke, or place on probation the registrations for all places of business operated in this state by
18 Fortuna Holdings, Inc., dba Meineke Car Care Center, Vivian C. Yung, President, upon a finding
19 that it has, or is, engaged in a course of repeated and willful violations of the laws and regulations
20 pertaining to an automotive repair dealer.

21 **PRAYER**

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

24 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
25 268426 issued to Fortuna Holdings, Inc., dba Meineke Car Care Center, Vivian C. Yung,
26 President (Respondent);

27 2. Revoking, suspending, or placing on probation any other automotive repair dealer
28 registration issued to Respondent;

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3. Ordering Respondent 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;

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

DATED: April 7, 2014

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

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