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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 Number

77/13-31

13 **HITEK AUTOMOTIVE INC.**
14 **GURBINDER S. MAVI, President**

ACCUSATION

15 **dba QUALITY TUNE-UP #10**
16 **3570 El Camino Real**
17 **Santa Clara, California 95051**

18 **Automotive Repair Dealer Registration**
19 **Number ARD 229523**

20 **Smog Check Station License Number RC**
21 **229523,**

Respondent.

22 Complainant John Wallauch alleges:

PARTIES

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

25 2. On or about October 2, 2003, the Bureau issued Automotive Repair Dealer
26 Registration Number ARD 229523 (ARD registration) to Hitek Automotive Inc., Gurbinder S

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1 Mavi, President, doing business as respondent Quality Tune-Up #10. This ARD registration was
2 in full force and effect at all times relevant to the charges brought in this Accusation and expires
3 on August 31, 2013, unless renewed.

4 3. On or about October 8, 2003, the Bureau issued Smog Check Station License Number
5 RC 229523 (smog check license) to Hitek Automotive Inc., Gurbinder S Mavi, President, doing
6 business as Quality Tune-Up #10. This smog check license was in full force and effect at all times
7 relevant to the charges brought in this Accusation and will expire on August 31, 2013, unless
8 renewed.

9 **JURISDICTION**

10 4. This Accusation is brought before the Director of Consumer Affairs for the Bureau
11 under the authority of the following laws. All section references are to the Business and
12 Professions Code unless otherwise indicated.

13 5. Section 118 provides, in pertinent part:

14 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
15 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
16 order of a court of law, or its surrender without the written consent of the board, shall not, during
17 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
18 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
19 provided by law or to enter an order suspending or revoking the license or otherwise taking
20 disciplinary action against the licensee on any such ground.”

21 6. Section 9882 provides, in pertinent part:

22 “(a) There is in the Department of Consumer Affairs a Bureau of Automotive Repair under
23 the supervision and control of the director. The duty of enforcing and administering this chapter
24 is vested in the chief who is responsible to the director. The director may adopt and enforce those
25 rules and regulations that he or she determines are reasonably necessary to carry out the purposes
26 of this chapter and declaring the policy of the bureau, including a system for the issuance of
27 citations for violations of this chapter as specified in Section 125.9.”

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1 automotive repair dealer, which are done by the automotive repair dealer or any automotive
2 technician, employee, partner, officer, or member of the automotive repair dealer.

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

6 “(2) Causing or allowing a customer to sign any work order that does not state the repairs
7 requested by the customer or the automobile's odometer reading at the time of repair.

8 . . .

9 “(4) Any other conduct that constitutes fraud.

10 . . .

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

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

16 12. Section 9884.8 provides, in pertinent part:

17 “All work done by an automotive repair dealer, including all warranty work, shall be
18 recorded on an invoice and shall describe all service work done and parts supplied.”

19 13. Section 9884.9 provides, in pertinent part:

20 “The automotive repair dealer shall give to the customer a written estimated price for labor
21 and parts necessary for a specific job.”

22 14. California Code of Regulations, title 16, section 3353, provides, in pertinent part:

23 “No work for compensation shall be commenced and no charges shall accrue without
24 specific authorization from the customer in accordance with the following requirements:

25 “(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
26 estimated price for parts and labor for a specific job.”

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1 15. California Code of Regulations, title 16, section 3356, provides, in pertinent part:

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

4 . . .

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

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

8 16. California Code of Regulations, title 16, section 3371, provides, in pertinent part:

9 “No dealer shall publish, utter, or make or cause to be published, uttered, or made any false
10 or misleading statement or advertisement which is known to be false or misleading, or which by
11 the exercise of reasonable care should be known to be false or misleading.”

12 17. California Code of Regulations, title 16, section 3373, provides:

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

18 **COST RECOVERY**

19 18. Section 125.3 provides, in pertinent part:

20 “(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
21 proceeding before any board within the department or before the Osteopathic Medical Board
22 upon request of the entity bringing the proceedings, the administrative law judge may direct a
23 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
24 to exceed the reasonable costs of the investigation and enforcement of the case.”

