

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**FIS, INC., doing business as PURRFECT
AUTO SERVICE #125;
MOHAMMAD HANIF KHAN,
President, Vice President, Secretary, Treasurer**

Automotive Repair Dealer Registration No. ARD
270946
Smog Check Station License No. RC 270946

and

**FIS, INC., doing business as PURRFECT
AUTO SERVICE;
MOHAMMAD HANIF KHAN, President,
Vice President, Secretary, Treasurer**

Automotive Repair Dealer Registration No. ARD
261008
Smog Check Station License No. RC 261008,

Respondents.

Case No. 79/16-66

OAH No. 2016060962


DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective

May 31, 2017

DATED: 4/18/2017



RYAN MARCROFT
Assistant Chief Counsel
Division of Legal Affairs
Department of Consumer Affairs

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

FIS, INC., doing business as PURRFECT
AUTO SERVICE #125;
MOHAMMAD HANIF KHAN, President,
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Automotive Repair Dealer Registration No.
ARD 270946
Smog Check Station License No.
RC 270946

and

FIS, INC., doing business as PURRFECT
AUTO SERVICE;
MOHAMMAD HANIF KHAN, President,
Vice President, Secretary, Treasurer

Automotive Repair Dealer Registration No.
ARD 261008
Smog Check Station License No.
RC261008,

Respondents.

Case No.: 79/16-66

OAH No.: 2016060962

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on January 17, 2017. Kevin J. Rigley, Deputy Attorney General, represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs. No appearance was made on behalf of respondent FIS, Inc., doing business as Purrfect Auto Service and Purrfect Auto Service #125. Respondent Mohammad Hanif Khan, the corporate officer of FIS, Inc., did not appear and was not represented at the hearing.

Complainant seeks to discipline the automotive repair dealer registrations and smog check station licenses issued to FIS, Inc., doing business as Purrfect Auto Service #125 and Purrfect Auto Service, and to obtain an order for reimbursement of its costs of investigation and prosecution because respondents allegedly made untrue or misleading statements, engaged in fraudulent conduct, and failed to comply with the requirements of the Automotive Repair Act and Motor Vehicle Inspection Program.

The matter proceeded by default. The record was closed and the matter was submitted for decision at the conclusion of the hearing. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order, which among other things, revokes the automotive repair dealer registrations and smog check station licenses issued to FIS, Inc., doing business as Purrfect Auto Service #125 and Purrfect Auto Service.

FACTUAL FINDINGS

1. Complainant brought the Accusation¹ solely in his official capacity.

Purrfect Auto Service #125's Registration and License

2. On November 21, 2012, the Bureau issued Automotive Repair Dealer Registration ARD 270946 to FIS, Inc., doing business as Purrfect Auto Service #125 with respondent Mohammad Hanif Khan as president, vice president, secretary and treasurer. ARD 270946 expired November 30, 2014.

3. On January 18, 2013, the Bureau issued Smog Check Station License RC 270946 to FIS, Inc., doing business as Purrfect Auto Service #125 with respondent Mohammad Hanif Khan as president, vice president, secretary and treasurer. RC 270946 expired November 30, 2014.

Purrfect Auto Service's Registration and License

4. On March 2, 2010, the Bureau issued Automotive Repair Dealer Registration ARD 261008 to FIS, Inc., doing business as Purrfect Auto Service with respondent Mohammad Hanif Khan as president, vice president, secretary and treasurer. ARD 261008 expired February 28, 2015.

5. On April 1, 2010, the Bureau issued Smog Check Station License RC 261008 to FIS, Inc., doing business as Purrfect Auto Service with respondent Mohammad Hanif

¹ At the administrative hearing, the Accusation was amended by interlineation as follows: On page 11, line 9, the word "five" was omitted and substituted with the word "four." On page 11, lines 18 and 19, the word "Toyota" was omitted and substituted with the word "Honda."

Khan as president, vice president, secretary and treasurer. RC 261008 expired February 28, 2015.

