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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: **W. B. TRANSMISSIONS, INC.,** **dba TOP QUALITY TRANSMISSIONS** **WALEED ASAD BILLEH, President** 23930 Sunnymead Blvd., #A Moreno Valley, CA 92553 Automotive Repair Dealer Reg. No. AB 220240 Smog Check Station License No. RB 220240 Respondent.	Case No. 77/06-70 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 14, 2006, Complainant Dennis Kenneally, in his official capacity as the Assistant Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 77/06-70 against W. B. Transmissions, Inc., dba Top Quality Transmissions, Waleed Asad Billeh, President (Respondent) before the Director of Consumer Affairs (Director).

2. On or about March 8, 2002, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration No. AB 220240 to Respondent. The Automotive

Repair Dealer Registration expired on February 28, 2006, and has not been renewed.

3. On or about September 3, 2004, the Bureau of Automotive Repair issued Smog Check Station License No. RB 220240 to Respondent. The Smog Check Station license expired on February 28, 2006, and has not been renewed.

4. On or about October 17, 2006, Rosita Donovan, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 77/06-70, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Bureau, which was and is 23930 Sunnymead Blvd. #A, Moreno Valley, CA 92553. A copy of the Accusation, the related documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

5. Service of the Accusation was effective as a matter of law under the provisions of Business and Professions Code section 124.

6. On or about November 6, 2006, the aforementioned documents were returned by the U.S. Postal Service marked "Moved, Left No Address." A copy of the postal returned envelopes are attached hereto as Exhibit B, and are incorporated herein by reference.

7. Business and Professions Code section 118 states, in pertinent part:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, 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 license on any such ground."

8. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of

respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

9. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 77/06-70.

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

"(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."

11. Pursuant to its authority under Government Code section 11520, the Director finds Respondent is in default. The Director will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits A, B and C, finds that the allegations in Accusation No. 77/06-70 are true.

12. The total costs for investigation and enforcement of this matter are $50,498.13 as of March 6, 2007 (See Declarations of Wayne Ramos and Patrick Daniel Povey, which are attached hereto as Exhibit C, and are incorporated herein by reference).

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent W. B. Transmissions, Inc., dba Top Quality Transmissions, Waleed Asad Billeh, President, has subjected his Automotive Repair Dealer Registration No. AB 220240 and his Smog Check Station License No. RB 220240 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Director of Consumer Affairs is authorized to revoke Respondent's Automotive Repair Dealer Registration and Smog Check Station License based upon the following violations alleged in the Accusation:

a. Violations of the Business and Professions Code (Bus. & Prof. Code §§ 9884.7, subd. (a)(6), 9884.8, 9884.9, subd. (a),

and 9884.11;

b. Untrue or Misleading Statements (Bus. & Prof. Code § 9884.7. subd. (a)(1));

c. Violations of Regulations (Cal. Code Regs., tit. 16, § 3356, subd. (a));

d. Willful Departure from Trade Standards (Bus. & Prof. Code § 9884.7, subd. (a)(7));

e. Failure to Provide Copy of Signed Estimate (Bus. & Prof. Code § 9884.7, subd. (a)(3));

e. Fraud (Bus. & Prof. Code § 9884.7, subd. (a)(4));

f. Failure to Record Service Work Requested by Customer (Bus. & Prof. Code § 9884.7, subd. (a)(2));

g. Unauthorized Sublet of Repairs (Bus. & Prof. Code § 9884.7, subd. (a)(9)); and

h. Dishonesty, Fraud or Deceit (Health & Saf. Code § 44072.2, subd. (d)).

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ORDER

IT IS SO ORDERED that Automotive Repair Dealer Registration No. AB 220240 and Smog Check Station License No. RB 220240 heretofore issued to Respondent W. B. Transmissions, Inc., dba Top Quality Transmissions, Waleed Asad Billeh, President, are revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on July 6, 2007.

