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

12
13 In the Matter of the Accusation Against:

Case No. 77/18 - 9143

14 **JERMAL AUSTIN DBA VRF AUTO**
15 **SERVICE**
16 **11861 Paramount Boulevard**
Downey, CA 90241

A C C U S A T I O N

17 **Automotive Repair Dealer Registration No.**
ARD 269368

18 Respondent.
19

20 Complainant alleges:

21 **PARTIES**

- 22 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
23 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.
24 2. On or about June 7, 2012, the Bureau of Automotive Repair issued Automotive
25 Repair Dealer Registration Number ARD 269368 to Jermal Austin dba VRF Auto Service
26 (Respondent). The Automotive Repair Dealer Registration expired on June 30, 2018, and has not
27 been renewed.
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JURISDICTION

3. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

Section 9884.7 of the Code provides that the Director may revoke an automotive repair dealer registration.

4.e Section 9884.13 of the Code 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 temporarily or permanently invalidating (suspending or revoking) a registration.

STATUTORY PROVISIONS

5.e Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

6.e Section 9884.7 of the Code states:

"(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation 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.

(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.

"

(4) Any other conduct which constitutes fraud.

"

1 (6) Failure in any material respect to comply with the provisions of this chapter or a
2 regulations adopted pursuant to it. . . .”

3 7.a Section 9884.8 of the Code states:a

4 “All work done by an automotive repair dealer, including all warranty work, shall
5 be recorded on an invoice and shall describe all service work done and parts supplied.
6 Service work and parts shall be listed separately on the invoice, which shall also state
7 separately the subtotal prices for service work and for parts, not including sales tax, and
8 shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or
9 reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a
10 component system is composed of new and used, rebuilt or reconditioned parts, that
11 invoice shall clearly state that fact. The invoice shall include a statement indicating
12 whether any crash parts are original equipment manufacturer crash parts or nonoriginal
13 equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to
14 the customer and one copy shall be retained by the automotive repair dealer.”

15 **REGULATORY PROVISIONS**

16 8. California Code of Regulations, title 16, section 3353, states:

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

19 “

20 “(b) Estimate for Auto Body or Collision Repairs. Every dealer, when doing auto body or
21 collision repairs, shall give to each customer a written estimated price for parts and labor for a
22 specific job. Parts and labor shall be described separately and each part shall be identified,
23 indicating whether the replacement part is new, used, rebuilt or reconditioned. The estimate shall
24 also describe replacement crash parts as original equipment manufacturer (OEM) crash parts or
25 non-OEM aftermarket crash parts.”

26 9.a California Code of Regulations, title 16, section 3356, states:a

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

1 (1) The invoice shall show the automotive repair dealer's registration number and the
2 corresponding business name and address as shown in the Bureau's records. If the automotive
3 repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b)
4 of Section 3371 of this chapter.

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, and
7 the price for each described service and repair.

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

12 (C) The subtotal price for all service and repair work performed.

13 (D) The subtotal price for all parts supplied, not including sales tax.

14 (E) The applicable sales tax, if any.

15 "

16 10.e California Code of Regulations, title 16, section 3371, states:

17 "No dealer shall publish, utter, or make or cause to be published, uttered, or made any false
18 or misleading statement or advertisement which is known to be false or misleading, or which by
19 the exercise of reasonable care should be known to be false or misleading. . ."

20 11.e California Code of Regulations, title 16, section 3373, states:

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

26 **COST RECOVERY PROVISION**

27 12.e Section 125.3 of the Code provides, in pertinent part, that the Board may request the
28 administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 FACTS

6 13.e On or about April 3, 2018, the Bureau received a consumer complaint filed by G. R.¹
7 against Respondent. The complaint alleged that Respondent did not repair G. R.'s vehicle
8 properly. On or about March 26, 2018, G. R. took her 2012 Volkswagen Jetta (the "Jetta") to her
9 regular mechanic, T. W. to have an engine oil leak checked. T. W. informed her that the engine
10 oil leak is coming from the vacuum pump and in order to make the repair the transmission must
11 be removed. T. W. did not have the equipment to perform the repair and recommend G. R. take
12 the vehicle to Respondent's repair facility.