Alleged Causes for Revocation of Registrations and Licenses

6. Paul Vitelli, Program Representative I of the Bureau, has responsibility for, among other things, investigating allegations about automobile repair shop fraud. Vitelli credibly testified at the administrative hearing that, over an unspecified period of time, the Bureau received multiple consumer complaints that Purrfect Auto Services #125 was conducting repairs on vehicles that were not required and selling automobile parts that were not necessary. Based on these consumer complaints, the Bureau commenced investigating the business practices of Purrfect Auto Services #125, and then ultimately expanded the scope of its investigation to include the business practices of Purrfect Auto Services. The Bureau's initial investigations found evidence of "over selling," which Vitelli explained occurred "when consumers went in for brake inspections, then left with other things such as tune ups, fuel systems." Based on the findings of its initial investigations, the Bureau launched comprehensive undercover investigations, on April 3, 2014, June 12, 2014, and June 18, 2014, into the business practices of Purrfect Auto Services #125 and Purrfect Auto Services.

7. By sworn affidavits, Bureau employees explained how they intentionally induced a single, specific malfunction in three different vehicles, a Toyota, a Honda, and a Chevrolet truck, how each inducement was documented in the Bureau's laboratory prior to dispatching an undercover operative with a vehicle to either Purrfect Auto Services #125 or Purrfect Auto Services for repairs, and the condition of the vehicle after Purrfect Auto Services #125 and Purrfect Auto Services performed certain repairs on each vehicle. (See Exh. 4 at p. AGO 029 and p. AGO 057 and Exh. 6 at p. AGO 100). The Bureau's undercover operatives detailed their encounter with Purrfect Auto Services #125 and Purrfect Auto Services in sworn affidavits. (See Exh. 4 at p. AGO 042 and p. AGO 066 and Exh. 6 at p. AGO 110.) Vitelli prepared investigative reports with comprehensive analyses of the undercover investigations' detailed findings. (See Exh 4 at pp. AGO 001-012 and Exh. 6 at pp. AG) 075-083.)

8. Vitelli's credible testimony and the supporting reports and documentation on which Vitelli relied during the course of his testimony and the Bureau employees and undercover operatives' testimony by affidavit were neither challenged nor disputed at the administrative hearing.

9. All evidence submitted at the administrative hearing has been considered, and the following allegations, as set forth in the Accusation, are established by a preponderance of the credible evidence:

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UNDERCOVER OPERATION #1 RE:PURRFECT AUTO SERVICE#125

15. A Bureau Forensic Laboratory Representative (lab representative) documented a Toyota (Toyota) by installing an intentionally damaged cylinder number two spark plug in order to create an ignition system misfire. The shorted number two cylinder spark plug caused the engine to run rough and have a loss of power on acceleration. This malfunction caused the "Check Engine Light" to illuminate. The only repair necessary to correct the defect would have been to replace the number two cylinder spark plug.

16. On or about April 03, 2014, Bureau representatives transported the Toyota in its documented condition (as specified above in paragraph 13[sic]) to a pre-arranged location, where it was released to an undercover operator who was working on behalf of the Bureau. The undercover operator was instructed to drive the Toyota to Respondent Purrfect Auto #125's facility and request a smog check. The undercover operator then drove the Toyota to Respondent Purrfect Auto #125's facility and requested a smog check for the Toyota from an employee at Respondent Purrfect Auto #125 by the name of "Shawn" (hereinafter referred to as "Shawn"), who identified himself as the manager. The undercover operator also asked how much the smog check would cost, to which Shawn replied "around \$60.00". The undercover operator did not sign or receive a written estimate from the manager.

