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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. **77/14-52**

13 **MOTHER LODE MOTORS INC.,**
14 **dba MOTHER LODE MOTORS**
15 **NATHAN H. FLAKE, PRESIDENT**
16 **STANLEY M. FLAKE, SECRETARY/
TREASURER**
17 13411 Mono Way
18 Sonora, California 95370-5338

A C C U S A T I O N

19 **Automotive Repair Dealer Registration**
20 **No. ARD 77998**

Respondent.

21 Patrick Dorais ("Complainant") alleges:

22 **PARTIES**

23 1. Complainant brings this Accusation solely in his official capacity as the Chief of the
24 Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

25 2. In or around 1980, the Director of Consumer Affairs ("Director") issued Automotive
26 Repair Dealer Registration Number ARD 77998 to Mother Lode Motors Inc. ("Respondent"),
27 doing business as Mother Lode Motors, with Nathan H. Flake as president and Stanley M. Flake
as secretary/treasurer. The Automotive Repair Dealer Registration was in full force and effect

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1 at all times relevant to the charges brought herein and will expire on April 30, 2015, unless
2 renewed.

3 **STATUTORY AND REGULATORY PROVISIONS**

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

8 4. Code section 9884.7 states, in pertinent part:

9 (a) The director, where the automotive repair dealer cannot show there was a
10 bona fide error, may deny, suspend, revoke, or place on probation the registration of
11 an automotive repair dealer for any of the following acts or omissions related to the
12 conduct of the business of the automotive repair dealer, which are done by the
13 automotive repair dealer or any automotive technician, employee, partner, officer, or
14 member of the automotive repair dealer.

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

15 ...

16 (5) Conduct constituting gross negligence.

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

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

21 ...

22 (b) Except as provided for in subdivision (c), if an automotive repair dealer
23 operates more than one place of business in this state, the director pursuant to
24 subdivision (a) shall only suspend, revoke, or place on probation the registration of
25 the specific place of business which has violated any of the provisions of this
26 chapter. This violation, or action by the director, shall not affect in any manner the
27 right of the automotive repair dealer to operate his or her other places of business.

28 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
place on probation the registration for all places of business operated in this state by
an automotive repair dealer upon a finding that the automotive repair dealer has, or
is, engaged in a course of repeated and willful violations of this chapter, or
regulations adopted pursuant to it.

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1 5. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
2 "commission," "committee," "department," "division," "examining committee," "program," and
3 "agency." "License" includes certificate, registration or other means to engage in a business or
4 profession regulated by the Code.

5 6. Code section 9884.8 states:

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

18 7. Code section 9884.9, subdivision (a), states:

19 The automotive repair dealer shall give to the customer a written estimated
20 price for labor and parts necessary for a specific job. No work shall be done and no
21 charges shall accrue before authorization to proceed is obtained from the customer.
22 No charge shall be made for work done or parts supplied in excess of the estimated
23 price without the oral or written consent of the customer that shall be obtained at
24 some time after it is determined that the estimated price is insufficient and before the
25 work not estimated is done or the parts not estimated are supplied. Written consent
26 or authorization for an increase in the original estimated price may be provided by
27 electronic mail or facsimile transmission from the customer. The bureau may specify
28 in regulation the procedures to be followed by an automotive repair dealer if an
authorization or consent for an increase in the original estimated price is provided by
electronic mail or facsimile transmission. If that consent is oral, the dealer shall
make a notation on the work order of the date, time, name of person authorizing the
additional repairs, and telephone number called, if any, together with a specification
of the additional parts and labor and the total additional cost, and shall do either of
the following:

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

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

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

(signature or initials)"

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

3 8. California Code of Regulations, title 16 ("Regulation"), section 3366, subdivision (a)
4 states:

5 Except as provided in subsection (b) of this section, any automotive repair
6 dealer that advertises or performs, directly or through a sublet contractor, automotive
7 air conditioning work and uses the words service, inspection, diagnosis, top off,
8 performance check or any expression or term of like meaning in any form of
advertising or on a written estimate or invoice shall include and perform all of the
following procedures as part of that air conditioning work:

