

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
Deputy Attorney General
4 State Bar No. 253959
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1188
6 Facsimile: (415) 703-5480
E-mail: Nicholas.Tsukamaki@doj.ca.gov
7 *Attorneys for Complainant*

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. 77/13-73

13 **SAN BRUNO AT SILVER SUPER SHELL**
14 **DENNIS T. VUONG, OWNER**
2380 San Bruno Ave.
San Francisco, CA 94134

A C C U S A T I O N

15 **Automotive Repair Dealer Registration No.**
16 **ARD 213788**

17 **Smog Check Station License No. RC 213788**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about December 5, 2000, the Bureau issued Automotive Repair Dealer
25 Registration Number ARD 213788 to San Bruno at Silver Super Shell, Dennis T. Vuong, Owner
26 (Respondent). The registration was in full force and effect at all times relevant to the charges
27 brought herein and will expire on November 30, 2013, unless renewed.
28

exercise of reasonable care should be known, to be untrue or misleading.

...

(4) Any other conduct which constitutes fraud.

...

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] 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.

...

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only refuse to validate, or shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate temporarily or permanently, 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.

9. Section 9884.8 of the Code states in pertinent part: "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. . . ."

10. Section 9884.9 of the Code states in pertinent part:

(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 customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. . . .

...

///

1 15. California Code of Regulations, title 16, section 3373, states:

2 No automotive repair dealer or individual in charge shall, in filling out an estimate,
3 invoice, or work order, or record required to be maintained by section 3340.15(f) of
4 this chapter, withhold therefrom or insert therein any statement or information which
5 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.

6 COSTS

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

13 UNDERCOVER OPERATION – October 24, 2011

14 17. Prior to initiating an undercover run at the subject facility on October 24, 2011,
15 Bureau personnel had inspected and documented a 1997 Acura. The only repairs needed for this
16 vehicle to be safely driven were replacement of the front brake pads, replacement of the left rear
17 brake and tail lamp bulb, and inflation of the tires to their proper pressure.

18 18. On or about October 24, 2011, a Bureau undercover operator (operator) drove the
19 Acura to Respondent's facility and was greeted by the service manager Vincent Chu (Chu). The
20 operator told Chu that the vehicle felt "mushy" and "squirmy" and that the brake lamp was on.
21 Chu handed the operator an invoice requesting that she fill it out. The invoice did not contain an
22 estimated price for the repairs. Chu told the operator he would call her with an estimated price
23 for the work within the hour.

24 19. Later in the day on October 24, Chu phoned the operator and told her that the Acura
25 needed front and rear brake pads and front and rear shocks. Chu gave the operator an estimated
26 price of \$1,200 for the repairs. The operator then told Chu that she needed to check her finances
27 and she would get back to him. Later that day, the operator called Chu and asked him whether it
28 was safe to replace the brakes without replacing the brake rotors. Chu replied that he might as

1 well replace the rotors so he could warranty the brake job. Chu also informed the operator that
2 the rotors would cost \$85 each and that he would not charge her for the brake labor. Chu also
3 told the operator that the new total cost of the repairs was \$1,540. The operator verbally
4 authorized the brake pad, rotor, and shock replacement on the Acura.

5 20. On October 25, the operator phoned Chu. Chu informed the operator that the repairs
6 were finished but that the cost of the repairs exceeded the quoted price due to the increased price
7 of certain parts. Chu told the operator that the total price was now \$2,059.65. He also told the
8 operator that he had replaced the brake bulb at no charge.

9 21. On or about October 26, 2011, the operator phoned Chu and told him that she could
10 only pay \$2,000 for the repairs. Chu agreed to lower the bill to \$2,000. Later in the day on
11 October 26, the operator returned to Respondent's facility, paid Chu \$2,000 in cash, and received
12 final invoice number [REDACTED]. The invoice does not indicate that the Acura's rear brake bulb had
13 been replaced.

14 22. Upon re-inspection of the Acura, a Bureau representative determined that
15 Respondent's facility had replaced the front brake pads, the front brake rotors, the rear brake
16 pads, and the rear brake rotors as invoiced. The front and rear brake rotors and the rear brake
17 pads were within factory specifications and were not in need of replacement. The Bureau
18 representative also determined that the rear brake bulb had been replaced and was needed. The
19 Bureau representative further determined that the front and rear shocks were replaced as invoiced
20 but that they were not in need of replacement. Finally, the Bureau representative determined that
21 two front brake bleeder screw rubber dust caps were missing, the front brake rotor to hub screws
22 were missing, the brake master cylinder was over full, two left front brake line bracket to strut
23 bolts were loose, and one tire was 5 pounds per square inch under the manufacturer's
24 specification.

25 23. Bureau personnel determined that Respondent's facility charged the operator
26 \$1,778.34 in unnecessary parts and labor. The parts and labor costs paid for the unnecessary
27 repairs are shown in Table #1 below.

