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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. 77/11-08

13 **AAMCO TRANSMISSIONS**
14 **HUMBERTO RODRIGUEZ, OWNER**
15 **7012 Van Nuys Blvd.**
16 **Van Nuys, CA 91405-3001**
17 **Automotive Repair Dealer Reg. No. ARD 89534**

A C C U S A T I O N

Respondent.

18 Complainant alleges:

PARTIES

19 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
20 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

21 2. On or about August 10, 1981, the Director of Consumer Affairs ("Director") issued
22 Automotive Repair Dealer Registration Number ARD 89534 to Humberto Rodriguez
23 ("Respondent"), owner of Aamco Transmissions. Respondent's automotive repair dealer
24 registration was in full force and effect at all times relevant to the charges brought herein and will
25 expire on August 31, 2012, unless renewed.

JURISDICTION

26
27 3. Business and Professions Code ("Code") section 9884.7 provides that the Director
28 may revoke an automotive repair dealer registration.

1 7. Code section 9884.9, subdivision (a), states, in pertinent part:

2 The automotive repair dealer shall give to the customer a written
3 estimated price for labor and parts necessary for a specific job. No work shall be done
4 and no charges shall accrue before authorization to proceed is obtained from the
5 customer. No charge shall be made for work done or parts supplied in excess of the
6 estimated price without the oral or written consent of the customer that shall be
7 obtained at some time after it is determined that the estimated price is insufficient and
8 before the work not estimated is done or the parts not estimated are supplied. Written
9 consent or authorization for an increase in the original estimated price may be
10 provided by electronic mail or facsimile transmission from the customer. The bureau
11 may specify in regulation the procedures to be followed by an automotive repair
12 dealer when an authorization or consent for an increase in the original estimated price
13 is provided by electronic mail or facsimile transmission. If that consent is oral, the
14 dealer shall make a notation on the work order of the date, time, name of person
15 authorizing the additional repairs and telephone number called, if any, together with a
16 specification of the additional parts and labor . . .

10 8. Code section 22, subdivision (a), states:

11 "Board" as used in any provision of this Code, refers to the board in
12 which the administration of the provision is vested, and unless otherwise expressly
13 provided, shall include "bureau," "commission," "committee," "department,"
14 "division," "examining committee," "program," and "agency."

14 9. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes
15 "registration" and "certificate."

16 **(Regulatory Provisions)**

17 10. California Code of Regulations, title 16, section ("Regulation") 3303, subdivision (j),
18 states:

19 "Authorization" means consent. Authorization shall consist of the
20 customer's signature on the work order, taken before repair work begins.
21 Authorization shall be valid without the customer's signature only when oral or
22 electronic authorization is documented in accordance with applicable sections of
23 these regulations.

22 11. Regulation 3356 states, in pertinent part:

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

25

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

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

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

5

6 (d) The automotive repair dealer shall give the customer a legible copy of
7 the invoice and shall retain a legible copy as part of the automotive repair dealer's
8 records pursuant to Section 9884.11 of the Business and Professions Code and
9 Section 3358 of this article.

10 12. Regulation 3361.1 states, in pertinent part:

11 The following minimum requirements specifying accepted trade
12 standards for good and workmanlike rebuilding of automatic transmissions are
13 intended to define terms that have caused confusion to the public and unfair
14 competition within the automotive repair industry. The term "automatic transmission"
15 shall also apply to the automatic transmission portion of transaxles for the purposes of
16 this regulation, unless both the automatic transmission portion and the differential
17 portion of the transaxle share a common oil supply, in which case the term "automatic
18 transmission" shall apply to both portions of the transaxle. These minimum
19 requirements shall not be used to promote the sale of "rebuilt" automatic
20 transmissions when a less extensive and/or less costly repair is desired by the
21 customer . . . All automotive repair dealers engaged in the repair, sale, or installation
22 of automatic transmissions in vehicles covered under the Act shall be subject to the
23 following minimum requirements:

24 (a) Before an automatic transmission is removed from a motor vehicle for
25 purposes of repair or rebuilding, it shall be inspected. Such inspection shall
26 determine whether or not the replacement or adjustment of any external part or parts
27 will correct the specific malfunction of the automatic transmission. In the case of an
28 electronically controlled automatic transmission, this inspection shall include a
29 diagnostic check, including the retrieval of any diagnostic trouble codes, of the
30 electronic control module that controls the operation of the transmission. If minor
31 service and/or replacement or adjustment of any external part or parts and/or of
32 companion units can reasonably be expected to correct the specific malfunction of the
33 automatic transmission, then prior to removal of the automatic transmission from the
34 vehicle, the customer shall be informed of that fact as required by Section 3353 of
35 these regulations . . .

