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9
10 **BEFORE THE**
11 **DIRECTOR OF THE DEPARTMENT OF CONSUMER AFFAIRS**
12 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
13 **STATE OF CALIFORNIA**

14
15 In the Matter of the Accusation and Petition to
Revoke Probation Against:

16 **ECMB SERVICES, INC.,**
17 **DBA 1ST STOP CAR CARE & SMOG**
18 **Miguel Beltran, President**
3008 N. 2nd Ave.
Chula Vista, CA 91910

19 **Automotive Repair Dealer Registration No.**
20 **ARD 283712**
21 **Smog Check Station License No. RC 283712**
22 **Brake Station License No. BS 283712,**
23 **Lamp Station License No. LS 283712**

Respondent.

Case No. 77/22-19198

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

24 **PARTIES**

25 1. Patrick Dorais (Complainant) brings this Accusation and Petition to Revoke
26 Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair
27 (Bureau), Department of Consumer Affairs.
28

1 13. Section 17500 of the Code states:

2 It is unlawful for any person, firm, corporation or association, or any
3 employee thereof with intent directly or indirectly to dispose of real or personal
4 property or to perform services, professional or otherwise, or anything of any nature
5 whatsoever or to induce the public to enter into any obligation relating thereto, to
6 make or disseminate or cause to be made or disseminated before the public in this
7 state, or to make or disseminate or cause to be made or disseminated from this state
8 before the public in any state, in any newspaper or other publication, or any
9 advertising device, or by public outcry or proclamation, or in any other manner or
10 means whatever, including over the Internet, any statement, concerning that real or
11 personal property or those services, professional or otherwise, or concerning any
12 circumstance or matter of fact connected with the proposed performance or
13 disposition thereof, which is untrue or misleading, and which is known, or which by
14 the exercise of reasonable care should be known, to be untrue or misleading, or for
15 any person, firm, or corporation to so make or disseminate or cause to be so made or
16 disseminated any such statement as part of a plan or scheme with the intent not to sell
17 that personal property or those services, professional or otherwise, so advertised at the
18 price stated therein, or as so advertised. Any violation of the provisions of this section
19 is a misdemeanor punishable by imprisonment in the county jail not exceeding six
20 months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by
21 both that imprisonment and fine.

22 **REGULATORY PROVISIONS FOR ACCUSATION**

23 14. California Code of Regulations, title 16, section 3371 (Regulation 3371) states:

24 No automotive repair dealer shall publish, utter, or make or cause to be
25 published, uttered, or made any false or misleading statement or advertisement which
26 is known to be false or misleading, or which by the exercise of reasonable care should
27 be known to be false or misleading. Advertisements and advertising signs shall
28 clearly show the name and address listed on the automotive repair dealer's State
registration certificate.

15 15. California Code of Regulations, title 16, section 3373 (Regulation 3373) states:

16 No automotive repair dealer or individual in charge shall, in filling out an
17 estimate, invoice, or work order, or record required to be maintained by section
18 3340.15(e) of this chapter, withhold therefrom or insert therein any statement or
19 information which will cause any such document to be false or misleading, or where
20 the tendency or effect thereby would be to mislead or deceive customers, prospective
21 customers, or the public.

22 **COST RECOVERY FOR ACCUSATION**

23 16. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **FACTUAL ALLEGATIONS**

4 17. On December 29, 2022, an undercover operator with the Bureau (Operator 1) took the
5 Bureau's 2001 Pontiac to Respondent's facility. Prior to the undercover run, a Bureau
6 representative inspected and documented the vehicle's brake system. Other than the vehicle's
7 low front brake pad linings, all existing brake system components were in good condition and did
8 not need replacement. The Bureau representative released the vehicle for the undercover run with
9 an odometer reading of 112,327 miles.

10 18. Operator 1 arrived at Respondent's facility at approximately 0919 hours and met with
11 a male identified as "George." Operator 1 signed an estimate authorizing a brake inspection for
12 \$45.00. George provided Operator 1 with a copy of the estimate and stated he would call her in
13 three hours.

14 19. At approximately 1144 hours, Operator 1 received a voicemail from George stating
15 he had an update regarding the Firebird and asked Operator 1 to return his call. At 1153 hours,
16 Operator 1 returned George's call. George stated a technician drove the vehicle and felt a
17 vibration when braking. George stated the front brake pads were at 1 millimeter and the front
18 rotors were below minimum thickness specifications. George went on to state the recommended
19 thickness for front rotors was 1.209. George stated the front left rotor measured 1.206 and the
20 right front rotor measured 1.193 and that the right rear rotor was also below the minimum
21 specification. George recommended Operator 1 replace the right rear rotor once the rear pad
22 wore out and recommended a brake flush as the history of the vehicle was unknown and brake
23 flushes were recommended every year or 12,000 miles. George provided the cost for the service
24 to be \$636.00. Operator 1 indicated she would call him with her decision. At approximately
25 1205, Operator 1 approved the replacement of the front brake pads, front rotors, and brake flush.
26 George stated the work would be completed the same day.

1 20. At approximately 1405 hours, Operator 1 called for status of the vehicle. George
2 stated that the technician was installing the parts and estimated it would take 1.5 hours to
3 complete.