28 ///

TABLE #1

Description	Parts Cost (incl. CA sales tax)	Service/installation labor cost
Rear brake pads	\$92.23	\$180.00
Front and rear shocks	\$759.50	\$300.00
Front brake rotors	\$239.98	
Rear brake rotors	\$206.63	
Total Parts	\$1,298.34	
Total Labor	\$480.00	
Total Fraud	\$1,778.34	

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

a. Respondent's employee told the Bureau's operator that the Acura needed certain parts that were not in need of replacement.

b. Respondent's employee listed on the invoice for the repairs to the Acura certain parts and repairs that were unnecessary.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

25. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(4) of the Code in that Respondent committed acts constituting fraud by accepting payment for the replacement of front and rear brake rotors, rear brake pads, and front and rear shocks on the Acura even though those parts were not in need of replacement.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 26. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(7)
4 of the Code in that Respondent willfully departed from or disregarded accepted trade standards
5 for good and workmanlike repair without the consent of the owner or the owner's duly authorized
6 representative in the following material respects:

7 a. Respondent's facility failed to replace two front brake bleeder screw rubber dust caps
8 and the front brake rotor to hub screws on the Acura.

9 b. Respondent's facility left the Acura's brake master cylinder over full.

10 c. Respondent's facility left two of the Acura's left front brake line bracket to strut bolts
11 loose.

12 d. Respondent's facility left one of the Acura's tires 5 pounds per square inch under the
13 manufacturer's specification.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Failure to Record Work on Invoice)**

16 27. Respondent is subject to disciplinary action under section 9884.8 of the Code and
17 California Code of Regulations, title 16, section 3356, subdivision (a)(2)(A) in that Respondent
18 replaced a rear brake bulb on the Acura but did not record this repair on the invoice.

19 **FIFTH CAUSE FOR DISCIPLINE**

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

21 28. Respondent is subject to disciplinary action under section 9884.9, subdivision (a) of
22 the Code and California Code of Regulations, title 16, section 3353, subdivision (a) in that
23 Respondent failed to give to the Bureau's operator a written estimated price for labor and parts
24 necessary for the repairs to the Acura.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 **(Performing Additional Work Without Obtaining Consent)**

27 29. Respondent is subject to disciplinary action under section 9884.9 of the Code and
28 California Code of Regulations, title 16, section 3353, subdivision (c) in that after Respondent's

1 employee provided the Bureau's operator with an initial estimate of the repairs to the Acura and
2 after the operator verbally authorized those repairs, Respondent's facility performed work and/or
3 supplied parts in excess of the estimated price without obtaining the operator's oral or written
4 consent. Respondent's facility also charged the operator for this additional work and/or parts
5 supplied.

6 **UNDERCOVER OPERATION – FEBRUARY 14, 2012**

7 30. Prior to initiating an undercover run at the subject facility, Bureau personnel had
8 inspected and documented a 1995 Oldsmobile. The only repairs needed for this vehicle to be
9 safely driven were replacement of the front brake pads, adjustment of the right front camber and
10 toe, and inflation of the right front tire to the proper pressure. The vehicle's front brake rotors
11 and front shocks were installed new and found to be free of defect. The transmission oil filter,
12 pan gasket, and seven quarts of transmission oil were also installed new.

13 31. On or about February 14, 2012, the same Bureau operator involved in the undercover
14 operation on October 24, 2011, drove the Oldsmobile to Respondent's facility and was greeted by
15 Chu. The operator told Chu that the vehicle was wandering all over the road and was making a
16 strange noise. Chu gave the operator a blank work order and asked that she fill it out and sign it,
17 which the operator did. Chu did not provide the operator with a copy of the work order or an
18 estimated price for the repairs. Chu agreed to look over the vehicle and requested that the
19 operator leave it at the facility to be diagnosed.

20 32. Later in the day on February 14, the operator phoned Respondent's facility and spoke
21 with Chu. Chu informed the operator that the front brake pads and front brake rotors needed to be
22 replaced, and that there was oil leaking from the valve cover gaskets, the transmission gasket, and
23 the engine oil pan gasket. Chu also informed the operator that the two front struts, or shocks,
24 needed to be replaced, and that after he replaced the struts, Chu would perform an alignment.
25 Chu verbally gave the operator an estimated price of \$1,900 for the repairs. The operator later
26 authorized the repairs.

27 33. On or about February 15, 2012, the operator called Respondent's facility to check on
28

1 the status of the repairs. The operator was informed by one of Respondent's employees that the
2 total cost of the repairs was \$2,066.65. Later in the day on February 15, the operator went to
3 Respondent's facility, paid \$2,066.65 for the repairs, and picked up the Oldsmobile. The operator
4 also received a final invoice number [REDACTED] which was incorrectly dated February 13, 2012.

5 34. Upon re-inspection of the Oldsmobile, a Bureau representative determined the
6 following with regard to the vehicle:

7 a. Respondent's facility had replaced the front brake pads and front brake rotors as
8 invoiced. The front brake rotors were not in need of replacement.