17. Shortly thereafter, the smog check was completed, at which point Shawn returned and informed the undercover operator that the car had failed and needed further diagnostic testing, at an additional cost of \$160.00. Furthermore, no written estimate for this \$160.00 diagnostic service was provided to the undercover operator at that time. Shawn merely informed the undercover operator that he would call him in a few hours with the results of the diagnostic test. The undercover operator then left the premises and awaited a call back from Shawn. Eventually, Shawn called the undercover operator and told him the Toyota would need a fuel management system tune up due to carbon build up, and that the vehicle speed sensor was not working. The undercover operator then asked Shawn how much that work would cost and was told that the total price for such services would be \$1389.90. Shawn also said he would call the undercover operator later that same day to let him know if the car was ready to be picked up. The undercover operator then orally authorized all the work that Shawn had just informed him over the phone would be needed. At approximately 6:00 p.m. that same day, Shawn called the undercover operator and informed him that one of the parts he had ordered was the wrong one, and that the car would not be completed until the following day. On the following day, Shawn informed the undercover operator over the phone that the car had passed a smog check and that it was ready to be picked up. Shawn also told the undercover operator that he owed \$1389.90. for the work that had been done on the vehicle.

18. A Bureau representative then met with the undercover operator and provided him with \$1500 in cash to pay for the repairs at Respondent Purrfect Auto #125's facility. The undercover operator was subsequently dropped off at the Respondent's Purrfect Auto #125's facility, paid the \$1389.90, and after receiving invoices and Vehicle Inspection Reports from Respondent Purrfect Auto #125's employee, drove away in the Toyota. Thereafter, the undercover operator met the Bureau representative and relinquished possession of the Toyota to him, at which point the Bureau representative transported the Toyota directly back to the Bureau's Documentation Lab.

19. The Bureau's lab representative subsequently confirmed that the only repair that actually would have been necessary to correct the defect would have been to identify the problem cylinder for the misfire, and replace the damaged spark plug.

20. In regard to the work that Respondent Purrfect Auto #125 claimed that it performed and actually received payment for, the Bureau's lab representative made the following determinations: The replacement of all of the spark plugs was actually done, and such was reasonable and acceptable under the circumstances. However, the idle and timing speed was not adjusted despite being billed for, as no provision for adjustment exists. Purge and decarb induction and injection chambers were not needed even though it was billed for, and in fact was not performed. Replacement of the vehicle speed sensor was billed for, but was not needed and in fact, not even performed. Repair of a parasitic draw was billed for, but was not needed and in fact, not even performed. Resetting and relearning computer memory was billed for but not completed, as the evaporative system monitor was incomplete. Based upon the dollar values listed on the invoice, Respondent Purrfect Auto #125 charged the undercover operator \$1,244.53 for parts and labor that were not needed and not provided as invoiced.

21. In essence, Respondent Purrfect Auto #125 charged the undercover operator \$1,244.53 for work that was not required to repair the vehicle's misfire condition, which was also ultimately not even performed, Respondent Purrfect Auto #125 told the undercover operator that they could not return his parts because such parts were smog related and the undercover operator was not a "smog official". Respondent Purrfect Auto #125 told the undercover operator that the cost of the Smog Check inspection would be around \$60.00, but did not provide him a written estimate prior to performing the inspection. Respondent Purrfect Auto #125 gave the undercover operator an invoice that contained the entry "purge & decarb induction & injection chambers", which did not adequately describe the nature of the service work that was actually performed.

[¶]. . . [¶]

UNDERCOVER OPERATION #2 RE:PURRFECT AUTO SERVICE#125

27. A Bureau Forensic Laboratory Representative (lab representative) documented a Honda (Honda) by way of an intentionally damaged cylinder number four spark plug to create an ignition system misfire. The shorted number five cylinder spark plug caused the engine to run rough and have a loss of power on acceleration. This malfunction also caused the "Check Engine Light" to illuminate. The only repair necessary to correct the defect would have been to replace the spark plug.

