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

13
14 In the Matter of the Accusation Against:

Case No. 77/18-6315

15 **STUTTGART AUTO WERKS, DBA GERMAN AUTO;**
16 **GERALD LEROY MARKS,**
17 **PRESIDENT/SECRETARY/TREASURER**
10831 Bloomfield Street, #B
Los Alamitos, CA 90720

A C C U S A T I O N

18 **Automotive Repair Dealer Registration No. ARD 276487**

19 Respondent.

20
21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about May 2, 2014, the Bureau of Automotive Repair issued Automotive
27 Repair Dealer Registration Number ARD 276487 to Stuttgart Auto Werks, dba German Auto;

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1 with Gerald Leroy Marks as President/Secretary/Treasurer (Respondent). The Automotive Repair
2 Dealer Registration expired on May 31, 2018, and has not been renewed.

3 JURISDICTION

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

7 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
8 surrender or cancellation of a license shall not deprive the Director of jurisdiction to proceed with
9 a disciplinary action during the period within which the license may be renewed, restored,
10 reissued or reinstated.

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

15 6. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
16 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
17 proceeding against an automotive repair dealer or to render a decision invalidating a registration
18 temporarily or permanently.

19 7. Section 9884.22, subdivision (a), of the Code states:

20 (a) Notwithstanding any other provision of law, the director may revoke,
21 suspend, or deny at any time any registration required by this article on any of the
22 grounds for disciplinary action provided in this article. The proceedings under this
23 article shall be conducted in accordance with Chapter 5 (commencing with Section
24 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director
25 shall have all the powers granted therein.

24 STATUTORY PROVISIONS

25 8. Section 9884.7 of the Code states:

26 (a) The director, where the automotive repair dealer cannot show there was a
27 bona fide error, may deny, suspend, revoke, or place on probation the registration
28 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

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

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

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

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

12 (4) Any other conduct which constitutes fraud.

13 (5) Conduct constituting gross negligence.

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

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

19 (8) Making false promises of a character likely to influence, persuade, or
20 induce a customer to authorize the repair, service, or maintenance of automobiles.

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

24 (10) Conviction of a violation of Section 551 of the Penal Code.

25 Upon denying of registration, the director shall notify the applicant thereof,
26 in writing, by personal service or mail addressed to the address of the applicant set
27 forth in the application, and the applicant shall be given a hearing under Section
28 9884.12 if, within 30 days thereafter, he or she files with the bureau a written
request for hearing, otherwise the denial is deemed affirmed.

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

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or
place on probation the registration for all places of business operated in this state

1 by an automotive repair dealer upon a finding that the automotive repair dealer
2 has, or is, engaged in a course of repeated and willful violations of this chapter, or
3 regulations adopted pursuant to it.

4 9. Section 9884.8 of the Code states:

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

17 10. Section 9884.9 of the Code states:

18 (a) The automotive repair dealer shall give to the customer a written
19 estimated price for labor and parts necessary for a specific job. No work shall be
20 done and no charges shall accrue before authorization to proceed is obtained from
21 the customer. No charge shall be made for work done or parts supplied in excess
22 of the estimated price without the oral or written consent of the customer that shall
23 be obtained at some time after it is determined that the estimated price is
24 insufficient and before the work not estimated is done or the parts not estimated
25 are supplied. Written consent or authorization for an increase in the original
26 estimated price may be provided by electronic mail or facsimile transmission from
27 the customer. The bureau may specify in regulation the procedures to be followed
28 by an automotive repair dealer if 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, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation
on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or
initials to an acknowledgment of notice and consent, if there is an oral consent of
the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original
estimated price.

(signature or initials)"

Nothing in this section shall be construed as requiring an automotive repair
dealer to give a written estimated price if the dealer does not agree to perform the
requested repair.

1 (b) The automotive repair dealer shall include with the written estimated
2 price a statement of any automotive repair service that, if required to be done, will
3 be done by someone other than the dealer or his or her employees. No service shall
4 be done by other than the dealer or his or her employees without the consent of the
customer, unless the customer cannot reasonably be notified. The dealer shall be
responsible, in any case, for any service in the same manner as if the dealer or his
or her employees had done the service.