13 14.e On or about March 26, 2018, G. R. took her vehicle to Respondent's facility. G. R.e
14 met with Respondent and asked to have the engine oil leak checked. Respondent checked the
15 Jetta and informed her that the vacuum pump must be replaced. On or about March 27, 2018, G.
16 R. received a call from Respondent informing her that the lower timing cover was the cause of the
17 oil leak. Respondent informed G. R. that the repair cost would be \$3,154.20. G. R. agreed to the
18 cost of repairs. Later that day, G. R. was informed by Respondent that her vehicle was ready and
19 informed her that the final cost was \$2,552.50. G. R. paid Respondent \$1,620.00 with two (2)
20 credit cards and cash that she borrowed from her niece. She received a final receipt from
21 Respondent.

22 15.e On or about March 28, 2018, G. R. saw that her vehicle was still leaking engine oil in
23 the same place as before. She reviewed her receipt and noticed that the receipt did not have the
24 breakdown of the payments made for the repairs. She returned to the Respondent's facility and
25 requested and received a receipt.

26 16.e On or about March 30, 2018, G. R. took her vehicle to McKenna Volkswagen in the
27 city of Cerritos and requested an inspection of the repairs made by Respondent. After inspecting

28 ¹ The consumers' initials are used to protect their identity.

1 the vehicle, the technician stated on the final receipt that the vacuum pump was replaced with a
2 non-factory part (not a Volkswagen original part), the lower timing chain cover had not been
3 replaced, and there was an engine oil leak between the engine and the transmission area at the
4 rear main seal.

5 17.e On or about April 11, 2018, a Bureau representative inspected G. R.'s vehicle. Thee
6 Bureau representative requested and witnessed the removal of the top and bottom covers of the
7 engine. The Bureau representative also inspected the under part of the engine and transmission.
8 During the inspection, the Bureau representative observed that the engine was still leaking oil and
9 the bolts on the transmission mount had not been removed. In fact, both the engine and
10 transmission had not been removed. The Bureau representative further noted that the vacuum
11 pump did not appear to have been removed or replaced but merely cleaned.

12 18.e On or about April 12, 2018, a Bureau representative interviewed J. C., a parts advisor
13 at McKenna Volkswagen. J. C. shared that on or about March 28, 2018, he received a call from
14 Respondent inquiring about a quote for a lower timing cover on a 2012 Volkswagen Jetta. J. C.
15 sent an email to Respondent with a quote of \$525.34 plus tax for the lower timing cover. On or
16 about March 29, 2018 J. C. received another telephone call from Respondent asking for a quote
17 on a vacuum pump and gasket for a 2012 Volkswagen Jetta. J. C. sent an email to Respondent
18 with the price of \$276.00 plus tax for the vacuum pump and \$17.28 plus tax for the gasket. J. C.
19 confirmed that Respondent never paid or picked up any of the parts he inquired about.

20 19.e On or about April 16, 2018, a Bureau representative interviewed Respondent.e
21 Respondent claimed he personally replaced the vacuum pump and the lower timing cover by
22 unbolting and separating the engine from the transmission. Respondent also provided the Bureau
23 representative the quotes from J. C. at McKenna Volkswagen as proof that he purchased the parts.

24 20.e On or about May 10, 2018, a Bureau representative went to McKenna Volkswagen
25 and witnessed a certified Volkswagen technician remove the transmission from G. R.'s Jetta. The
26 Bureau representative observed that the vacuum pump and the lower timing cover had not been
27 removed. The Bureau representative received a copy of the Station Inspection Report detailing
28 the observations.

21.e The following table summarizes the parts and labor paid for but not provided:

Line Item	Operation	Description	Mechanical Labor	Price
	Remove/Replace	Transmission	\$600.00	
	Replace	Vacuum Pump		\$350.00
	Replace	Vacuum Pump Gasket		\$25.00
	Replace	Lower Timing Cover & Gasket		\$1,400.00
Subtotals			\$600.00	
Total Parts				\$1,775.00
Tax on Parts 10.00%				\$177.50
Total Mechanical Labor			\$600.00	
Total Parts and Labor Not Provided				\$2,552.50

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

22.e Respondent's registration is subject to disciplinary action under Business and Professions Code section 9884.7, subdivision (a)(1), in conjunction with California Code of Regulations, title 16, section 3371, in that on or about the period of March 27, 2018 – April 16, 2018, Respondent made, uttered or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

- a.e Respondent represented to G. R. that he removed and replaced the lower timing cover and the vacuum pump on the Jetta, and he received payment for these services. This statement was untrue, dishonest, misleading, and fraudulent. Respondent did not remove or replace the lower timing cover and the vacuum pump on the Jetta.