28. On June 12, 2014, Bureau representatives transported the Toyota in its documented condition (as specified above in paragraph 27) to a pre-arranged location, where it was released to an undercover operator (hereinafter "undercover operator") who was working on behalf of the Bureau. The undercover operator was instructed to drive the Toyota to Respondent Purrfect Auto#125's facility and request a smog check. The undercover operator then drove the Toyota to Respondent Purrfect Auto #125's facility and requested a smog check for the Toyota from an employee at Respondent Purrfect Auto #125's facility by the name of "Tom" (hereinafter referred to as "Tom") who identified himself as one of the managers at the facility. Tom later returned and advised the undercover operator that the Honda had failed the smog test. Tom further advised the undercover operator that a diagnostic test had to be done on the vehicle, that it would cost \$89.95, and that the undercover operator should call back later that day to receive the results of the diagnostic test. The undercover operator did not sign or receive a written estimate from Tom. The undercover operator then departed the facility. When the undercover operator later called Tom to receive the results of the diagnostic test, Tom told him that there was excessive carbon build up, that three injectors were not giving a signal to the Honda's computer, and that the injectors were non-sequential with the cam and crank sensors. Tom also told the undercover operator that the control units for the cam and crank sensors appeared to be bad, that the cam and crank timing was off, and that there was excessive carbon build up on the airflow sensor and EGR systems, which was slowing down the signals to the computer. Tom further advised that there were many things that could be wrong with the vehicle and that it may take until the end of the day to determine any such things. Tom then asked if the undercover operator could leave the Honda and [sic] until the end of the day or the following morning. The undercover operator agreed and left the Honda at the facility overnight.

29. On the following day, June 13, 2014, the undercover operator called the respondent Purrfect Auto #125's facility and spoke with Tom, who advised that the Honda had excessive carbon build up and that all the EGR passages were plugged. Tom farther stated that in order for the Honda to pass a smog check, all of the passages and carbon had to be cleaned out. Tom also informed the undercover operator that the sensors would not be effective if the

carbon is not removed. Additionally, Tom told the undercover operator that after the intake system was cleaned and decarbonized, the spark plugs would have to be replaced in order for the Honda to pass a smog check.

30. The undercover operator then asked what these services Tom had just spoken of would cost and was told the total would be \$595.29, tax included. After the undercover operator then orally authorized the work, Tom said he would call him when the car was ready.

31. When the undercover operator later went to the facility to pay for the work and pick up the Honda, Tom told him that the spark plugs had been replaced, and gave the old ones back to the undercover operator, as requested. The undercover operator then asked Tom if the Respondent Purrfect Auto #125's facility had replaced any other parts on the Honda had been replaced [*sic*] and was told that nothing else had been replaced—that all of the remaining charges in addition to the spark plugs were for labor.

32. The undercover operator then paid the entire \$595.29 bill and was provided with various documents (an invoice and two Vehicle Inspection Reports)—and drove away in the Honda to another location, where he met with Bureau representatives who took custody of the Honda. Thereafter, a Bureau representative transported the Honda back to the Bureau's Forensic Laboratory.

33. The Bureau's lab representative subsequently confirmed that the only repair necessary to correct the defect would have been to identify the problem cylinder for the misfire, and replace the damaged spark plug. In regard to the work that Respondent Purrfect Auto #125 claimed that it performed and actually received payment for, the Bureau's lab representative made the following determinations: The replacement of all of the spark plugs was actually done, and such was reasonable and acceptable under the circumstances. However, although the invoice reflected that the air filter had been replaced, it had not been. The lab representative also found that EGR passage cleaning had been performed but was not needed, and that the purge and decarb service listed on the invoice (and charged for) was not needed.

34. Based upon the dollar values listed on the invoice, it was determined that Respondent Purrfect Auto #125 had charged the undercover operator \$471.70 for parts and labor that were either not needed or not provided.

35. In essence, Respondent Purrfect Auto #125 charged the undercover operator \$471.70 for work that was not required to repair the Honda's misfire condition. Respondent Purrfect Auto #125 failed to advise the undercover operator of the cost of a Smog Check inspection, and also failed to provide the undercover operator with a written estimate prior to performing the inspection.

[¶]. . . [¶]

UNDERCOVER OPERATION RE: PURRFECT AUTO SERVICE

40. A Bureau lab representative documented a Chevrolet Truck (Chevrolet Truck) by intentionally damaging the number six cylinder spark plug to create an ignition system misfire. This malfunction caused the "Service Engine Soon" lamp to illuminate, the engine to run rough and have a loss of power on acceleration. The only repair necessary to correct the defect would have been to replace the number six cylinder spark plug, though replacing all the spark plugs would also have been acceptable.