It is so ORDERED May 30, 2007

Shela Barker

SHELA BARKER
Staff Counsel
Department of Consumer Affairs

80125250.wpd
DOJ docket number:SD2005800394

Attachments:

Exhibit A: Accusation No.77/06-70, Related Documents, and Declaration of Service
Exhibit B: Copy of Postal Return Envelopes
Exhibit C: Declarations of Wayne Ramos and Patrick Daniel Povey

Exhibit A

Accusation No. 77/06-70,
Related Documents and Declaration of Service

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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: **W. B. TRANSMISSIONS, INC.,** **dba TOP QUALITY TRANSMISSIONS** **WALEED ASAD BILLEH, President** 23930 Sunnymead Blvd., #A Moreno Valley, CA 92553 Automotive Repair Dealer Reg. No. AB 220240 Smog Check Station License No. RB 220240 Respondent.	Case No. 77/06-70 **ACCUSATION**

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Reg. No. AB 220240

2. On or about March 8, 2002, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number AB 220240 to W. B. Transmissions, Inc. ("Respondent"), doing business as Top Quality Transmissions, with Waleed Asad Billeh as president. Respondent's automotive repair dealer registration expired on February 28, 2006.

Smog Check Station License No. RB 220240

3. On or about September 3, 2004, the Director issued Smog Check Station License Number RB 220240 to Respondent. Respondent's smog check station license expired on February 28, 2006.

JURISDICTION

4. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that the Director may invalidate an automotive repair dealer registration.

5. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

6. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

7. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY AND REGULATORY PROVISIONS

Statutory Provisions

8. Bus. & Prof. Code section 9884.7 states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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.
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> (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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(2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

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

(4) Any other conduct which 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.

. . . .

(9) Having repair work done by someone other than the dealer or his or her employees without the knowledge or consent of the customer unless the dealer can demonstrate that the customer could not reasonably have been notified . . .

9. Bus. & Prof. Code section 9884.7, subdivision (c), states, in pertinent part, that 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 the laws and regulations pertaining to an automotive repair dealer.

10. Bus. & Prof. Code section 9884.8 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. 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 . . .

11. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

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. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer when 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 . . .

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

13. Bus. & Prof. Code section 22, subdivision (a), states:

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

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

15. Health & Saf. Code section 44072.2 states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

. . . .

(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured . . .

16. Health & Saf. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

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Regulatory Provisions

17. California Code of Regulations, title 16, section ("Regulation") 3353, subdivision (d), states:

> Estimated Price to Tear Down, Inspect, Report and Reassemble. For purposes of this article, to tear down" shall mean to disassemble, and teardown" shall mean the act of disassembly. If it is necessary to tear down a vehicle component in order to prepare a written estimated price for required repair, the dealer shall first give the customer a written estimated price for the teardown. This price shall include the cost of reassembly of the component. The estimated price shall also include the cost of parts and necessary labor to replace items such as gaskets, seals and O rings that are normally destroyed by teardown of the component. If the act of teardown might prevent the restoration of the component to its former condition, the dealer shall write that information on the work order containing the teardown estimate before the work order is signed by the customer.
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> The repair dealer shall notify the customer orally and conspicuously in writing on the teardown estimate the maximum time it will take the repair dealer to reassemble the vehicle or the vehicle component in the event the customer elects not to proceed with the repair or maintenance of the vehicle and shall reassemble the vehicle within that time period if the customer elects not to proceed with the repair or maintenance. The maximum time shall be counted from the date of authorization of teardown.
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> After the teardown has been performed, the dealer shall prepare a written estimated price for labor and parts necessary for the required repair. All parts required for such repair shall be listed on the estimate. The dealer shall then obtain the customer's authorization for either repair or reassembly before any further work is done.

18. Regulation 3356, subdivision (a), states, in pertinent part:

> The invoice shall show the dealer's registration number and the corresponding business name and address. If the dealer's telephone number is shown, it shall comply with the requirements of Subsection 3371(b) of this chapter. In addition, the invoice shall describe all service work done, including all warranty work, and shall separately identify each part in such a manner that the customer can understand what was purchased . . .

19. Regulation 3358 states:

> Each automotive repair dealer shall maintain legible copies of the following records for not less than three years:
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> (a) All invoices relating to automotive repair including invoices received from other sources for parts and/or labor.
>
> (b) All written estimates pertaining to work performed.
>
> (c) All work orders and/or contracts for repairs, parts and labor. All such records shall be open for reasonable inspection and/or reproduction by the bureau or other law enforcement officials during normal business hours.