- 9 (1) Exposed hoses, tubing and connections are examined for damage or leaks;
- 10 (2) The compressor and clutch, when accessible, are examined for damage,
missing bolts, missing hardware, broken housing and leaks;
- 11 (3) The compressor is rotated to determine if it is seized or locked up;
- 12 (4) Service ports are examined for missing caps, damaged threads and
conformance with labeling;
- 13 (5) The condenser coil is examined for damage, restrictions or leaks;
- 14 (6) The expansion device, if accessible, is examined for physical damage or
15 leaks;
- 16 (7) The accumulator receiver dryer and in-line filter have been checked for
17 damage, missing or loose hardware or leaks;
- 18 (8) The drive belt system has been checked for damaged or missing pulleys or
19 tensioners and for proper belt routing, tension, alignment, excessive wear or
20 cracking;
- 21 (9) The fan clutch has been examined for leakage, bearing wear and proper
operation;
- 22 (10) The cooling fan has been checked for bent or missing blades;
- 23 (11) Accessible electrical connections have been examined for loose, burnt,
24 broken or corroded parts;
- 25 (12) The refrigerant in use has been identified and checked for contamination;
- 26 (13) The system has been checked for leakage at a minimum of 50-PSI
27 system pressure;
- 28 (14) The compressor clutch, blower motor and air control doors have been
checked for proper operation;
- (15) High and low side system operating pressures, as applicable, have been
measured and recorded on the final invoice; and,

1 (16) The center air distribution outlet temperature has been measured and
2 recorded on the final invoice.

3 9. Regulation, section 3371, states, in pertinent part:

4 No dealer shall publish, utter, or make or cause to be published, uttered, or
5 made any false or misleading statement or advertisement which is known to be false
6 or misleading, or which by the exercise of reasonable care should be known to be
7 false or misleading. . . .

8 **COST RECOVERY**

9 10. Code section 125.3 provides, in pertinent part, that a Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case.

13 **UNDERCOVER OPERATION #1**

14 11. On or about August 14, 2013, at approximately 1030 hours, a Bureau undercover
15 operator using an alias (the "operator") took a Bureau-documented 2006 Chevrolet to
16 Respondent's facility and asked "Jeff," Respondent's employee, for the \$49 A/C (air
17 conditioning) service advertised by Respondent. Jeff prepared an estimate to service the air
18 conditioning system for \$110, which included Freon.

19 12. A few hours later that same day, Jeff told the operator that the A/C was
20 malfunctioning and needed to be diagnosed. Jeff increased the estimate to \$213, which the
21 operator verbally authorized. Approximately one hour later, Jeff told the operator on the
22 telephone that the compressor showed an internal and catastrophic failure. Jeff recommended a
23 new compressor, dryer, expansion valve, and flushing the A/C system, for a total cost of around
24 \$1,050, which the operator verbally authorized.

25 13. On or about August 15, 2013, Jeff informed the operator that the vehicle was being
26 torn down and total repairs would not cost more than \$1,561.05.

27 14. On or about August 16, 2013, the operator retrieved the vehicle and paid Respondent
28 \$1,525.55, the total amount of Respondent's final invoice, [REDACTED].

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (Failure to Comply with the Automotive Repair Act)

3 18. Respondent's registration is subject to discipline under Code section 9884.7,
4 subdivision (a)(6), in that, as regards the Bureau's 2006 Chevrolet, Respondent failed to
5 materially comply with that Code, as follows:

6 a. **Section 9884.8:** Respondent failed to describe on Invoice [REDACTED] all work done.

7 b. **Code Section 9884.9, Subdivision (a):**

8 i. Respondent failed to obtain the operator's authorization to replace the A/C
9 compressor relay.

10 ii. Respondent increased the estimate from that previously authorized by the
11 operator without the operator's consent.

12 iii. Respondent failed to document on final invoice [REDACTED] the operator's
13 authorization to perform diagnostics on the A/C system.