5 (c) In addition to subdivisions (a) and (b), an automotive repair dealer, when
6 doing auto body or collision repairs, shall provide an itemized written estimate for
7 all parts and labor to the customer. The estimate shall describe labor and parts
8 separately and shall identify each part, indicating whether the replacement part is
new, used, rebuilt, or reconditioned. Each crash part shall be identified on the
written estimate and the written estimate shall indicate whether the crash part is an
original equipment manufacturer crash part or a nonoriginal equipment
manufacturer aftermarket crash part.

9 (d) A customer may designate another person to authorize work or parts
10 supplied in excess of the estimated price, if the designation is made in writing at
11 the time that the initial authorization to proceed is signed by the customer. The
12 bureau may specify in regulation the form and content of a designation and the
13 procedures to be followed by the automotive repair dealer in recording the
14 designation. For the purposes of this section, a designee shall not be the
15 automotive repair dealer providing repair services or an insurer involved in a claim
16 that includes the motor vehicle being repaired, or an employee or agent or a person
17 acting on behalf of the dealer or insurer.

18 11. Section 9884.11 of the Code states:

19 Each automotive repair dealer shall maintain any records that are required by
20 regulations adopted to carry out this chapter. Those records shall be open for
21 reasonable inspection by the chief or other law enforcement officials. All of those
22 records shall be maintained for at least three years.

23 12. Section 9889.50 of the Code states:

24 The Legislature finds the following:

25 (1) Thousands of California automobile owners each year require repair of
26 their vehicles as a result of collision or other damage.

27 (2) California automobile owners are suffering direct and indirect harm
28 through unsafe, improper, incompetent, and fraudulent auto body repairs.

(3) There is a lack of proper training and equipment that auto body repair
shops need to meet the demands of the highly evolved and sophisticated
automobile manufacturing industry.

(4) California has no minimum standards or requirements for auto body
repair shops.

(5) Existing laws currently regulating the auto body industry could be
strengthened.

1 (6) There is a compelling need to increase competency and standards for the
2 auto body repair industry.

3 13. Section 9889.51 of the Code states:

4 “ ‘Auto body repair shop’ means a place of business operated by an
5 automotive repair dealer where automotive collision repair or reconstruction of
6 automobile or truck bodies is performed.”

7 **REGULATORY PROVISIONS**

8 14. California Code of Regulations, title 16, (CCR) section 3353,¹ states, in pertinent
9 part:

10 No work for compensation shall be commenced and no charges shall accrue
11 without specific authorization from the customer in accordance with the following
12 requirements:

13 (a) Estimate for Parts and Labor. Every dealer shall give to each customer a
14 written estimated price for labor and parts for a specific job.

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

22 (c) Additional Authorization. The dealer shall obtain the customer's
23 authorization before any additional work not estimated is done or parts not
24 estimated are supplied. This authorization shall be in written, oral, or electronic
25 form, and shall describe additional repairs, parts, labor and the total additional
26 cost.

27 (1) If the authorization from the customer for additional repairs, parts, or
28 labor in excess of the written estimated price is obtained orally, the dealer shall
also make a notation on the work order and on the invoice of the date, time, name
of the person authorizing the additional repairs, and the telephone number called,
if any, together with the specification of the additional repairs, parts, labor and the
total additional costs.

(2) If the authorization from the customer for additional repairs, parts, or
labor in excess of the written estimated price is obtained by facsimile transmission
(fax), the dealer shall also attach to the work order and the invoice, a faxed
document that is signed and dated by the customer and shows the date and time of
transmission and describes the additional repairs, parts, labor and the total
additional cost.

¹ The language as set forth in this Accusation, reflects the language that was in operation
and effect at the time of the violations. Section 3353 was subsequently amended in 2018.

1 (3) If the authorization from the customer for additional repairs, parts, or
2 labor in excess of the written estimated price is obtained by electronic mail (e-
3 mail), the dealer shall print and attach to the work order and invoice. the e-mail
4 authorization which shows the date and time of transmission and describes the
5 additional repairs, parts, labor, and the total additional costs.