41. On June 18, 2014 a Bureau representative instructed a Bureau undercover operator ("the undercover operator") to drive the Chevrolet Truck from an undisclosed location to Respondent Purrfect Auto, and request a Smog Check. The undercover operator then drove the Chevrolet Truck to Respondent Purrfect Auto and spoke to an employee behind the counter who identified himself as the facility's manager ("the manager"). The undercover operator asked the manager if he had time to do a Smog Check that day while he (the undercover operator) waited, and the manager said that he could do so. The manager then took the keys to the Chevrolet Truck from the undercover operator, but did not provide him with a written estimate. The manager then left the counter area. When he returned a short time later, the manager told the undercover operator that the Chevrolet Truck had failed and that a diagnostic would have to be done. The undercover operator then asked how much the diagnostic would cost, and the manager told him the price was \$89.99. The undercover operator orally authorized the diagnostic and waited for the results; no written estimate for this diagnostic service was provided to him. About forty five minutes later, the manager approached the undercover operator with an "estimate worksheet", and proceeded to advise the undercover operator that the Chevrolet Truck needed spark plugs –but also spark plug wires, a distributor cap, an ignition rotor, an air filter, and a resetting of the vehicle's computer. He added that he would need to "run the monitors" on the vehicle and a lot of built-up carbon would also have to be cleaned out. When the undercover operator asked how much these services would cost, the manager told him that although normally the price would be about \$1100.00, but that he would only charge the undercover operator \$750.00. Though the undercover operator orally authorized the services that had just been suggested to him by the manager, he was not asked to sign a written estimate for this work.

42. After the undercover operator informed the manager that he would probably have to leave the Chevrolet Truck overnight because he had to go to work at that point, he left the premises of Respondent Purrfect Auto on foot and was picked up by the Bureau representative less than a mile away. On the following morning, the undercover operator called Respondent Purrfect Auto and spoke with the same manager, who told him the vehicle had passed the

test and was now ready to be picked up. When the undercover operator then inquired about being provided with the parts that Respondent Purrfect Auto had replaced on the vehicle, the manager told him that he had not asked for the old parts early enough for them to be retained, and that they had been thrown away. The manager also stated that the total cost of all the services rendered was going to be around \$900.00, because of the initial test and diagnostic services that were done. No additional authorization for the price increase from \$750.00 to \$900.00 was ever asked for by the manager or given by the undercover operator. The undercover operator subsequently returned to Respondent Purrfect Auto later that same day, paid the \$900.00 in cash, and left with the Chevrolet Truck after he was provided with an invoice and a VIR in connection with the work that had just been performed.

43. Thereafter, between June 19, 2014 and July 8, 2014, the Bureau's lab representative inspected the Chevrolet Truck and confirmed that the only repair that had actually been necessary to correct the previously documented defect would have been to identify the problem cylinder, and replace the spark plug (though replacing all the spark plugs would also have been acceptable). The Bureau's lab representative found that the distributor cap, distributor rotor and spark plug wire set had been replaced as invoiced, despite the fact that the replacement of these parts had not been necessary.

44. Based upon the amount shown on the invoice, Respondent Purrfect Auto Service charged \$215.01 for parts and labor which were not necessary to repair the vehicle's previously documented misfire condition.

(Exh. 1.)

Costs of Investigation and Prosecution

10. The Bureau incurred investigative costs in the amount of \$10,044.21 and prosecution costs in the amount of \$9,160. These costs are reasonable pursuant to Business and Professions Code section 125.3.

11. No evidence regarding respondents' finances or ability to pay the Bureau's cost of investigation and prosecution was presented at the administrative hearing.

LEGAL CONCLUSIONS

1. With respect to the First Cause for Discipline (Untrue or Misleading Statements) alleged in paragraph 22 of the Accusation, cause exists to revoke respondent Purrfect Auto Service #125's Registration Number ARD 270946 and Smog Check Station License Number RC 270946 pursuant to Business and Professions Code section 9884.7, subdivisions (a)(1) and (4), and California Code of Regulations, title 16, section 3373, by reason of Factual Finding 9 (in paragraphs 15 through 21 of the Accusation).