20. Regulation 3361.1 states, in pertinent part:

The following minimum requirements specifying accepted trade standards for good and workmanlike rebuilding of automatic transmissions are intended to define terms that have caused confusion to the public and unfair competition within the automotive repair industry . . . All automotive repair dealers engaged in the repair, sale, or installation of automatic transmissions in vehicles covered under the Act shall be subject to the following minimum requirements:

(a) Before an automatic transmission is removed from a motor vehicle for purposes of repair or rebuilding, it shall be inspected. Such inspection shall determine whether or not the replacement or adjustment of any external part or parts will correct the specific malfunction of the automatic transmission. In the case of an electronically controlled automatic transmission, this inspection shall include a diagnostic check, including the retrieval of any diagnostic trouble codes, of the electronic control module that controls the operation of the transmission. If minor service and/or replacement or adjustment of any external part or parts and/or of companion units can reasonably be expected to correct the specific malfunction of the automatic transmission, then prior to removal of the automatic transmission from the vehicle, the customer shall be informed of that fact as required by Section 3353 of these regulations. Before removing an automatic transmission from a motor vehicle, the dealer shall also comply with the provisions of section 3353(d), and disclose any applicable guarantee or warranty as provided in sections 3375, 3376 and 3377 of these regulations. If a diagnostic check of an electronic control module cannot be completed due to the condition of the transmission, the customer shall be informed of that fact and a notation shall be made on the estimate, in accordance with Section 3353 of these regulations.

. . . .

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

. . . .

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

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

(A) Lined friction plates

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

(C) All sealing rings

(D) Gaskets . . .

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21. Regulation 3374 states that "[n]o dealer shall advertise, represent, or in any manner imply that a used, rebuilt or reconditioned part or component is new unless such part and all of the parts of any component are in fact new."

COST RECOVERY

22. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a 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.

CONSUMER COMPLAINT (PITTMAN): 1995 FORD CONTOUR

23. On or about April 4, 2003, consumers Rick and Cindie Pittman ("the Pittmans") took their 1995 Ford Contour to Respondent's facility to have the transmission checked due to a delay in shifting. On or about April 8, 2003, the Pittmans authorized the facility to remove, disassemble, and inspect the transmission at an estimated cost of $385. On or about April 10, 2003, the Pittmans called the facility to check on the status of the vehicle and were advised that the transmission needed to be rebuilt at an estimated cost of $2,691.05. On or about April 12, 2003, the Pittmans were advised that the vehicle needed a new transmission solenoid and that the total repair costs would be $3,025.81. The repairs were completed on or before April 15, 2003.

24. On or about August 1, 2003, the Pittmans filed a complaint with the Bureau, stating that they had to return the vehicle to the facility on at least three occasions due to continued problems with the transmission and that the problems with the component had not been resolved.

25. On August 5, 2003, Bureau Representative Thomas McGee went to the facility and requested copies of the repair records on the vehicle. On August 18, 2003, Respondent provided the Bureau with copies of various records, including a transmission repair order dated April 4, 2003.

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FIRST CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

26. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that it failed to comply with section 9884.9, subdivision (a), of that Code by failing to properly document the Pittmans' authorization for the repairs on their 1995 Ford Contour. Respondent documented on the transmission repair order dated April 4, 2003, that Rick Pittman had authorized a revised estimate price of $2,691.05 on April 10, 2003, and a revised estimate price of $3,025.81 on April 12, 2003, but failed to specify the additional repairs or services to be performed on the vehicle.

CONSUMER COMPLAINT (CONTRERAS): 1997 DODGE 1500 PICKUP

27. On or about January 11, 2003, consumer David Contreras ("Contreras") took his 1997 Dodge 1500 pickup to Respondent's facility to have the transmission repaired. On or about January 13, 2003, Contreras returned to the facility to retrieve the vehicle after the repairs were completed and received a copy of Transmission Repair Order 451, totaling $1,892.39.

28. In or about September 2003, Contreras took the vehicle back to the facility due to continued problems with the transmission. On or about September 17, 2003, Contreras retrieved the vehicle from the facility and was given a copy of Transmission Repair Order 832, totaling $953.43.

29. In or about October 2003, Contreras had additional repair work performed on the transmission, including the installation of a torque converter, and was given a copy of Transmission Repair Order 905. The repair order stated that "all parts installed are new unless specified otherwise".

30. In or about November 2003, Contreras filed a complaint with the Bureau, stating that he had to return the vehicle to the facility on at least five occasions to repair the transmission; however, the component still was not working properly (it was grinding, slipping, and noisy).

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31. On December 10, 2003, Bureau Representative Robert Fugh ("Fugh") went to the facility and requested copies of the repair records on the vehicle, including parts receipts. Waleed Billeh ("Billeh") told Fugh that he would attempt to locate the parts receipts by December 16, 2003.