14 **UNDERCOVER OPERATION #2**

15 19. On or about September 12, 2013, at approximately 1045 hours, a Bureau undercover
16 operator using an alias (the "operator") took a Bureau-documented 1997 Chevrolet to
17 Respondent's facility and asked Jeff for the \$49 A/C service that Respondent advertised. Jeff
18 prepared an estimate to service the A/C system for \$110, which included Freon. A few hours
19 later, Jeff told the operator on the telephone that the compressor would not come on and that a
20 diagnostic procedure would increase the estimate to \$152, which the operator verbally approved.
21 Jeff later told the operator that a broken wire was found and repaired. Invoice [REDACTED], which
22 included \$103 for the diagnostic procedure, totaled \$152, which the operator paid.

23 20. On or about September 18, 2013, the Bureau inspected the 1997 Chevrolet using
24 invoice [REDACTED] provided by Respondent for comparison. The Bureau determined that
25 Respondent improperly repaired the broken ground wire by bypassing the in-line diode circuit in
26 the connector. The A/C diode circuit controls voltage spikes generated by the A/C electrical
27 system and is an essential component.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (False Advertising)

3 21. Respondent's registration is subject to discipline under Code section 9884.7,
4 subdivision (a)(6), as regards the Bureau's 1997 Chevrolet, in that Respondent failed to comply
5 with Regulation section 3371 by publishing, uttering, or making, or causing to be published,
6 uttered, or made false or misleading statements or advertisements which are known to be false or
7 misleading, or which by the exercise of reasonable care should be known to be false or
8 misleading. Specifically, Respondent advertised a \$49 A/C Service, but charged the operator to
9 diagnose a failure in the A/C system caused by a broken ground wire at the electrical connector.
10 An inspection of electrical connections is required when performing an A/C service, as set forth
11 in paragraph 22, subparagraph (a), below.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 (Departure from Trade Standards)

14 22. Respondent's registration is subject to discipline under Code section 9884.7,
15 subdivision (a)(7), as regards the Bureau's 1997 Chevrolet, in that Respondent willfully departed
16 from or disregarded accepted trade standards for good and workmanlike repair without the
17 consent of the owner or the owner's duly authorized representative, as follows:

18 a. Respondent failed to include in its \$49 A/C service the inspection of electrical
19 connections for loose, burnt, broken or corroded parts, as required by Regulation, section 3366,
20 subdivision (a)(11).

21 b. Respondent failed to record on invoice [REDACTED] the high and low side system
22 operating pressures as required by Regulation, section 3366, subdivision (a)(15).

23 c. Respondent failed to record on invoice [REDACTED] the center air distribution outlet
24 temperature as required by Regulation, section 3366, subdivision (a)(16).

25 **SIXTH CAUSE FOR DISCIPLINE**

26 (Conduct Constituting Gross Negligence)

27 23. Respondent's registration is subject to discipline under Code section 9884.7,
28 subdivision (a)(5), as regards the Bureau's 1997 Chevrolet, in that Respondent committed an act

1 constituting gross negligence when Respondent's employee removed and then failed to properly
2 connect the A/C diode circuit in the connector.

3 **UNDERCOVER OPERATION #3**

4 24. On or about September 17, 2013, at approximately 1020 hours, a Bureau undercover
5 operator using an alias (the "operator") took a Bureau-documented 2000 Toyota to Respondent's
6 facility and asked Jeff for the \$49 A/C service that Respondent advertised. Jeff prepared an
7 estimate to service the A/C system for \$110, and told the operator that the total could change
8 depending on the amount of Freon used. A few hours later, Jeff telephoned the operator and
9 stated that the Freon was filled because it was low and the A/C condenser fan and A/C
10 compressor were not coming on. The operator verbally approved a revised estimate of \$157 for a
11 diagnostic procedure.

12 25. A few hours later that same day, Jeff told the operator that the pressure switch on the
13 dryer needed to be replaced, and increased the estimate to \$341, which the operator authorized.