6 (4) The additional repairs, parts, labor, total additional cost, and a statement
7 that the additional repairs were authorized either orally, or by fax, or by e-mail
8 shall be recorded on the final invoice to Section 9884.9 of the Business and
9 Professions Code. All documentation must be retained pursuant to Section
10 9884.11 of the Business and Professions Code.

11 (d) Estimated Price to Tear Down, Inspect, Report and Reassemble. For
12 purposes of this article, to "tear down" shall mean to disassemble, and "teardown"
13 shall mean the act of disassembly. If it is necessary to tear down a vehicle
14 component in order to prepare a written estimated price for required repair, the
15 dealer shall first give the customer a written estimated price for the teardown. This
16 price shall include the cost of reassembly of the component. The estimated price
17 shall also include the cost of parts and necessary labor to replace items such as
18 gaskets, seals and O rings that are normally destroyed by teardown of the
19 component. If the act of teardown might prevent the restoration of the component
20 to its former condition, the dealer shall write that information on the work order
21 containing the teardown estimate before the work order is signed by the customer.

22 The repair dealer shall notify the customer orally and conspicuously in
23 writing on the teardown estimate the maximum time it will take the repair dealer to
24 reassemble the vehicle or the vehicle component in the event the customer elects
25 not to proceed with the repair or maintenance of the vehicle and shall reassemble
26 the vehicle within that time period if the customer elects not to proceed with the
27 repair or maintenance. The maximum time shall be counted from the date of
28 authorization of teardown.

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.

(e) Revising an Itemized Work Order. If the customer has authorized repairs
according to a work order on which parts and labor are itemized, the dealer shall
not change the method of repair or parts supplied without the written, oral,
electronic authorization of the customer. The authorization shall be obtained from
the customer as provided in subsection (c) and Section 9884.9 of the Business and
Professions Code.

....

(g) Definitions. As used in this section, "written " shall mean the
communication of information or information in writing, other than by electronic
means; "oral" shall mean the oral communication of information either in person or
telephonically; "electronic" shall mean the communication of information by
facsimile transmission (fax) or electronic mail (e-mail).

1 15. California Code of Regulations, title 16, section 3358,² states:

2 Each automotive repair dealer shall maintain legible copies of the following
3 records for not less than three years:

4 (a) All invoices relating to automotive repair including invoices received
5 from other sources for parts and/or labor.

6 (b) All written estimates pertaining to work performed.

7 (c) All work orders and/or contracts for repairs, parts and labor. All such
8 records shall be open for reasonable inspection and/or reproduction by the bureau
9 or other law enforcement officials during normal business hours.

10 16. California Code of Regulations, title 16, section 3371,³ states:

11 No dealer shall publish, utter, or make or cause to be published, uttered, or
12 made any false or misleading statement or advertisement which is known to be
13 false or misleading, or which by the exercise of reasonable care should be known
14 to be false or misleading. Advertisements and advertising signs shall clearly show
15 the following:

16 (a) Firm Name and Address. The dealer's firm name and address as they
17 appear on the State registration certificate as an automotive repair dealer; and

18 (b) Telephone Number. If a telephone number appears in an advertisement
19 or on an advertising sign, this number shall be the same number as that listed for
20 the dealer's firm name and address in the telephone directory, or in the telephone
21 company records if such number is assigned to the dealer subsequent to the
22 publication of such telephone directory.

23 17. California Code of Regulations, title 16, section 3372.1 states:

24 An automotive repair dealer shall not advertise automotive service at a price
25 which is misleading. Price advertising is misleading in circumstances which
26 include but are not limited to the following:

27 (a) The automotive repair dealer does not intend to sell the advertised service
28 at the advertised price but intends to entice the consumer into a more costly
transaction; or

(b) The advertisement for service has the capacity to mislead the public as to
the extent that anticipated parts, labor or other services are included in the
advertised price; or

26 ² The language as set forth in this Accusation, reflects the language that was in operation
27 and effect at the time of the violations. Section 3358 was subsequently amended in 2018.

28 ³ The language as set forth in this Accusation, reflects the language that was in operation
and effect at the time of the violations. Section 3371 was subsequently amended in 2018.