32. On December 16, 2003, Fugh returned to the facility and met with Billeh. Billeh told Fugh that he did not have any parts receipts relating to Repair Order 451; however, he did have parts receipts relating to Repair Orders 832 and 905, including a part receipt from supplier I.D.C. The latter indicated that a rebuilt torque converter had been installed in the vehicle in October 2003.

SECOND CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

33. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which it knew, or in the exercise of reasonable care should have known to be untrue or misleading. Respondent represented on Repair Order 905 that a new torque converter had been installed in Contreras' 1997 Dodge 1500 pickup when, in fact, the torque converter was rebuilt.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

34. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 9884.9, subdivision (a):** Respondent documented on Repair Order 451 that on January 15, 2003, at 9:15 a.m., Contreras had authorized $1,826.78 in additional repairs on his 1997 Dodge 1500 pickup, but failed to specify the repairs or services to be performed on the vehicle.

b. **Section 9884.11:** Respondent failed to maintain copies of all invoices received from other sources for parts and/or labor relating to the transmission repairs performed on Contreras' 1997 Dodge 1500 pickup, as

set forth on Repair Order 451, or failed to make those records available for inspection by the Bureau.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

35. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), Respondent failed to comply with Regulation 3356, subdivision (a), by failing to separately identify parts on Transmission Repair Invoice 451 in such a manner that the customer could understand what was purchased. Respondent represented on the invoice that an "overhaul kit" had been installed in Contreras' 1997 Dodge 1500 pickup, but failed to separately identify or specify the parts that were included in the kit.[1]

CONSUMER COMPLAINT (AIRA/DAVIS): 1995 DODGE STRATUS

36. In or about November 2003, consumer Linda Davis ("Davis") and her daughter, Rachel Aira ("Aira"), took Davis' 1995 Dodge Stratus to Respondent's facility to have the transmission repaired because it would not go into reverse. After the repairs were completed, Davis and Aira received a copy of Transmission Repair Invoice 1004, totaling $2,740.89.

37. On or about February 6, 2004, Aira filed a complaint with the Bureau, alleging that Respondent refused to give Davis a warranty on the transmission repairs.

38. On March 16, 2004, Bureau Representative Lawrence Merrill ("Merrill") went to Respondent's facility and met with Billeh. Billeh told Merrill, among other things, that they had conducted an external inspection of the transmission.

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1. An overhaul kit typically includes friction plates, sealing rings (metal and Teflon), gaskets, and other soft parts.

FIFTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

39. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 9884.8**: Respondent failed to record on Transmission Repair Invoice 1004 the external inspection of the transmission on Davis' 1995 Dodge Stratus.

b. **Section 9884.9, subdivision (a)**: Respondent failed to document on Transmission Repair Invoice 1004 Davis' authorization for the external inspection of the transmission on her 1995 Dodge Stratus.

CONSUMER COMPLAINT (GONZALES):

1995 OLDSMOBILE SILHOUETTE VAN

40. On or about April 8, 2004, consumer Aurelio Gonzales ("Gonzales") had his 1995 Oldsmobile Silhouette van towed to Respondent's facility for diagnosis of a transmission problem. Gonzales authorized the facility to conduct an external inspection of the transmission. Later that same day, Gonzales was advised that the facility needed to disassemble the transmission in order to give him an estimate for repair. Gonzales authorized the facility to remove the transmission from the vehicle and to disassemble and inspect the component. Several days later, Gonzales was advised that it would cost approximately $1,800 to rebuild the transmission. Gonzales declined the repairs. When Gonzales went to the facility to retrieve the vehicle, the transmission was returned to him in boxes (disassembled). In or about late April 2004, Gonzales filed a complaint with the Bureau.

41. On May 5, 2004, Bureau Representative Merrill went to Respondent's facility and met with manager Wayne Snook ("Snook"). Snook told Merrill that he gave Gonzales an initial estimate of $130 for an external inspection of the transmission (including towing charges). The facility checked the vehicle for trouble codes, but found no problems. Gonzales authorized the facility to remove, disassemble, and inspect the transmission for $385,

including towing. Snook provided Merrill with a copy of Transmission Repair Invoice 1266, but had no other documentation relating to the repair of the vehicle.