4 21. At approximately 1540 hours, Operator 1 returned to Respondent's location.
5 Operator 1 met with George who stated that the work was almost complete. George stated the
6 brake fluid flush was not needed and was not conducted. George stated he did not charge
7 Operator 1 for the brake fluid flush which was confirmed on the copy of the invoice provided to
8 Operator 1. Operator 1 received an invoice for \$525.05, including tax. Operator 1 paid in full,
9 signed, and dated the invoice. Operator 1 indicated she may have misdated the initial estimate
10 and asked George to check. George informed Operator 1 that the initial invoice was misdated but
11 not to worry about it.

12 22. At approximately 1626 hours, Operator 1 left Respondent's facility with the 2001
13 Pontiac Firebird and returned the vehicle to the custody of a Bureau representative.

14 23. On December 29, 2020, a Bureau representative received the 2001 Pontiac Firebird
15 with the odometer reading 112,335 and a copy of the invoice. The invoice identified
16 Respondent's shop, was dated December 29, 2022, and identified the Bureau's vehicle by year,
17 make, model, and license plate. The invoice showed charges at the bottom of the "Labor
18 Description" column for "FRONT BRAKE JOB." The item listed below the charge was for
19 "RESURFACE FRONT BRAKE ROTORS." Near the center of the column, the measurements
20 for the left front rotor was listed as "1206" for the left rotor and "1.193" for the front right rotor.
21 The invoice listed the left rear rotor measured ".970" and the right rear rotor measured ".950."

22 24. On January 4, 2023, the Bureau representative inspected the vehicle. The odometer
23 read 112,335 miles. The Bureau representative test drove the vehicle. The odometer increased to
24 112,339 miles. The Bureau representative inspected the vehicle and found as follows:

- 25 a. Respondent replaced the vehicle's front brake rotors.
- 26 b. Respondent stated inaccurate measures and diagnoses in the invoice provided to
27 Operator 1.

28

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements/Records)**

3 25. Respondent is subject to disciplinary action under Code section 9884.7,
4 subdivision (a)(1), in that Respondent made untrue and misleading statements as set forth in
5 paragraphs 17 through 24, above, and as follows:

6 a. Respondent's employee/representative George falsely sold Operator 1 front
7 brake rotors which were not necessary.

8 b. Respondent's employee/representative George falsely stated the right rear rotor
9 was below acceptable thickness, which was untrue.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Conduct Constituting Fraud)**

12 26. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
13 (a)(4), in that Respondent committed acts constituting fraud by charging and selling front brake
14 rotors as set forth in paragraphs 17 through 24, above, and incorporated herein by reference.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements/Records – 16 CCR 3371)**

17 27. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
18 (a)(6), in conjunction with Regulation 3371, in that Respondent made untrue or misleading
19 statements that were known to be false or misleading, or which by the exercise of reasonable care
20 should be known to be false or misleading, as set forth in the First Cause of Discipline, above.
21 Complainant incorporates by reference paragraphs 17 through 24, above, as if fully set forth
22 herein.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements/Records – 16 CCR 3373)**

25 28. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
26 (a)(6), in conjunction with Regulation 3373, in that Respondent made untrue or misleading
27 statements that were known to be false or misleading, or which by the exercise of reasonable care
28 should be known to be false or misleading, as set forth in the First Cause of Discipline, above.

1 Complainant incorporates by reference paragraphs 17 through 24, above, as if fully set forth
2 herein.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Provisions of the Automotive Repair Act or Regulations)**

5 29. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
6 (a)(6), in that Respondent failed to comply with the provisions of the Automotive Repair Act or
7 Regulations as more fully described in paragraphs 17 through 24, above, and incorporated herein
8 by reference.

9 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

10 30. This Petition to Revoke Probation is brought before the Director under Probation
11 Term and Condition Number 6 of the Decision and Order in , " Case No. 77/20-3281, "*In the*
12 *Matter of the Accusation Against: ECMB Services, Inc., DBA 1st Stop Care & Smog Miguel*
13 *Beltran, President/Treasurer, Emmar Irene Castiollo Limon, Secretary*, which became effective
14 on October 12, 2022. That term and condition states:

15 **6. Violation of Probation**

16 If Respondent violates or fails to comply with the terms and conditions of
17 probation in any respect, the Director, after giving notice and opportunity
18 to be heard may set aside the stay order and carry out the disciplinary
19 order provided in the decision. Once Respondent is served notice of
20 BAR's intent to set aside the stay, the Director shall maintain jurisdiction,
21 and the period of probation shall be extended until final resolution of the
22 matter.

23 31. Grounds exist to revoke Respondent's probation under the authority of Condition 6 of
24 the Decision and Order in that Respondent did not comply with the terms and conditions of his
25 probation, as set forth below.

26 **CAUSE TO REVOKE PROBATION**

27 **(Obey All Laws)**

28 7. At all times after the effective date of Respondent's probation, Condition 1 stated:

1. Obey All Laws. During the period of probation, Respondent shall
comply with all federal and state statutes, regulations and rules governing all BAR
registrations and licenses held by Respondent.

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

DATED: As of Digital Signature Date

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 77/20-3281