14 26. On or about September 19, 2013, the operator retrieved the 2000 Toyota. He
15 received invoice [REDACTED] in the amount of \$325.86 for the repairs, which included a charge of
16 \$103 for a diagnostic service. The operator paid Respondent \$325.86.

17 27. On or about October 1, 2013, the Bureau inspected the 2000 Toyota using invoice
18 [REDACTED] provided by Respondent for comparison. The Bureau determined that replacement of the
19 A/C pressure switch and charging the A/C system were unnecessary. Repair of the wiring
20 harness connector at the pressure switch was the only necessary repair.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 (Untrue or Misleading Statements)

23 28. Respondent is subject to discipline under Code section 9884.7, subdivision (a)(1), in
24 that, as regards the Bureau's 2000 Toyota, Respondent made or allowed statements on its behalf
25 which it knew or which by exercise of reasonable care should have known to be untrue or
26 misleading. Specifically, Respondent and/or Respondent's employees falsely represented to a
27 Bureau operator that the pressure switch on the dryer was shorted out and the A/C system needed

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1 to be recharged, when neither was true. Further, Respondent represented on invoice [REDACTED] that
2 such repairs were necessary.

3 **EIGHTH CAUSE FOR DISCIPLINE**

4 (False Advertising)

5 29. Respondent's registration is subject to discipline under Code section 9884.7,
6 subdivision (a)(6), as regards the Bureau's 2000 Toyota, in that Respondent failed to comply with
7 Regulation, section 3371, by publishing, uttering, or making, or causing to be published, uttered,
8 or made false or misleading statements or advertisements which are known to be false or
9 misleading, or which by the exercise of reasonable care should be known to be false or
10 misleading. Specifically, Respondent advertised a \$49 A/C Service, but charged the operator to
11 diagnose a failure in the A/C system caused by faulty wiring of the harness connector at the
12 pressure switch. An inspection of electrical connections is required when performing an A/C
13 service, as set forth in paragraph 30, subparagraph (a), below.

14 **NINTH CAUSE FOR DISCIPLINE**

15 (Departure from Trade Standards)

16 30. Respondent's registration is subject to discipline under Code section 9884.7,
17 subdivision (a)(7), as regards the Bureau's 2000 Toyota, in that Respondent willfully departed
18 from or disregarded accepted trade standards for good and workmanlike repair without the
19 consent of the owner or the owner's duly authorized representative, as follows:

20 a. Respondent failed to include in its \$49 A/C service the inspection of electrical
21 connections for loose, burnt, broken or corroded parts, as required by Regulation, section 3366,
22 subdivision (a)(11).

23 b. Respondent failed to record on invoice [REDACTED] the high and low side system
24 operating pressures as required by Regulation, section 3366, subdivision (a)(15).

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1 **TENTH CAUSE FOR DISCIPLINE**

2 (Failure to Comply with the Automotive Repair Act)

3 31. Respondent's registration is subject to discipline under Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to materially comply with Code Section 9884.8 by
5 failing to describe all work performed on the Bureau's 2000 Toyota.

6 **OTHER MATTERS**

7 32. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
8 or place on probation the registration for all places of business operated in this state by
9 Respondent Mother Lode Motors Inc., dba Mother Lode Motors, upon a finding that Respondent
10 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
11 pertaining to an automotive repair dealer.

12 **PRAYER**

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

- 15 1. Revoking or suspending Automotive Repair Dealer Registration Number
16 ARD 77998, issued to Mother Lode Motors Inc., dba Mother Lode Motors;
- 17 2. Revoking or suspending any other automotive repair dealer registration issued to
18 Mother Lode Motors Inc., dba Mother Lode Motors;
- 19 3. Ordering Mother Lode Motors Inc., dba Mother Lode Motors, to pay the Director of
20 Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant
21 to Business and Professions Code section 125.3; and,
- 22 4. Taking such other and further action as deemed necessary and proper.

23
24 DATED: March 20, 2014


25 PATRICK DORAIS
26 Chief
27 Bureau of Automotive Repair
28 Department of Consumer Affairs
State of California
Complainant

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