SIXTH CAUSE FOR DISCIPLINE

(Departure From Trade Standards)

42. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair as defined in Regulation 3361.1, without the consent of the owner or the owner's duly authorized representative, in the following material respects:

a. Respondent provided Gonzales with an estimated price for the teardown of the transmission on his 1995 Oldsmobile Silhouette van before removing the component from the vehicle, but failed to include the cost of reassembling the transmission, in violation of Regulation 3353, subdivision (d).

b. Respondent failed to notify Gonzales orally and in writing as to the maximum time it would take to reassemble the transmission on Gonzales' 1995 Oldsmobile Silhouette van once Gonzales declined the recommended repairs, i.e., the rebuilding of the transmission, in violation of Regulation 3353, subdivision (d).

SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

43. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 9884.8:** Respondent failed to record on Transmission Repair Invoice 1266 the external inspection of the transmission on Gonzales' 1995 Oldsmobile Silhouette van.

b. **Section 9884.11:** Respondent failed to maintain a copy of the original estimate for the external inspection of the transmission on Gonzales'

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1995 Oldsmobile Silhouette van or make the original estimate available for inspection by the Bureau.

CONSUMER COMPLAINT (HARRIS): 1988 BMW 735i

44. On or about April 15, 2004, consumer Michael Harris ("Harris") took his 1988 BMW 735i to Respondent's facility for diagnosis of a transmission problem on the vehicle. That same day, Harris signed a written estimate in the amount of $65, but was not given a copy of the document.

45. On or about April 17, 2004, Harris authorized the facility to remove, teardown, and inspect the transmission to determine the problem with the component at an estimated cost of $585.

46. On or about April 20, 2004, Respondent's manager, Snook, contacted Harris and told him that it would cost $2,800 to repair the transmission. Harris did not receive any documentation from the facility relating to the repair work on the vehicle.

47. On or about May 17, 2004, Harris filed a complaint with the Bureau, alleging that he disagreed with the $2,800 estimated price for the repair of the transmission, but authorized the work when he learned that the facility had already commenced the repairs.

48. On May 26, 2004, Bureau Representative Merrill went to the facility and met with Snook and Billeh. Snook provided Merrill with copies of Transmission Repair Invoice 1275[2] and parts receipts for the vehicle. Snook explained that the $65 noted on the invoice was for an external inspection of the vehicle and the $585 was for the teardown of the transmission.

EIGHTH CAUSE FOR DISCIPLINE

(Departure From Trade Standards)

49. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair as defined in Regulation 3361.1,

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The invoice provided by Respondent was a four part, carbonized document. Merrill noted that none of the pages were missing, indicating that Harris had not, in fact, received a copy of the original estimate he signed on April 15, 2004.

without the consent of the owner or the owner's duly authorized representative, in a material respect. Respondent failed to provide Harris with a written estimated price for the teardown of the transmission on his 1988 BMW 735i , in violation of Regulation 3353, subdivision (d).

NINTH CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Signed Estimate)

50. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that Respondent failed or refused to give Harris a copy of the written estimate as soon as Harris signed the document.

TENTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

51. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 9884.8:**

1. Respondent failed to record on Transmission Repair Invoice 1275 the external inspection of the transmission on Harris' 1988 BMW 735i.

2. Respondent failed to provide Harris with an invoice listing all service work performed and parts supplied on his 1988 BMW 735i.

b. **Section 9884.9, subdivision (a):** Respondent failed to provide Harris with a written estimate for parts and labor necessary for the repair of the transmission on his 1988 BMW 735i.

CONSUMER COMPLAINT (JOHNSON): 1992 FORD AEROSTAR

52. On or about April 12, 2004, Consumer Cleveland Johnson ("Johnson") took his 1992 Ford Aerostar to Respondent's facility for repair due to a problem with the transmission. On or about April 15, 2004, Johnson returned to the facility to retrieve the vehicle after the repairs were completed (Respondent overhauled or rebuilt the transmission) and received

a copy of Transmission Repair Invoice 1248, totaling $1,684.67, which included a 12 month/12,000 mile written warranty on all parts and labor listed on the invoice.

53. Sometime after the repairs were completed, the transmission on the vehicle failed while Johnson was traveling to Texas. Johnson took the vehicle to Complete Car Care Center in Galveston, Texas, and had the transmission rebuilt for $1,852.77.

54. On or about July 22, 2004, Johnson filed a complaint with the Bureau, stating that Respondent would only issue him a refund of the labor charges invoiced by Complete Car Care Center.