2. With respect to the Second Cause for Discipline (Failure to Return Parts When Requested) alleged in paragraph 23 of the Accusation, cause exists to revoke respondent Purrfect Auto Service #125's Registration Number ARD 270946 and Smog Check Station License Number RC 270946 pursuant to Business and Professions Code section 9884.10, by reason of Factual Finding 9 (in paragraphs 15 through 21 of the Accusation).

3. With respect to the Third Cause for Discipline (Fraud) alleged in paragraph 24 of the Accusation, cause exists to revoke respondent Purrfect Auto Service #125's Registration Number ARD 270946 and Smog Check Station License Number RC 270946 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), and California Code of Regulations, title 16, section 3373, by reason of Factual Finding 9 (in paragraphs 15 through 21 of the Accusation).

4. With respect to the Fourth Cause for Discipline (Violations of Written Estimate and Invoice Requirements) alleged in paragraph 25 of the Accusation, cause exists to revoke respondent Purrfect Auto Service #125's Registration Number ARD 270946 and Smog Check Station License Number RC 270946 pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6), and 9884.9, subdivision (a), and California Code of Regulations, title 16, sections 3353 and 3356, by reason of Factual Finding 9 (in paragraphs 15 through 21 of the Accusation).

5. With respect to the Fifth Cause for Discipline (Violations of the Code) alleged in paragraph 26 of the Accusation, cause exists to revoke respondent Purrfect Auto Service #125's Registration Number ARD 270946 and Smog Check Station License Number RC 270946 pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6), and 9884.9, subdivision (a), by reason of Factual Finding 9 (in paragraphs 15 through 21 of the Accusation).

6. With respect to the Sixth Cause for Discipline (Untrue or Misleading Statements) alleged in paragraph 36 of the Accusation, cause exists to revoke respondent Purrfect Auto Service #125's Registration Number ARD 270946 and Smog Check Station License Number RC 270946 pursuant to Business and Professions Code section 9884.7, subdivisions (a)(1) and (4), and California Code of Regulations, title 16, section 3373, by reason of Factual Finding 9 (in paragraphs 27 through 35 of the Accusation).

7. With respect to the Seventh Cause for Discipline (Fraud) alleged in paragraph 37 of the Accusation, cause exists to revoke respondent Purrfect Auto Service #125's Registration Number ARD 270946 and Smog Check Station License Number RC 270946 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), by reason of Factual Finding 9 (in paragraphs 27 through 35 of the Accusation).

8. With respect to the Eighth Cause for Discipline (Violations of Written Estimate and Invoice Requirements) alleged in paragraph 38 of the Accusation, cause exists to revoke respondent Purrfect Auto Service #125's Registration Number ARD 270946 and Smog Check Station License Number RC 270946 pursuant to Business and Professions Code

sections 9884.7, subdivision (a)(6), and 9884.9, subdivision (a), and California Code of Regulations, title 16, sections 3353 and 3356, by reason of Factual Finding 9 (in paragraphs 27 through 35 of the Accusation).

9. With respect to the Ninth Cause for Discipline (Violations of the Code) alleged in paragraph 39 of the Accusation, cause exists to revoke respondent Purrfect Auto Service #125's Registration Number ARD 270946 and Smog Check Station License Number RC 270946 pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6), and 9884.9, subdivision (a), by reason of Factual Finding 9 (in paragraphs 27 through 35 of the Accusation).

10. With respect to the Tenth Cause for Discipline (Untrue and Misleading Statements) alleged in paragraph 45 of the Accusation, cause exists to revoke respondent Purrfect Auto Service's Registration Number ARD 261008 and Smog Check Station License Number RC 261008 pursuant to Business and Professions Code section 9884.7, subdivisions (a)(1) and (4), and California Code of Regulations, title 16, section 3373, by reason of Factual Finding 9 (in paragraphs 40 through 44 of the Accusation).