25 **FACTUAL BACKGROUND AND CAUSES FOR DISCIPLINE**

26 **UNDERCOVER OPERATION # 1 – JANUARY 24, 2012**

27 19. On or about January 24, 2012, a Bureau undercover operator drove a Bureau-
28 documented 1991 Ford Taurus to respondent’s facility Quality Tune-Up #10. The Bureau

1 previously had created a defect in that vehicle's starter relay which prevented the starter motor
2 from operating when the ignition key was turned to the start position. The only repair required to
3 correct this condition was the replacement of the starter relay. The starter was a newly
4 remanufactured part and in good condition.

5 20. The undercover operator initially requested a smog inspection be performed on the
6 Taurus. She was given an estimate for the smog inspection, which she signed and received a
7 copy. After respondent found that the vehicle would not start, the undercover operator was
8 informed that a diagnosis and repair of the starting system would be necessary prior to the smog
9 inspection. The undercover operator was given an estimate for diagnosis of the "no start"
10 condition, which she signed and received a copy.

11 21. A short time later the undercover operator was told that the starter and the starter
12 solenoid, or starter relay, needed to be replaced. She was given a written updated estimate of
13 \$517.32 for the repairs, which she signed and received a copy. The repairs then were completed.
14 The undercover operator paid respondent the total of \$517.32, and received a copy of Invoice
15 25142 and a Vehicle Inspection Report. Invoice 25142 stated, "Performed no start diagnosis and
16 found internal short on the starter assembly and starter solenoid. Recommend to replace started
17 [sic] solenoid and starter assembly and recheck vehicle. Recommend to continue diagnosis as
18 needed." The starter relay often is erroneously called a starter solenoid.

19 22. On January 27, 2012, a Bureau representative re-inspected the Taurus and found that
20 both the starter relay and starter had been replaced. He also found that the starter relay was
21 improperly secured because it was missing a fastener.

22 **FIRST CAUSE FOR DISCIPLINE**
23 **Making or Authorizing Untrue or Misleading Statements**
24 **Bus. & Prof. Code, § 9884.7, subs. (a)(1), (a)(6); Cal. Code Regs., tit. 16, § 3371**

25 23. The allegations of paragraphs 19-22 are realleged and incorporated by reference as if
26 fully set forth.

27 24. Respondent has subjected its ARD registration to disciplinary action under section
28 9884.7, subdivision (a)(1), for making or authorizing untrue or misleading statements. As set
forth in paragraphs 19-22 above, respondent told the undercover operator that the starter motor on

1 the Bureau's 1991 Ford Taurus needed replacement, when in fact the starter was a newly
2 remanufactured part and in good condition.

3 **SECOND CAUSE FOR DISCIPLINE**
4 **Fraud**
5 **Bus. & Prof. Code, § 9884.7, subd. (a)(4)**

6 25. The allegations of paragraphs 19-22 are realleged and incorporated by reference as if
7 fully set forth.

8 26. Respondent has subjected its ARD registration to disciplinary action under section
9 9884.7, subdivision (a)(4), for fraud. As set forth in paragraphs 19-22 above, respondent replaced
10 the starter on the Bureau's 1991 Ford Taurus and accepted payment for that replacement, when in
11 fact replacement of the starter relay was the only repair needed. The replacement of the starter
12 was unnecessary because it was a newly remanufactured part and in good condition.

13 **THIRD CAUSE FOR DISCIPLINE**
14 **False or Misleading Information on an Estimate, Invoice, Work Order, or Record**
15 **Bus. & Prof. Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, § 3373**

16 27. The allegations of paragraphs 19-22 are realleged and incorporated by reference as if
17 fully set forth.

18 28. Respondent has subjected its ARD registration to disciplinary action under section
19 9884.7, subdivision (a)(6), and California Code of Regulations, title 16, section 3373 for placing
20 false or misleading information on an estimate, invoice, work order, or record. As set forth in
21 paragraphs 19-22 above, respondent's Invoice 25142 for the Bureau's 1991 Ford Taurus states,
22 "[F]ound internal short on the starter assembly and starter solenoid. Recommend to replace
23 started [*sic*] solenoid and starter assembly and recheck vehicle." In fact, the starter was a new
24 remanufactured part and in good condition.

25 **FOURTH CAUSE FOR DISCIPLINE**
26 **Wilfull Departure or Disregard of Accepted Trade Standards for Good and Workmanlike**
27 **Repair**
28 **Bus. & Prof. Code, § 9884.7, subd. (a)(7)**

29 29. The allegations of paragraphs 19-22 are realleged and incorporated by reference as if
30 fully set forth.

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1 Recommend to replace power brake booster and recheck vehicle. Recommend to continue
2 diagnosis as needed.” It did not state that a fuel injection system flush had been performed.