55. On August 20, 2004, Bureau Representative Merrill went to Respondent's facility and met with Snook and Billeh. Snook and Billeh provided Merrill with copies of the repair records on the vehicle, including Transmission Repair Invoice 1248.

ELEVENTH CAUSE FOR DISCIPLINE

(Violations of the Bus. & Prof. Code)

56. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code by failing to properly document Johnson's authorization for the repairs on his 1992 Ford Aerostar, as follows:

a. Respondent documented on Transmission Repair Invoice 1248 that Johnson had authorized an original estimate price of $65, but failed to specify the repair or service to be performed on the vehicle.

b. Respondent documented on Transmission Repair Invoice 1248 that on April 12, 2004, at 3:00 p.m., $385 in additional repairs, described as "RDI" (removal, disassembly, and inspection of the transmission), had been authorized on the vehicle, but failed to specify the name of the person who authorized the repairs.

c. Respondent documented on Transmission Repair Invoice 1248 that $1,595 in additional repairs, described as "rebuild trans with converter, used case", had been authorized on the vehicle, but failed to specify the name of the person who authorized the repairs or the date and time the repairs were authorized.

TWELFTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

57. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), Respondent failed to comply with Regulation 3356, subdivision (a), by failing to separately identify parts on Transmission Repair Invoice 1248 in such a manner that the customer could understand what was purchased. Respondent represented on the invoice that an "overhaul kit" had been installed in Johnson's 1992 Ford Aerostar, but failed to separately identify or specify the parts that were included in the kit.

UNDERCOVER OPERATION #1: 1992 PLYMOUTH SUNDANCE

58. On September 7, 2004, an undercover operator with the Bureau (hereinafter "operator") took the Bureau's 1992 Plymouth Sundance to Respondent's facility. The reverse band strut in the automatic transaxle had been broken, preventing the vehicle from operating in reverse gear. The operator met with Respondent's employee, "Wally", and told him that the vehicle would not back up. Wally gave the operator an estimate and asked her to fill in the customer information and sign the document. The operator completed and signed the estimate, but was not given a copy of the document.

59. At approximately 1:44 p.m. that same day, the operator telephoned the facility and spoke with Wally. Wally told the operator that they checked the vehicle, that it would not operate in reverse, and that it would cost $360 for the repairs, including parts and labor, plus sales tax. The operator authorized the repairs.

60. On September 8, 2004, at approximately 12:10 p.m., the operator called the facility and spoke with Respondent's employee, "Wayne". Wayne told the operator that they had installed a reverse band in the vehicle and serviced the transmission. Wayne also told the operator that the belts were cracked, that she should have the belts and hoses replaced because they were in bad condition, and that she could get stranded if she did not have the belts and hoses changed on the vehicle.

61. At approximately 1:20 p.m. that same day, the operator telephoned the facility and told Wally that she would pick up the vehicle, but did not want the belts and hoses

replaced. Wally told the operator that the belts and hoses were bad and that she should not drive the vehicle in that condition. The operator told Wally that her father would replace the belts and hoses himself.

62. At approximately 1:50 p.m, the operator returned to the facility to retrieve the vehicle after the repairs were completed, paid the facility $364.65, and received a copy of Transmission Repair Invoice 1515. The invoice contained an "ATRA" emblem, signifying that Top Quality Transmissions was a member of the Automatic Transmission Rebuilders Association.

63. On September 15, 2004, Bureau Representative Bruce Geloso inspected the vehicle and determined, among other things, that the belts and hoses were free from defects and in good working order.

THIRTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

64. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which it knew, or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent's employee, Wayne, represented to the operator that the belts on the Bureau's 1992 Plymouth Sundance were cracked, that she should have the belts and hoses replaced because they were in bad condition, and that she could get stranded if she did not have the belts and hoses changed. In fact, the belts were not cracked, excessively worn, or frayed and were in good working order at the time the vehicle was taken to Respondent's facility. Further, the coolant hoses were free of soft spots, were not leaking, and were in good working order as well.

b. Respondent's employee, Wally, represented to the operator that the belts and hoses were bad and that she should not drive the Bureau's 1992 Plymouth Sundance in that condition. In fact, the belts and hoses were free from defects and in good working order, as set forth in subparagraph (a) above.

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c. Respondent represented on Transmission Repair Invoice 1515 that Top Quality Transmissions was a member of the Automatic Transmission Rebuilders Association. In fact, Respondent's facility is not now, nor has it ever been, a member of ATRA.