1 (c) The advertisement for service or repair has the capacity to mislead the
2 public as to the need for additional related parts, labor or other services; or

3 (d) The automotive repair dealer knows or should know that the advertised
4 service cannot usually be performed in a good and workmanlike manner without
5 additional parts, services or labor; provided, however, that an advertisement which
6 clearly and conspicuously discloses that additional labor, parts or services are
7 often needed will, to that extent, not be regarded as misleading. Any such
8 disclosure statement shall indicate that many instances of performance of the
9 service involve extra cost and, if the automotive dealer reasonably expects that the
10 extra cost will be more than 25% of the advertised costs, that the extra cost may be
11 substantial. The type size of the disclosure statement shall be at least 1/2 the type
12 size used in the advertised price and the statement shall either be shown near the
13 price or shall be prominently footnoted through use of an asterisk or similar
14 reference.

15 18. California Code of Regulations, title 16, section 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(f) 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
20 where the tendency or effect thereby would be to mislead or deceive customers,
21 prospective customers, or the public.

22 COST RECOVERY

23 19. Section 125.3 of the Code provides, in pertinent part, that the Board 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
27 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
28 included in a stipulated settlement.

RESTITUTION

20. Section 11519, subdivision (d) of the Government Code provides, in pertinent part,
that the Director may require restitution of damages suffered as a condition of probation in the
event probation is ordered.

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FACTS

21. At all times alleged in this Accusation, any allegation of fraud refers to actual fraud. In the alternative, fraud refers to constructive fraud as defined in Civil Code sections 1571-1573.

22. At all times alleged in this Accusation, Gerald Leroy Marks (Marks) was acting within the course and scope of a technician, employee, partner, officer, owner, or member of Respondent.

23. Respondent advertised on the internet website, "Craigslist," numerous listings advertising low priced rebuilt Volkswagen engines, transmissions, and expertise in Volkswagen repair. Respondent used low priced engine rebuilding advertisements to bait and switch consumers into substantially higher cost transactions, never intending to complete the repairs. Respondent intentionally mislead consumers into paying in advance of repairs, with the promise of placement on a "build list" giving the consumer a false sense of hope that their Volkswagen components would receive priority and be completed in a timely manner. The following nine consumers were victims of Respondent's scheme:⁴

CONSUMER COMPLAINT #1 - J.H.

24. J.H. found Respondent through an advertisement on Craigslist. In the advertisement, Respondent offered a rebuilt Volkswagen engine for \$500.00.

25. On or about July 25, 2017, J.H. contacted Respondent and spoke with Marks. J.H. asked about a rebuilt short block assembly (engine assembly without cylinders or cylinder heads) for his Volkswagen. J.H. was told that Respondent had one in stock for \$500.00 with J.H.'s Volkswagen's old engine traded in as a core.

26. On or about July 26, 2017, J.H. delivered his old engine to Respondent for a rebuild. When he arrived, Marks was not at Respondent's shop, so he spoke to an employee, "Shawn." Shawn told J.H. that he did not have a rebuilt engine available for exchange; however, he stated that Respondent could rebuild the Volkswagen's engine for \$500.00. J.H. signed an estimate to "inspect all parts dropped off, contact customer on inspection and options, assemble customer's

⁴ Cumulatively, Respondent stole a total of \$21,704.76 from these nine consumers. That amount does not include the value of the engines, transmissions and ancillary parts that Respondent failed to return.

1 short block” J.H.’s engine for \$503.00, and was charged and paid a \$200.00 deposit. J.H.
2 expected Respondent to rebuild his Volkswagen’s engine for \$500.00 as advertised and promised.

3 27. Approximately one week later, on or about August 3, 2017, Marks emailed J.H. a
4 new estimate for \$1,529.28 to rebuild his engine. The new estimate also had a different
5 description of the work that included a “tear down.” J.H. declined to pay this new estimate and
6 made multiple attempts to reach Marks by phone, however, Marks did not respond. Therefore, on
7 or about August 14, 2017, J.H. went to Respondent’s station to retrieve his engine and \$200.00.
8 While J.H. was at Respondent’s station, Marks showed J.H. an engine that was disassembled on a
9 workbench and told J.H. that the disassembled engine was J.H.’s Volkswagen’s engine. The
10 engine had not been cleaned. J.H. requested his deposit back, but Marks refused. J.H. requested
11 an itemized invoice of labor that was performed, but Marks refused. J.H. loaded his engine and
12 parts into his vehicle and left without his deposit. J.H. filed a consumer complaint against
13 Respondent with the Bureau of Automotive Repair (BAR).