3 35. On or about May 8, 2012, a Bureau representative re-inspected the Corsica and found
4 that the power brake booster had been replaced and that the leaking EGR valve had not.
5 Common automotive repair manuals contain diagnostic guides that would have led a mechanic to
6 detect the defective EGR valve. He also found that the rough idle condition caused by the
7 malfunctioning EGR valve was still present.

8 **FIFTH CAUSE FOR DISCIPLINE**
9 **Making or Authorizing Untrue or Misleading Statements**
10 **Bus. & Prof. Code, § 9884.7, subd. (a)(1), (a)(6); Cal. Code Regs., tit. 16, § 3371**

11 36. The allegations of paragraphs 31-35 are realleged and incorporated by reference as if
12 fully set forth.

13 37. Respondent has subjected its ARD registration to disciplinary action under section
14 9884.7, subdivision (a)(1), for making or authorizing untrue or misleading statements. As set
15 forth in paragraphs 31-35 above, respondent told the undercover operator that replacement of the
16 power brake booster would correct the rough idle condition, when in fact it had not. Respondent
17 also stated that the rough idle condition was corrected after the power brake booster had been
18 replaced, when in fact it had not.

19 **SIXTH CAUSE FOR DISCIPLINE**
20 **Fraud**
21 **Bus. & Prof. Code, § 9884.7, subd. (a)(4)**

22 38. The allegations of paragraphs 31-35 are realleged and incorporated by reference as if
23 fully set forth.

24 39. Respondent has subjected its ARD registration to disciplinary action under section
25 9884.7, subdivision (a)(4), for fraud. As set forth in paragraphs 31-35 above, respondent replaced
26 the power brake booster on the Bureau’s 1990 Chevrolet Corsica and accepted payment for that
27 replacement, when in fact replacement of the EGR valve was the only repair needed. The
28 replacement of the power brake booster was unnecessary because it was in good condition.

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1 **SEVENTH CAUSE FOR DISCIPLINE**
2 **False or Misleading Information on an Estimate, Invoice, Work Order, or Record**
3 **Bus. & Prof. Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, § 3373**

4 40. The allegations of paragraphs 31-35 are realleged and incorporated by reference as if
5 fully set forth.

6 41. Respondent has subjected its ARD registration to disciplinary action under section
7 9884.7, subdivision (a)(6), and California Code of Regulations, title 16, section 3373 for placing
8 false or misleading information on an estimate, invoice, work order, or record. As set forth in
9 paragraphs 31-35 above, respondent's Invoice 26400 for the Bureau's 1990 Chevrolet Corsica
10 states, "Performed leak test using smoke machine and found vacuum leak coming from power
11 brake booster," when in fact the power brake booster was in good condition.

12 **EIGHTH CAUSE FOR DISCIPLINE**
13 **Failure to State Request Repairs on Work Order**
14 **Bus. & Prof. Code, § 9884.7, subd. (a)(2)**

15 42. The allegations of paragraphs 31-35 are realleged and incorporated by reference as if
16 fully set forth.

17 43. Respondent has subjected its ARD registration to disciplinary action under section
18 9884.7, subdivision (a)(2), for failing to state requested repairs on a signed work order. As set
19 forth in paragraphs 31-35 above, respondent's estimate simply stated that the services requested
20 were "Diagnosis, Driveability"; it did not state the requested repair to the Bureau's 1990
21 Chevrolet Corsica or refer to the rough idle condition.

22 **NINTH CAUSE FOR DISCIPLINE**
23 **Willfull Departure or Disregard of Accepted Trade Standards for**
24 **Good and Workmanlike Repair**
25 **Bus. & Prof. Code, § 9884.7, subd. (a)(7)**

26 44. The allegations of paragraphs 31-35 are realleged and incorporated by reference as if
27 fully set forth.

28 45. Respondent has subjected its ARD registration to disciplinary action under section
9884.7, subdivision (a)(7), for a willful departure or disregard of accepted trade standards for
good and workmanlike repair in any material respect. As set forth in paragraphs 31-35 above,

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1 respondent failed to properly consult common automotive repair manuals which would have
2 allowed him to detect the defective EGR valve.

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4 **TENTH CAUSE FOR DISCIPLINE**
5 **Failure to Provide a Written Estimate for a Specific Job**
6 **Bus. & Prof. Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, § 3353;**
7 **Bus. & Prof. Code, § 9884.9**

8 46. The allegations of paragraphs 31-35 are realleged and incorporated by reference as if
9 fully set forth.