FOURTEENTH CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Signed Estimate)

65. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that its employee, Wally, failed or refused to give the operator a copy of the estimate as soon as she signed the document.

UNDERCOVER OPERATION #2: 1994 BUICK CENTURY

66. On January 31, 2005, an undercover operator with the Bureau (hereinafter "operator") had the Bureau's 1994 Buick Century towed to Respondent's facility for repair because it would not operate. The oil pump drive shaft on the vehicle was defective (the splines had been removed from the drive shaft) and as a result, the automatic transmission had no line pressure and was unable to operate normally in any gear. Once the vehicle arrived at the facility, the operator met with Respondent's employee, "Wayne". Wayne gave the operator an estimate and asked her to fill in the customer information and sign the document. The operator completed and signed the estimate, but was not given a copy of the document. Wayne told the operator that he would check the vehicle and let her know if a teardown was needed. The operator authorized the work, then left the facility.

67. At approximately 2:55 p.m. that same day, the operator telephoned the facility and spoke with Wayne. Wayne told the operator that the transmission needed to be torn down at an estimated cost of $385, which the operator authorized.

68. On February 2, 2005, the operator called the facility and spoke with Wayne. Wayne told the operator that the transmission needed a complete overhaul at an estimated cost of $1,700.

69. On February 4, 2005, the operator returned to the facility after the repairs were completed, paid Wayne $1,776.42, and signed and received a copy of Transmission Repair Invoice 2003.

70. On March 22, 2005, Bureau Representative Mark Hockett inspected the vehicle and determined that Respondent failed to overhaul the transmission as required by Regulation 3361.1.

FIFTEENTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

71. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that as to the Bureau's 1994 Buick Century, Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative, in the following material respects:

a. Respondent failed to replace the reverse band, forward band, 2/1 band, 2nd clutch piston with bonded seal, 3rd clutch piston with bonded seal, manual shaft seal, and filter seal in the automatic transmission, as required by Regulation 3361.1.

b. Respondent failed to replace six of the nine Teflon sealing rings in the automatic transmission, as required by Regulation 3361.1.

c. Respondent replaced three shift solenoids and the PWM solenoid in the automatic transmission when, in fact, those parts were in good working condition and met the manufacturer's specifications at the time the vehicle was towed to Respondent's facility.

SIXTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

72. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which it knew, or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent represented on Transmission Repair Invoice 2003 that the transmission on the Bureau's 1994 Buick Century had been overhauled when, in fact, the transmission had not been overhauled as required by Regulation 3361.1, as set forth in paragraph 71 above.

b. Respondent represented on Transmission Repair Invoice 2003 that Top Quality Transmissions was a member of the Automatic Transmission Rebuilders Association. In fact, Respondent's facility is not now, nor has it ever been, a member of ATRA.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Fraud)

73. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it committed an act which constitutes fraud. Respondent charged and obtained payment from the operator for overhauling the transmission on the Bureau's 1994 Buick Century when, in fact, the transmission had not been overhauled as required by Regulation 3361.1, as set forth in paragraph 71 above.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Signed Estimate)

74. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that its employee, Wayne, failed or refused to give the operator a copy of the estimate as soon as she signed the document.

NINETEENTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

75. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), Respondent failed to comply with Regulation 3356, subdivision (a), by failing to separately identify parts on Transmission Repair Invoice 2003 in such a manner that the customer could understand what was purchased. Respondent represented on the invoice that an "overhaul kit" had been installed in the Bureau's 1994 Buick Century, but failed to separately identify or specify the parts that were included in the kit.

UNDERCOVER OPERATION #3: 1999 DODGE DAKOTA PICKUP

76. On June 1, 2005, an undercover operator with the Bureau (hereinafter "operator") took the Bureau's 1999 Dodge Dakota pickup to Respondent's facility for repair. The check ball had been removed from the overdrive piston retainer in the automatic transmission, creating a hydraulic leak in the overdrive hydraulic system. The operator told Respondent's

employee, "Wayne", that the transmission was not shifting into overdrive and that the "check engine" light (malfunction indicator light) was on in the vehicle. Wayne gave the operator an estimate and asked him to fill in the customer information and sign the document. The operator completed and signed the estimate, but was not given a copy of the document. Wayne told the operator that he would call the operator that aftemoon after checking the transmission.