14 28. On or about January 29, 2018, a BAR representative visited Respondent and
15 discussed J.H.’s complaint with Marks. Marks admitted that he did not refund any money to J.H.
16 Respondent also did not maintain a copy of the revised estimate dated August 3, 2017 in its
17 records.

18 **CONSUMER COMPLAINT #2 – R.T.**

19 29. R.T. found Respondent through an advertisement on the internet website, Craigslist.
20 In the advertisement, Respondent offered a rebuilt Volkswagen engine for \$1,395.00.

21 30. On or about March 9, 2017, R.T. delivered his Volkswagen to Respondent. Marks
22 provided R.T. with an estimate to rebuild the engine for \$1,420.92, which included removing the
23 engine from the Volkswagen, rebuilding the engine and installing the rebuilt engine. The
24 estimate did not document the maximum time it would take to reassemble R.T.’s engine should
25 R.T. elect not to proceed with the repair. R.T. expected that Respondent would rebuild his
26 Volkswagen’s engine for \$1,420.00 in three months as promised. R.T. paid Respondent
27 \$1,420.00 when he dropped his vehicle off.

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1 38. On or about January 3, 2017, J.M. delivered his Volkswagen to Respondent, who
2 provided him with an estimate to rebuild his Volkswagen's engine for \$1,541.87. J.M. expected
3 and believed that Respondent would rebuild his Volkswagen's engine for \$1,541.87 as promised
4 and thus, paid Respondent \$1,500.00 in cash when he dropped off the engine.

5 39. Shortly thereafter, on or about January 13, 2017, Marks emailed J.M. with a revised
6 estimate for \$2,193.49, which J.M. authorized. However, Respondent did not document the date,
7 time, telephone number, name of person authorizing work, the additional cost, and additional
8 work that was to be performed when Respondent raised the cost from \$1,541.87 to \$2,442.30 on
9 the work order.

10 40. For the next several months, J.M. attempted to contact Marks about his engine
11 rebuild; however, Marks avoided J.M.'s calls. In October 2017, J.M. visited Respondent's station
12 to follow up on his rebuild. J.M. discovered that Respondent had not performed any work on his
13 engine in the past ten months. J.M. questioned Marks as to why no work had been performed on
14 his engine. Marks then provided J.M. with a new estimate showing a total amount of \$2,560.69.
15 J.M. declined the new estimate and asked Marks when his engine would be ready. Marks became
16 angry and told J.M. that it would be ready, "when I say it will be ready." At that point, J.M.
17 asked Marks to return his \$1,500.00 and return his engine. Marks refused to refund J.M.'s money
18 but told J.M. he could take his engine, but that it was disassembled. Thereafter, J.M. filed a
19 consumer complaint with BAR.

20 41. On January 29, 2018, a BAR representative met with Marks to discuss the complaint
21 filed by J.M. against Respondent. Marks told the representative that J.M. wanted to cancel his
22 contract in October because he had purchased a replacement engine from another source and that
23 J.M. was told he could not cancel it because his engine was being assembled. Marks admitted
24 that J.M.'s engine was not complete, that he refused to provide a refund to J.M. and that he did
25 not return J.M.'s engine. Respondent also did not maintain the January 3, 2017 invoice, and
26 failed to provide part invoices for the parts listed on the January 3, 2017 work order.

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CONSUMER COMPLAINT #4 – R.H.

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2 42. R.H. found Respondent through an advertisement on the internet website, Craigslist.
3 In the advertisement, Respondent offered a rebuilt Volkswagen engine for \$799.00.

4 43. On or about July 8, 2017, R.H. delivered his Volkswagen to Respondent. Respondent
5 provided R.H. with an estimate to rebuild his engine and provide a rebuilt manual transmission
6 for \$2,157.92. R.H. expected that Respondent would rebuild his Volkswagen's engine and
7 provide a rebuilt manual transmission for \$2,157.92 in four months, as promised. However,
8 Respondent did not document the maximum time it would take to reassemble R.H.'s engine
9 should R.H. elect not to proceed with the repair on the work order.