11. With respect to the Eleventh Cause for Discipline (Failure to Return Parts When Requested) alleged in paragraph 46 of the Accusation, cause exists to revoke respondent Purrfect Auto Service's Registration Number ARD 261008 and Smog Check Station License Number RC 261008 pursuant to Business and Professions Code section 9884.10, by reason of Factual Finding 9 (in paragraphs 40 through 44 of the Accusation).

12. With respect to the Twelfth Cause for Discipline (Fraud) alleged in paragraph 47 of the Accusation, cause exists to revoke respondent Purrfect Auto Service's Registration Number ARD 261008 and Smog Check Station License Number RC 261008 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), and California Code of Regulations, title 16, section 3373, by reason of Factual Finding 9 (in paragraphs 40 through 44 of the Accusation).

13. With respect to the Thirteenth Cause for Discipline (Violations of Written Estimate and Invoice Requirements) alleged in paragraph 48 of the Accusation, cause exists to revoke respondent Purrfect Auto Service's Registration Number ARD 261008 and Smog Check Station License Number RC 261008 pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6), and 9884.9, subdivision (a), and California Code of Regulations, title 16, sections 3353 and 3356, by reason of Factual Finding 9 (in paragraphs 40 through 44 of the Accusation).

14. With respect to the Fourteenth Cause for Discipline (Violations of the Code) alleged in paragraph 49 of the Accusation, cause exists to revoke respondent Purrfect Auto Service's Registration Number ARD 261008 and Smog Check Station License Number RC 261008 pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6), and 9884.9, subdivision (a), by reason of Factual Finding 9 (in paragraphs 40 through 44 of the Accusation).

Cost Award

15. Cause exists pursuant to Business and Professions Code section 125.3 to order respondent FIS, Inc., doing business as Purrfect Auto Service #125 and Purrfect Auto Service to pay the Bureau's reasonable costs of investigation and prosecution set forth in Factual Finding 10.

16. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. App. 4th 32, 45, the Bureau must exercise its discretion to reduce or eliminate cost awards so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Bureau] may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Bureau, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and the Bureau must consider whether or not the licensee has raised a colorable defense. The Bureau must also consider the licensee's ability to make payment.

17. Considering all of the *Zuckerman* factors, including the respondents failure to appear at the administrative hearing and the absence of evidence regarding respondents' finances, respondents shall pay the Bureau its reasonable costs of investigation and prosecution totaling \$19,204.21, but only in the event that Automotive Repair Dealer Registration Numbers ARD 270946 or ARD 261008 or Smog Check Station License Numbers RC 270946 or RC 261008 are reinstated in the future.

ORDER

1. Automotive Repair Dealer Registration Number ARD 270946 issued to FIS, Inc., doing business as Purrfect Auto Service #125 is revoked.

2. Smog Check Station License Number RC 270946 issued to FIS, Inc., doing business as Purrfect Auto Service #125 is revoked.

3. Automotive Repair Dealer Registration Number ARD 261008 issued to FIS, Inc., doing business as Purrfect Auto Service is revoked.

4. Smog Check Station License Number RC 261008 issued to FIS, Inc., doing business as Purrfect Auto Service is revoked.

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5. FIS, Inc., doing business as Purrfect Auto Service #125 and Purrfect Auto Service shall pay the Bureau its reasonable costs of investigation and prosecution totaling \$19,204.21 in the event that the revoked registrations or licenses set forth above in Orders 1, 2, 3, and 4 are reinstated in the future.