77. At approximately 2:54 p.m. that same day, the operator telephoned the facility and spoke with Wayne. Wayne told the operator that the check engine light was on because of a 3-4 gear malfunction, which meant that the overdrive on the vehicle was not working. Wayne stated that he would check the wiring to the computer and remove the oil pan to check for metal. The operator asked Wayne about the cost for those services. Wayne told the operator that the cost was covered in the $35 estimate.

78. At approximately 5:05 p.m., Wayne told the operator that the transmission needed to be removed from the vehicle, but that the computer connections were "okay".

79. On June 2, 2005, at approximately 8:05 p.m., Wayne told the operator that the transmission needed a complete overhaul at an estimated price of $1,700. The operator authorized the repairs.

80. On June 6, 2005, the operator telephoned the facility and spoke with Wayne. Wayne told the operator that the vehicle still did not have overdrive and that he had sent the vehicle to an electrical shop.

81. On June 10, 2005, the operator returned to the facility after the repairs were completed, paid the facility $1,783.48, and signed and received a copy of Transmission Repair Invoice 2466.

82. On June 17, 2005, Bureau Representative Bruce Geloso inspected the vehicle and determined that Respondent failed to overhaul the transmission as required by Regulation 3361.1.

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TWENTIETH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

83. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(7), in that as to the Bureau's 1999 Dodge Dakota pickup, Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative, in a material respect. Respondent failed to replace the rear band and the metal sealing rings in the front servo and accumulator, as required by Regulation 3361.1.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

84. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which it knew, or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent represented on Transmission Repair Invoice 2466 that the automatic transmission on the Bureau's 1999 Dodge Dakota pickup had been overhauled when, in fact, the transmission had not been overhauled as required by Regulation 3361.1, as set forth in paragraph 82 above.

b. Respondent represented on Transmission Repair Invoice 2466 that Top Quality Transmissions was a member of the Automatic Transmission Rebuilders Association. In fact, Respondent's facility is not now, nor has it ever been, a member of ATRA.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Fraud)

85. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it committed an act which constitutes fraud. Respondent charged and obtained payment from the operator for overhauling the automatic transmission on the Bureau's 1999 Dodge Dakota pickup when, in fact, the transmission had not been overhauled as required by Regulation 3361.1, as set forth in paragraph 82 above.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Failure to Record Service Work Requested by Customer)

86. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(2), in that Respondent's employee, Wayne, caused or allowed the operator to sign the estimate which did not state the repairs requested by the operator, i.e., the check or external inspection of the automatic transmission on the Bureau's 1999 Dodge Dakota pickup.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Signed Estimate)

87. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that its employee, Wayne, failed or refused to give the operator a copy of the estimate as soon as he signed the document.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Unauthorized Sublet of Repairs)

88. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(9), in that Respondent had electrical work performed by someone other than Respondent or its employees, as set forth in paragraph 79 above, without the operator's knowledge or consent.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

89. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), Respondent failed to comply with Regulation 3356, subdivision (a), by failing to separately identify parts on Transmission Repair Invoice 2466 in such a manner that the customer could understand what was purchased. Respondent represented on the invoice that an "overhaul kit" and "valve body kit" had been installed in the Bureau's 1999 Dodge Dakota pickup, but failed to separately identify or specify the parts that were included in each kit.

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TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

90. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that it committed dishonest, fraudulent or deceitful acts whereby another is injured, as set forth in paragraphs 73 and 84 above.

OTHER MATTERS

91. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Respondent W. B. Transmissions, Inc., doing business as Top Quality Transmissions, upon a finding that said Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

92. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License Number RB 220240, issued to Respondent W. B. Transmissions, Inc., doing business as Top Quality Transmissions, is revoked or suspended, any additional license issued under this chapter in the name of W. B. Transmissions, Inc. may be likewise revoked or suspended by the Director.

PRAYER

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

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number AB 220240, issued to W. B. Transmissions, Inc., doing business as Top Quality Transmissions;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to W. B. Transmissions, Inc.;

3. Revoking or suspending Smog Check Station License Number RB 220240, issued to W. B. Transmissions, Inc., doing business as Top Quality Transmissions;

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4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of W. B. Transmissions, Inc.;

5. Ordering Respondent W. B. Transmissions, Inc., doing business as Top Quality Transmissions, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 14 Sept 2006

DENNIS KENNEALLY
Assistant Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California

Complainant