10 44. After Respondent removed the engine and transmission from R.H.'s Volkswagen,
11 Marks emailed R.H. a new estimate for \$2,823.25 to rebuild his engine and provide a rebuilt
12 manual transmission, which R.H. authorized. However, Respondent did not document the date,
13 time, telephone number, name of person authorizing work, the additional cost, and additional
14 work that was to be performed when Respondent raised the cost from \$2,157.92 to \$2,823.25 on
15 the work order. Respondent charged R.H. a deposit in the amount of \$1,000, which R.H. paid in
16 cash. Respondent subsequently charged R.H. the balance of \$1,823.25, which R.H. paid in cash.

17 45. For the next several months, R.H. attempted to contact Marks to no avail about the
18 status of the work. Therefore, in December 2017, R.H. went to Respondent's station, where he
19 discovered that no work had been performed on the engine. During this meeting, Marks provided
20 a manual transmission. R.H. questioned Marks as to when his engine would be complete but
21 Marks became argumentative. When R.H. asked for his money or his engine back, Respondent
22 refused. Thereafter, R.H. filed a complaint with BAR.

23 46. On January 29, 2018, a BAR representative met with Marks to discuss the complaint
24 that was filed by R.H. against Respondent. Marks told the BAR representative that R.H. was
25 happy to wait until his engine was complete, but then admitted that R.H.'s engine was not
26 complete, he had not started repairs to the engine and he did not know when it would be
27 completed. The BAR representative informed Marks that R.H. wanted a refund and the return of
28 his engine. Marks refused to provide any refund and refused to return the engine.

CONSUMER COMPLAINT #5 – A.S.-1⁵

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2 47. A.S. found Respondent through an advertisement on the internet website, Craigslist.
3 In the advertisement, Respondent offered rebuilt Volkswagen engines for low prices. A.S.
4 contacted Respondent and spoke to Marks, who assured A.S. that Respondent could rebuild the
5 engine and transmission for \$4,200.00.

6 48. On or about July 16, 2017, A.S. delivered his Volkswagen to Respondent. On or
7 about July 18, 2017, Marks provided A.S. with an estimate to rebuild the Volkswagen's engine
8 and transmission for \$4,388.91, which included removing the engine and transmission from the
9 vehicle, rebuilding the engine and transmission and installing the rebuilt engine and transmission.
10 A.S. expected that Respondent would rebuild the engine and transmission for \$4,388.91 in two
11 months, as promised. Thereafter, A.S. mailed Respondent a personal check on July 19, 2017 in
12 the amount of \$2,200.00.

13 49. Approximately two weeks later on or about July 31, 2017, Marks sent A.S. a revised
14 estimate for \$5,759.71, which A.S. authorized. Respondent attempted to charge A.S. with an
15 additional fee by offering a "Racers Rush," where Respondent would complete the work in 30
16 days. A.S. declined that offer.

17 50. Respondent continued to pressure A.S. into paying additional money or he would not
18 begin the repairs to the engine. Therefore, on September 13, 2017, A.S. paid Respondent an
19 additional \$2,000.00 by personal check.

20 51. Over the next several months, Marks made numerous excuses to A.S. regarding the
21 time to complete the repairs. Marks emailed A.S. another revised estimate for \$7,269.08, which
22 A.S. declined.

23 52. During December 2017 and January 2018, A.S. made numerous trips to Respondent's
24 station to check on the status of his work. However, Marks was never present when A.S. visited
25 and Marks did not return A.S. attempts to communicate. On January 31, 2018, after becoming
26 frustrated by Marks' lack of communication, A.S. returned to Respondent's station to pick up his
27

28 ⁵ There are two consumers with the initials A.S. To differentiate between the two, they
will be referred to as A.S.-1 and A.S.-2.

1 engine and obtain a refund. An employee at Respondent's station refused to return Marks engine
2 and Marks refused to respond to A.S. contact. Thereafter, A.S. filed a complaint with BAR
3 against Respondent.