10 47. Respondent has subjected its ARD registration to disciplinary action under section
11 9884.7, subdivision (a)(6), and California Code of Regulations, title 16, section 3353, and
12 Business and Professions Code section 9884.9 for failure to provide a written estimated price for
13 labor and parts necessary for a specific job. As set forth in paragraphs 31-35 above, respondent's
14 estimate simply stated that the services requested were "Diagnosis, Driveability," which does not
15 indicate the specific job that respondent was to perform on the Bureau's 1990 Chevrolet Corsica.

16 **UNDERCOVER OPERATION #3 – AUGUST 7, 2012**

17 48. On or about August 7, 2012, a Bureau undercover operator drove a Bureau-
18 documented 1993 Chevrolet C1500 pickup to respondent's facility. The Bureau previously had
19 created a defect in that vehicle's vacuum supply hose for the Manifold Absolute Pressure (MAP)
20 sensor system which caused a rough idle condition when the engine was started. The only repair
21 required to correct this condition was replacement of the vacuum hose that connects the MAP
22 sensor system to the throttle body. The MAP sensor, spark plugs, spark plug wires, fuel filter,
23 and fuel system all were in good condition.

24 49. The undercover operator spoke to Erwin. The undercover operator requested a
25 diagnosis for the rough idle condition. He signed an estimate and was provided a copy. The
26 estimate simply stated that the services requested were "Diagnosis, Driveability"; it did not state
27 the requested repair or refer to the rough idle condition.

28 50. Erwin contacted the undercover operator later that day and informed him that the
MAP sensor was reading out of specifications and needed replacement. Erwin also stated that the
spark plugs and spark plug wires needed replacement, the fuel system needed service, and the oil

1 needed changing. The undercover operator authorized all the recommended repairs except the oil
2 change. The operator later returned to respondent's facility, paid \$770.41, and received a copy of
3 Invoice 27651. Invoice 27651 stated:

4 "Verified vehicle had rough idle. Perform diagnosis. Performed leak test using smoke
5 machine and found no vacuum leaks and no exhaust leaks. Checked OBD system and found no
6 codes stored in vehicle memory. Tested the manifold absolute pressure sensor and found the
7 voltage out of range. Checked the spark plugs and found the spark plugs and spark plug wires
8 contaminated. Recommend to replace manifold absolute pressure sensor, replace spark plugs and
9 spark plug wires and replace fuel filter and perform fuel injection system cleaning and recheck
10 vehicle. Recommend to continue diagnosis as needed."

11 51. On or about August 9, 2012 a Bureau representative re-inspected the Chevrolet and
12 found that the MAP sensor, spark plugs, spark plug wires, and fuel filter had been replaced. He
13 also found that the defective vacuum supply hose between the throttle body and the MAP sensor
14 system had been repaired; however, the undercover operator was not told of this repair and the
15 repair is not documented on Invoice 27651.

16 **ELEVENTH CAUSE FOR DISCIPLINE**
17 **Making or Authorizing Untrue or Misleading Statements**
18 **Bus. & Prof. Code, § 9884.7, subd. (a)(1), (a)(6); Cal. Code Regs., tit. 16, § 3371**

19 52. The allegations of paragraphs 48-51 are realleged and incorporated by reference as if
20 fully set forth.

21 53. Respondent has subjected its ARD registration to disciplinary action under section
22 9884.7, subdivision (a)(1), for making or authorizing untrue or misleading statements. As set
23 forth in paragraphs 48-51 above, respondent told the undercover operator that the MAP sensor,
24 spark plugs, and spark plug wires needed replacement, and the fuel system needed service on the
25 Bureau's 1993 Chevrolet C1500 pickup, when in fact all of these parts were in good condition
26 and the only repair required was to repair or replace the leaking vacuum hose between the throttle
27 body and the MAP sensor.

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1 **TWELFTH CAUSE FOR DISCIPLINE**
2 **Fraud**
3 **Bus. & Prof. Code, § 9884.7, subd. (a)(4)**

4 54. The allegations of paragraphs 48-51 are realleged and incorporated by reference as if
5 fully set forth.