9 b. Respondent's facility had replaced the front struts as invoiced. The front struts were
10 not in need of replacement.

11 c. The transmission oil filter and transmission pan gasket were not in need of
12 replacement and were not replaced as invoiced.

13 d. Although a vehicle alignment had been performed, the front caster, camber, and toe
14 were not set to proper specification.

15 e. The right front tire pressure was not set to specification.

16 f. The cosmetic engine cover was removed to replace the engine valve cover gaskets but
17 was not reinstalled on the vehicle.

18 35. Bureau personnel determined that Respondent's facility charged the operator
19 \$1,136.97 in unnecessary parts and labor. The parts and labor costs paid for the unnecessary
20 repairs are shown in Table #2 below.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

TABLE #2

Description	Parts Cost (incl. CA sales tax)	Service/installation labor cost
Transmission fluid	\$54.26	\$110.00
Transmission filter kit*	\$43.40	\$0.00
Front brake rotors	\$238.70	\$0.00
Front struts	\$390.61	\$300.00
Total Parts	\$726.97	
Total Labor	\$410.00	
Total Fraud	\$1,136.97	

*Transmission filter kit was invoiced but not installed on the undercover vehicle

SEVENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

a. Respondent's employee told the Bureau's operator that the Oldsmobile needed certain parts that were not in need of replacement.

b. Respondent's employee listed on the invoice for the repairs to the Oldsmobile certain parts and repairs that were unnecessary.

c. Respondent's employee listed on the invoice for the repairs to the Oldsmobile certain parts that were not replaced as invoiced.

EIGHTH CAUSE FOR DISCIPLINE

(Fraud)

37. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(4)

1 of the Code in that Respondent committed acts constituting fraud by accepting payment for the
2 replacement of front brake rotors, front struts, a transmission oil filter, and a transmission pan
3 gasket on the Oldsmobile even though those parts were not in need of replacement.

4 **NINTH CAUSE FOR DISCIPLINE**

5 **(Departure from Trade Standards)**

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

- 10 a. Respondent's facility did not set the Oldsmobile's front caster, camber, and toe to
11 proper specification.
- 12 b. The right front tire pressure on the Oldsmobile was not set to specification.
- 13 c. The cosmetic engine cover on the Oldsmobile was removed to replace the engine
14 valve cover gaskets but was not reinstalled on the vehicle.

15 **TENTH CAUSE FOR DISCIPLINE**

16 **(Failure to Provide a Written Estimate)**

17 39. Respondent is subject to disciplinary action under section 9884.9, subdivision (a) of
18 the Code and California Code of Regulations, title 16, section 3353, subdivision (a) in that
19 Respondent failed to give to the Bureau's operator a written estimated price for labor and parts
20 necessary for the repairs to the Oldsmobile.

21 **ELEVENTH CAUSE FOR DISCIPLINE**

22 **(Performing Additional Work Without Obtaining Consent)**

23 40. Respondent is subject to disciplinary action under section 9884.9 of the Code and
24 California Code of Regulations, title 16, section 3353, subdivision (c) in that after Respondent's
25 employee provided the Bureau's operator with an initial estimate of the repairs to the Oldsmobile
26 and after the operator verbally authorized those repairs, Respondent's facility charged the
27 operator for work done and/or parts supplied in excess of the estimated price without obtaining
28 the operator's oral or written consent.

1 **PRIOR CITATIONS**

2 41. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complaint alleges the following:

4 a. On or about September 11, 2008, the Bureau issued Citation No. C09-0224 against
5 Respondent for violating Health and Safety Code section 44012, subdivision (f) (failure to
6 perform a visual/functional check of emission control devices according to procedures prescribed
7 by the Department), and California Code of Regulations, title 16, section 3340.35, subdivision (c)
8 (issuing a certificate of compliance to a vehicle that was improperly tested). The Bureau assessed
9 civil penalties totaling \$500 against Respondent for these violations. Respondent complied with
10 this citation on July 9, 2009.

11 **OTHER MATTERS**

12 42. Pursuant to section 9884.7, subdivision (c) of the Code, the Director may suspend,
13 revoke, or place on probation the registrations for all places of business operated in this state by
14 San Bruno at Silver Super Shell, Dennis T. Vuong, Owner, upon a finding that he has, or is,
15 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
16 automotive repair dealer.

17 **PRAYER**

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

- 20 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
- 21 213788 issued to San Bruno at Silver Super Shell, Dennis T. Vuong, Owner (Respondent);
- 22 2. Revoking or suspending Smog Check Station License Number RC 213788 issued to
- 23 Respondent;
- 24 3. Revoking, suspending, or placing on probation any other automotive repair dealer
- 25 registration issued to Dennis T. Vuong;
- 26 4. Ordering Respondent to pay the Bureau of Automotive Repair the reasonable costs of
- 27 the investigation and enforcement of this case pursuant to Business and Professions Code section
- 28 125.3; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: June 7, 2013 John Wallauch by Doug Balatti
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SF2013404545