4 **CONSUMER COMPLAINT #6 – R.B.**

5 53. R.B. found Respondent through an advertisement on the internet website, Craigslist.
6 In the advertisement, Respondent offered rebuilt Volkswagen engines for low prices. Through
7 text message exchanges, Marks assured R.B. that he could rebuild R.B.'s engine for \$1,628.92.

8 54. On or about July 18, 2017, Marks emailed R.B. an estimate to rebuild his engine for
9 \$1,628.92. R.B. signed the estimate and sent it back to Marks. Shortly thereafter, R.B. delivered
10 his engine to Respondent. R.B. expected that Respondent would rebuild his Volkswagen's
11 engine for \$1,628.92 as promised. Respondent charged R.B. a deposit in the amount of \$300.00,
12 which R.B. paid in cash.

13 55. Approximately two weeks later, on or about August 2, 2017, Marks emailed R.B. a
14 revised estimate for \$2,766.24, which R.B. authorized. Marks told R.B. that work could not be
15 performed until 80% of the total cost was paid. Marks convinced R.B. to pay an additional
16 \$1,000.00, which he paid in cash. Marks promised to complete R.B.'s engine in thirty days.

17 56. In February 2018, after becoming frustrated at Mark's lack of communication, R.B.
18 returned to Respondent's station to pick up his engine and \$2,300.00. Respondent's employee
19 told R.B. that no work had been performed on his engine. R.B. subsequently mailed Respondent
20 a letter demanding return of this money and his engine but Marks did not respond.

21 **CONSUMER COMPLAINT #7 – A.S.-2**

22 57. A.S. found Respondent through an advertisement on the internet website, Craigslist.
23 In the advertisement, Respondent advertised expertise in Volkswagen engine repairs for low
24 prices. On or about December 19, 2015, A.S. delivered his engine to Respondent. Marks
25 provided A.S. with an estimate to rebuild A.S.' engine for \$703.00. A.S. expected that
26 Respondent would rebuild his engine for \$703.00 as promised. Respondent charged a \$200.00
27 deposit, which A.S. paid.

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1 58. On or about April 18, 2016, Marks invited A.S. to visit Respondent's station to view
2 a collection of damaged parts. Marks claimed that the damaged parts were from A.S.' engine and
3 then provided A.S. with a revised estimate of \$3,132.00 to rebuild his engine. During that
4 meeting, A.S. paid Respondent \$400.00 using a debit card.

5 59. On or about May 4, 2016, A.S. visited Respondent to check the progress of his
6 engine. Respondent had not performed any work; however, Marks convinced A.S. to pay an
7 additional \$400.00 in cash to Respondent.

8 60. In March 16, 2017, A.S. returned to Respondent's station. During that visit, Marks
9 convinced A.S. to pay an additional \$400.00 in cash to Respondent.

10 61. In May 2017, A.S. visited Respondent's station to check the progress of his engine
11 and discovered that no work had been performed. When A.S. questioned Marks about the lack of
12 work, Marks responded by threatening him.

13 62. On or about October 30, 2017, A.S. contacted Marks about the status of his engine
14 and Marks replied that A.S.' engine would be on the staging table in the next week. On or about
15 November 29, 2017, A.S. contacted Marks again about the status of his engine. On or about
16 December 6, 2017, Marks responded to A.S. and told him that A.S.' engine would be complete by
17 the end of December 2017. A.S. never received his rebuilt engine. On or about February 27,
18 2018, Marks sent A.S. a message that he closed his shop. Thereafter, A.S. filed a complaint
19 against Respondent with BAR.

20 **CONSUMER COMPLAINT #8 – N.C.**

21 63. N.C. found Respondent through an advertisement on the internet website, Craigslist.
22 In the advertisement, Respondent advertised expertise in Volkswagen engine repairs for low
23 prices. On or about March 30, 2017, N.C. delivered his engine to Respondent. Marks provided
24 N.C. with an estimate to rebuild the engine for \$3,403.40 and insisted that N.C. pay the full
25 amount in cash before work could begin. N.C. paid Respondent \$3,403.40 by cashier's check.
26 N.C. expected that Respondent would rebuild his Volkswagen's engine for \$3,403.40 as
27 promised.