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

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

45 (A) Lined friction plates

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

2 (C) All sealing rings

3

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

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

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

13 (d) The torque converter is considered to be part of the automatic
14 transmission and shall be examined, cleaned, and made serviceable before the rebuilt,
15 remanufactured or overhauled transmission is installed. If the torque converter cannot
16 be restored to a serviceable condition, then the customer shall be so informed. With
17 the customer's authorization, the converter shall be replaced with a new, rebuilt,
18 remanufactured, reconditioned, overhauled, or unimpaired used torque converter. A
19 torque converter shall not be represented as rebuilt, remanufactured, reconditioned, or
20 overhauled unless the torque converter shell has been opened, all components of the
21 overrunning clutch assembly have been inspected and replaced as required, all
22 friction materials have been replaced as required, all rotating parts have been
23 examined and replaced as required, the shell has been resealed, and the unit has been
24 pressure tested.

25 13. Regulation 3373 states:

26 No automotive repair dealer or individual in charge shall, in filling out an
27 estimate, invoice, or work order, or record required to be maintained by section
28 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.

29 **COST RECOVERY**

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

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1 within manufacturer's specifications, and were not in need of replacement at the time the vehicle
2 was taken to Respondent's facility.

3 c. Respondent represented on the invoice that the transmission on the Bureau's 1992
4 Chevrolet pickup had been rebuilt. In fact, the transmission had not been rebuilt as defined in
5 Regulation 3361.1, subdivision (c), as set forth in paragraph 23 below.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 22. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
9 subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:
10 Respondent's service manager, Delgado, made false or misleading statements to the operator
11 regarding the Bureau's 1992 Chevrolet pickup, as set forth in subparagraphs 21 (a) and (b) above,
12 in order to induce the operator to authorize unnecessary repairs on the vehicle, then sold the
13 operator unnecessary repairs, including the removal and rebuilding of the transmission and the
14 replacement of the torque converter, 1-2 shift solenoid, pressure control solenoid, torque
15 converter clutch PWM solenoid, 3-2 shift solenoid, wiring harness assembly, torque converter
16 clutch (lock up) solenoid, and pressure switch assembly.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Departure from Trade Standards)**

19 23. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
20 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
21 standards for good and workmanlike repair without the consent of the owner or the owner's duly
22 authorized representative, in the following material respects:

23 a. Respondent failed to replace the manual shaft metal clad seal, forward accumulator
24 piston rubber square cut seal, four turbine shaft solid Teflon sealing rings, both stator shaft solid
25 Teflon sealing rings, and the oil pump bushing in the transmission of the Bureau's 1992
26 Chevrolet pickup, as required by Regulation 3361.1.

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UNDERCOVER OPERATION #2: 2001 FORD TRUCK

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2 26. On February 17, 2010, an undercover operator with the Bureau ("operator") took the
3 Bureau's 2001 Ford truck to Respondent's facility. A defective electronic pressure control
4 ("EPC") solenoid was installed on the Bureau-documented vehicle. The operator asked Delgado
5 to inspect the vehicle because a dash light (overdrive light) was on and the vehicle seemed to
6 have a loss of power. Delgado told the operator that the facility would not be able to perform the
7 inspection until the following morning. The operator signed a work order authorizing an external
8 diagnosis of the vehicle, but was not given a copy of the work order or a written estimate.

9 27. On February 18, 2010, Delgado called the operator and told him that the vehicle was
10 shifting hard, that they found an error code stored in the vehicle's computer, which indicated that
11 the vehicle had excessive contamination of a pressure control, and that the clutches were
12 contaminated with metal shavings. Delgado also told the operator that they needed to
13 disassemble the transmission in order to inspect it further, which would tell them exactly what
14 was wrong with vehicle. Delgado gave the operator a verbal estimate of \$450 for the work and
15 stated that they would apply the \$450 toward the repairs. The operator stated that he would call
16 Delgado back with his decision. At approximately 1558 hours, the operator called the facility and
17 told Delgado to proceed with the internal inspection of the vehicle.

18 28. On February 22, 2010, at approximately 1450 hours, Delgado called the operator and
19 told him that the diagnosis had been completed, that his mechanic found "shavings" in the
20 transmission during the inspection, and that the transmission needed to be rebuilt. The operator
21 asked Delgado what else was found during the inspection. Delgado stated that he would call the
22 operator back after speaking with the transmission "builder".

23 29. At approximately 1555 hours, that same day, Delgado called the operator and told
24 him that the vehicle needed a torque converter and electrical harness. Delgado recommended a
25 complete transmission rebuild at a cost of \$2,534. The operator told Delgado that the estimated
26 cost was more than he was expecting to pay and asked about the torque converter. Delgado stated
27 that the torque converter was connected to the transmission and that the contaminated
28 transmission fluid ran from the transmission to the torque converter. Delgado told the operator

1 that in order to repair the transmission, certain parts would need to be replaced, including the lock
2 up solenoid, ATC solenoid, rebuild kit, including gaskets, rings, and seals, fluid, and filter.
3 Delgado stated that it would cost \$1,817 to repair the transmission. Later, Delgado faxed the
4 operator two written estimates, an estimate for the repair of the transmission at a cost of
5 \$1,817.98 and an estimate for a full rebuild at a cost of \$2,534.30.

6 30. On February 23, 2010, the operator called the facility and told Delgado that he
7 wanted the transmission repaired instead of rebuilt.