1 b. Respondent represented to the Bureau representative that he removed and replaced
2 the lower timing cover and the vacuum pump on the Jetta, and he received payment
3 for these services. This statement was untrue, dishonest, misleading, and fraudulent.
4 Respondent did not remove or replace the lower timing cover and the vacuum pump
5 on the Jetta.

6 c. Respondent tried to pass off quotes for a lower timing cover, vacuum pump, and
7 gasket from McKenna Volkswagen as a bona fide invoice to the Bureau
8 representative. This statement was untrue, dishonest, misleading, and fraudulent.
9 Respondent did not purchase a lower timing cover, vacuum pump, or gasket from
10 McKenna Volkswagen.

11 Complainant incorporates by reference paragraphs 13-21, above, as though fully stated
12 herein.

13 SECOND CAUSE FOR DISCIPLINE

14 (Fraud)

15 23.e Respondent's registration is subject to disciplinary action pursuant to Business and
16 Professions Code section 9884.7, subdivision (a)(4), in that on or about the period of March 27,
17 2018 – April 16, 2018, on the estimate and invoice for repairs made to the Jetta, Respondent
18 committed acts constituting fraud, as stated fully above.

19 Complainant incorporates by reference paragraphs 13-21, above, as though fully stated
20 herein.

21 THIRD CAUSE FOR DISCIPLINE

22 (Violations of Statutes)

23 24.e Respondent's registration is subject to disciplinary action pursuant to Business and
24 Professions Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with the
25 following statutes:

26 a.e **Business and Professions Code section 9884.8:** Respondent failed to provide G. R.e
27 with an itemized invoice for repairs Respondent made to the Jetta.e
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1 Complainant incorporates by reference paragraphs 13-21, above, as though fully stated
2 herein.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Violations of Regulations)**

5 25.e Respondent's registration is subject to disciplinary action pursuant to Business and
6 Professions Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
7 provisions of California Code of Regulations, title 16, in the following material respects:

- 8 a. **Section 3353 (b)**: Respondent failed to provide G. R. with a written estimate with
9 price for parts and labor for a specific job.
- 10 a. **Section 3356**: Respondent failed to provide G. R. with an invoice for repairs
11 Respondent made to the Jetta.
- 12 b. **Section 3371**: On or about March 27, 2018 on the estimate and invoice for repairs
13 made to the Jetta, Respondent made false or misleading statements.
- 14 b. **Section 3373**: Respondent made, uttered or authorized statements which he knew or
15 in the exercise of reasonable care should have known to be untrue or misleading to
16 G.R. and the Bureau Investigator.

17 Complainant incorporates by reference paragraphs 13-21, above, as though fully stated
18 herein.

19 **OTHER MATTERS**

20 26.e Pursuant to Business and Professions Code section 9884.7, subdivision (c), the
21 Director may suspend, revoke, or place on probation the registration for all places of business
22 operated in this State by Respondent, upon a finding that Respondent has, or is, engaged in a
23 course of repeated and willful violations of the laws and regulations pertaining to an automotive
24 repair dealer.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Director of Consumer Affairs issue a decision:
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- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
2 269368, issued to Jermal Austin dba VRF Auto Service;
- 3 2. Revoking, suspending or placing on probation any other Automotive Repair Dealer
4 Registration issued to Jermal Austin;
- 5 3. Ordering Jermal Austin to pay the Bureau of Automotive Repair the reasonable costs
6 of the investigation and enforcement of this case, pursuant to Business and Professions Code
7 section 125.3; and,
- 8 4. Taking such other and further action as deemed necessary and proper.
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10
11 DATED: March 25, 2019 

12 PATRICK DORAIS
13 Chief
14 Bureau of Automotive Repair
15 Department of Consumer Affairs
16 State of California
17 *Complainant*

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19 3-20-19 Amended Acc - VRF Auto.docx
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