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1 Craigslist, without properly showing Respondent's business name and address as it appears in
2 BAR's records.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 70. Complainant re-alleges and incorporates by reference the allegations set forth above
6 in paragraphs 21-69.

7 71. Respondent's registration is subject to disciplinary action under Code section 9884.7,
8 subdivision (a)(1), in that Respondent made or authorized in any manner or by any means
9 whatever any statement written or oral which is untrue or misleading, and which is known, or
10 which by the exercise of reasonable care should be known, to be untrue or misleading.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 72. Complainant re-alleges and incorporates by reference the allegations set forth above
14 in paragraphs 21-69.

15 73. Respondent's registration is subject to disciplinary action under Code section 9884.7,
16 subdivision (a)(4) for conduct that constitutes fraud.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with the Code)**

19 74. Complainant re-alleges and incorporates by reference the allegations set forth above
20 in paragraphs 21-69.

21 75. Respondent's Registration is subject to disciplinary action under Code section 9884.7,
22 subdivision (a)(6), in that Respondent failed to comply with the following sections of the Code, in
23 the following respect:

24 a) **Section 9884.9(a)** – Respondent failed to meet estimate and authorization
25 requirements as required by the Code with respect to R.T., J.M., and R.H.

26 b) **Section 9884.11** – Respondent failed to maintain records and/or make records open
27 for reasonable inspection as it relates to his work for clients, J.H. and R.T.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 76. Complainant re-alleges and incorporates by reference the allegations set forth above
4 in paragraphs 21-69.

5 77. Respondent's Registration is subject to disciplinary action under section 9884.7,
6 subdivision (a)(6), in that Respondent failed to comply with the following sections of the
7 California Code of Regulations, title 16, in the following respect:

8 a) **Section 3353(c)(1)** – Respondent failed to comply with additional authorization
9 requirements with respect to J.M. and R.H.

10 b) **Section 3353(d)** – Respondent failed to comply with estimate to teardown, inspect,
11 report and reassemble with respect to R.H.

12 c) **Section 3358(a)** – Respondent failed to maintain legible copies of all invoices
13 relating to automotive repair including invoices received from other sources for parts and/or labor
14 with respect to R.T.

15 d) **Section 3358(c)** – Respondent failed to maintain all work orders and/or contracts for
16 repairs, parts and labor with respect to J. H. and R.T.

17 e) **Section 3371** – Respondent made an untrue or misleading statement or advertisement
18 with respect to J.H., R.T., J.M., R.H., A.S., R.B., A.S., N.C., and S.W.

19 f) **Section 3372.1** – Respondent advertised automotive services at a price which is
20 misleading with respect to J.H., R.T., J.M., R.H., A.S., R.B., A.S., N.C., and S.W.

21 g) **Section 3373** – Respondent inserted a statement or information in an estimate which
22 caused the document to be false or misleading with respect to J.H.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(False Promises)**

25 78. Complainant re-alleges and incorporates by reference the allegations set forth above
26 in paragraphs 21-69.

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1 79. Respondent's Registration is subject to disciplinary action under section 9884.7(a)(8)
2 in that Respondent made false promises of a character likely to influence, persuade, or induce a
3 customer to authorize the repair, service, or maintenance of automobiles.

4 **OTHER MATTERS**


5 80. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily
6 or permanently or refuse to validate, the registrations for all places of business operated in this
7 State by Respondent upon a finding that Respondent has engaged in a course of repeated and
8 willful violations of the laws and regulations pertaining to an automotive repair dealer.

9 **PRAYER**

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

- 12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
13 276487, issued to Stuttgart Auto Werks, dba German Auto; Gerald Leroy Marks,
14 President/Secretary/Treasurer;
- 15 2. Ordering Gerald Leroy Marks to pay the Bureau of Automotive Repair the reasonable
16 costs of the investigation and enforcement of this case, pursuant to Business and Professions
17 Code section 125.3; and,
- 18 3. Taking such other and further action as deemed necessary and proper.
- 19
20

21 DATED: March 21, 2019


22 PATRICK DORAIS
23 Chief
24 Bureau of Automotive Repair
25 Department of Consumer Affairs
26 State of California
27 Complainant

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