6 55. Respondent has subjected its ARD registration to disciplinary action under section
7 9884.7, subdivision (a)(4), for fraud. As set forth in paragraphs 48-51 above, respondent replaced
8 the MAP sensor, spark plugs, spark plug wires, fuel filter, and serviced the fuel system on the
9 Bureau's 1993 Chevrolet C1500 pickup and accepted payment for those replacements and
10 services, when in fact replacement or repair of the vacuum supply hose from the throttle body to
11 the MAP sensor was the only repair needed. The replacement of the MAP sensor, spark plugs,
12 spark plug wires, and fuel filter as well as the fuel system service was unnecessary because those
13 parts and components were in good condition. Although the vacuum supply hose was repaired,
14 this repair was not documented on Invoice 27651 or divulged to the undercover operator.

15 **THIRTEENTH CAUSE FOR DISCIPLINE**
16 **False or Misleading Information on an Estimate, Invoice, Work Order, or Record**
17 **Bus. & Prof. Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, § 3373**

18 56. The allegations of paragraphs 48-51 are realleged and incorporated by reference as if
19 fully set forth.

20 57. Respondent has subjected its ARD registration to disciplinary action under section
21 9884.7, subdivision (a)(1), and California Code of Regulations, title 16, section 3373 for placing
22 false or misleading information on an estimate, invoice, work order, or record. As set forth in
23 paragraphs 48-51 above, respondent's Invoice 27651 for the Bureau's 1993 Chevrolet C1500
24 pickup states, in pertinent part, "[F]ound no vacuum leaks and no exhaust leaks. . . . Tested the
25 manifold absolute pressure sensor and found the voltage out of range. Checked the spark plugs
26 and found the spark plugs and spark plug wires contaminated. Recommend to replace manifold
27 absolute pressure sensor, replace spark plugs and spark plug wires and replace fuel filter and
28 perform fuel injection system cleaning and recheck vehicle." In fact, all of those parts and
29 components were in good condition.

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FIFTEENTH CAUSE FOR DISCIPLINE
Failure to Record Work on Invoice
Bus. & Prof. Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, § 3356;
Bus. & Prof. Code, § 9884.8

58. The allegations of paragraphs 48-51 are realleged and incorporated by reference as if fully set forth.

59. Respondent has subjected its ARD registration to disciplinary action under section 9884.8 for failure to record all work done on an invoice. As set forth in paragraphs 48-51 above, respondent's Invoice 27651 for the Bureau's 1993 Chevrolet C1500 pickup failed to document the repair of the vacuum source hose from the throttle body to the MAP sensor.

SIXTEENTH CAUSE FOR DISCIPLINE
Failure to Provide a Written Estimate for a Specific Job
Bus. & Prof. Code, § 9884.7, subd. (a)(6); Cal. Code Regs., tit. 16, § 3353;
Bus. & Prof. Code, § 9884.9

60. The allegations of paragraphs 48-51 are realleged and incorporated by reference as if fully set forth.

61. Respondent has subjected its ARD registration to disciplinary action under section 9884.7, subdivision (a)(6), and California Code of Regulations, title 16, section 3353, and Business and Professions Code section 9884.9 for failure to provide a written estimated price for labor and parts necessary for a specific job. As set forth in paragraphs 48-51 above, respondent's estimate simply stated that the services requested were "Diagnosis, Driveability," which does not indicate the specific job that respondent was to perform on the Bureau's 1993 Chevrolet C1500 pickup.

PRIOR CITATIONS

62. To determine the degree of discipline, if any, to be imposed on respondent, complainant alleges that on or about March 18, 2011, the Bureau issued Citation Number C2011-1103 against respondent for violating Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing emission control device. The

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1 Bureau assessed civil penalties totaling \$1000.00 against respondent for the violations.

2 Respondent paid this citation on October 18, 2012.

3 **OTHER MATTERS**

4 63. Section 9884.7 provides, in pertinent part:

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

9 **PRAYER**

10 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
11 Accusation, and that following the hearing the Director of Consumer Affairs issue a decision:

12 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
13 Registration Number ARD 229523, issued to Hitek Automotive Inc, Gurbinder S Mavi,
14 President, doing business as respondent Quality Tune-Up #10;

15 2. Revoking, suspending, or placing on probation any other Automotive Repair Dealer
16 registration issued to Hitek Automotive Inc, Gurbinder S Mavi, President;

17 3. Ordering Hitek Automotive Inc, Gurbinder S Mavi, President, to pay the Director
18 the reasonable costs of the investigation and enforcement of this case pursuant to Business and
19 Professions Code section 125.3; and

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

21 DATED: *January 16, 2013*

John Wallauch by Doug Balatti
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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