8 31. On March 4, 2010, the operator returned to the facility to retrieve the vehicle, paid
9 \$1,817.90 for the repairs, and received a copy of a final invoice.

10 32. On March 9 and 10, 2010, the Bureau inspected the vehicle using the invoice for
11 comparison. The Bureau found that the facility had replaced the defective EPC solenoid, but had
12 performed unnecessary repairs on the vehicle. The estimated value of the repairs that were not
13 necessary on the vehicle is approximately \$1,457.98.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

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

19 a. Respondent's service manager, Delgado, represented to the operator that the facility
20 found an error code stored in the computer of the Bureau's 2001 Ford truck, which indicated that
21 the vehicle had excessive contamination of a pressure control, that the clutches were
22 contaminated with metal shavings, and that they needed to disassemble the transmission in order
23 to inspect it further. In fact, the only defect in the vehicle was the faulty EPC solenoid which
24 could be diagnosed and replaced without removing the transmission from the vehicle.

25 b. Respondent's service manager, Delgado, represented to the operator that there were
26 shavings in the transmission of the Bureau's 2001 Ford truck and that the transmission needed to
27 be rebuilt. In fact, all of the components in the transmission (with the exception of the EPC
28 solenoid) were in good, serviceable condition, were within manufacturer's specifications, and

1 were not in need of replacement, and the transmission was not in need of removal or rebuilding at
2 the time the vehicle was taken to Respondent's facility.

3 c. Respondent's service manager, Delgado, represented to the operator that the Bureau's
4 2001 Ford truck needed a torque converter and that the contaminated transmission fluid ran from
5 the transmission to the torque converter. In fact, the torque converter was within manufacturer's
6 specifications, was in good, serviceable condition, and was not in need of repair or replacement at
7 the time the vehicle was taken to Respondent's facility.

8 d. Respondent represented on the invoice that a new overhaul kit had been installed in
9 the Bureau's 2001 Ford truck. In fact, a complete overhaul kit had not been installed in that none
10 of the clutch friction (fiber) plates had been replaced on the vehicle.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Provide Customer with Copy of Signed Document)**

13 34. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
14 subdivision (a)(3), in that Respondent's service manager, Delgado, failed to provide the operator
15 with a copy of the work order as soon as the operator signed the documents.

16 **EIGHTH CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 35. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
19 subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:

20 a. Respondent's service manager, Delgado, made false or misleading statements to the
21 operator regarding the Bureau's 2001 Ford truck, as set forth in subparagraphs 33 (a) through (c)
22 above, in order to induce the operator to authorize unnecessary repairs on the vehicle, then sold
23 the operator unnecessary repairs, the removal and repair of the transmission, including the
24 replacement of the internal seals and gaskets, torque converter, torque converter lock up and shift
25 solenoids, front pump bushing, and lead frame.

26 b. Respondent obtained payment from the operator for installing a new overhaul kit in
27 the Bureau's 2001 Ford truck. In fact, a complete overhaul kit had not been installed in that none
28 of the clutch friction (fiber) plates had been replaced on the vehicle.

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 36. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
5 standards for good and workmanlike repair without the consent of the owner or the owner's duly
6 authorized representative in a material respect, as follows: Respondent failed to inform the
7 operator that minor service and/or replacement or adjustment of an external part might reasonably
8 be expected to correct the specific malfunction of the transmission on the Bureau's 2001 Ford
9 truck.

10 **TENTH CAUSE FOR DISCIPLINE**

11 **(Violations of the Code)**

12 37. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
13 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
14 that Code in a material respect, as follows: Respondent's service manager, Delgado, failed to
15 provide the operator with a written estimate for parts and/or labor necessary for a specific job.

16 **ELEVENTH CAUSE FOR DISCIPLINE**

17 **(Violations of Regulations)**

18 38. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
19 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following
20 material respects:

21 a. **Subdivision (a)(2)(A)**: Respondent charged the operator \$400.50 on the invoice for
22 an item listed as "Repair Transmission" without describing or identifying what was included in
23 the repair.

24 b. **Subdivision (d)**: Respondent failed to provide the operator with a legible copy of the
25 invoice (some of the parts and labor descriptions were difficult to read).

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1 **OTHER MATTERS**

2 39. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
3 or place on probation the registration for all places of business operated in this state by
4 Respondent Humberto Rodriguez, owner of Aamco Transmissions, upon a finding that
5 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
6 regulations pertaining to an automotive repair dealer.

7 **PRAYER**

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

- 10 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
11 89534, issued to Humberto Rodriguez, owner of Aamco Transmissions;
- 12 2. Revoking or suspending any other automotive repair dealer registration issued in the
13 name of Humberto Rodriguez;
- 14 3. Ordering Humberto Rodriguez, owner of Aamco Transmissions, to pay the Bureau of
15 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
16 pursuant to Business and Professions Code section 125.3;
- 17 4. Taking such other and further action as deemed necessary and proper.

18
19 DATED: _____

9-6-11


SHERRY MEHL

Chief

Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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