Dated: January 31, 2017

DocuSigned by:



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JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

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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 No. 19/16-66

13 **FIS, INC., DBA PURRFECT AUTO SERVICE #125;**
14 **MOHAMMAD HANIF KHAN – PRESIDENT/VICE**
15 **PRESIDENT/ SECRETARY/TREASURER**
2323 S. Azusa Ave.
West Covina, CA 91792

A C C U S A T I O N

16 Mailing address:
13823 Foothill Blvd.
Fontana, CA 92335

18 Automotive Repair Dealer Registration No. ARD 270946
19 Smog Check Station License No. RC 270946

20 and

21 **FIS, INC., DBA PURRFECT AUTO SERVICE;**
22 **MOHAMMAD HANIF KHAN – PRESIDENT/**
23 **SECRETARY/TREASURER**
13823 Foothill Blvd.
Fontana, CA 92335

24 Automotive Repair Dealer Registration No. ARD 261008
25 Smog Check Station License No. RC 261008

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27 Respondents.
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1 Complainant alleges:

2 PARTIES

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

5 **Automotive Repair Dealer Registrations**

6 2. On or about November 21, 2012, the Bureau of Automotive Repair issued
7 Automotive Repair Dealer Registration Number ARD 270946 (ARD registration) to FIS, Inc.,
8 dba Purrfect Auto Service #125; Mohammad Hanif Khan (Respondent Purrfect Auto #125). The
9 ARD registration will expire on November 30, 2016, unless renewed.

10 3. On or about March 2, 2010, the Bureau of Automotive Repair issued Automotive
11 Repair Dealer Registration Number ARD 261008 (ARD registration) to FIS, Inc., dba Purrfect
12 Auto Service; Mohammad Hanif Khan (Respondent Purrfect Auto). The ARD registration will
13 expire on February 28, 2017, unless renewed.

14 **Smog Check Test Only Station Licenses**

15 4. On or about January 18, 2013, the Bureau of Automotive Repair issued Smog Check
16 Station License Number RC 270946 (station license) to FIS, Inc., dba Purrfect Auto Service
17 #125; Mohammad Hanif Khan (Respondent Purrfect Auto #125). The station license will expire
18 on November 30, 2016, unless renewed.

19 5. On or about April 1, 2010, the Bureau of Automotive Repair issued Smog Check
20 Station License Number RC 261008 (station license) to FIS, Inc., dba Purrfect Auto Service;
21 Mohammad Hanif Khan (Respondent Purrfect Auto). The station license will expire on February
22 28, 2017, unless renewed.

23 JURISDICTION

24 6. This Accusation is brought before the Director of the Department of Consumer
25 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

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STATUTORY PROVISIONS

7. Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may 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 that constitutes fraud.

....

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

8. Code section 9884.8 states:

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

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1 9. Code section 9884.9 states, in pertinent part:

2 (a) The automotive repair dealer shall give to the customer a written estimated
3 price for labor and parts necessary for a specific job. No work shall be done and no
4 charges shall accrue before authorization to proceed is obtained from the customer.
5 No charge shall be made for work done or parts supplied in excess of the estimated
6 price without the oral or written consent of the customer that shall be obtained at
7 some time after it is determined that the estimated price is insufficient and before
8 the work not estimated is done or the parts not estimated are supplied. Written
9 consent or authorization for an increase in the original estimated price may be
10 provided by electronic mail or facsimile transmission from the customer. The
11 bureau may specify in regulation the procedures to be followed by an automotive
12 repair dealer when an authorization or consent for an increase in the original
13 estimated price is provided by electronic mail or facsimile transmission. If that
14 consent is oral, the dealer shall make a notation on the work order of the date, time,
15 name of person authorizing the additional repairs and telephone number called, if
16 any, together with a specification of the additional parts and labor . . .

10

11 10. Code section 9884.10 states:

12 "Upon request of the customer at the time the work order is taken, the automotive repair
13 dealer shall return replaced parts to the customer at the time of the completion of the work
14 excepting such parts as may be exempt because of size, weight, or other similar factors from this
15 requirement by regulations of the department and excepting such parts as the automotive repair
16 dealer is required to return to the manufacturer or distributor under a warranty arrangement. If
17 such parts must be returned to the manufacturer or distributor, the dealer at the time the work
18 order is taken shall offer to show, and upon acceptance of such offer or request shall show, such
19 parts to the customer upon completion of the work, except that the dealer shall not be required to
20 show a replaced part when no charge is being made for the replacement part."

21

REGULATORY PROVISIONS

22 11. Regulation 3353 states, 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 12. Regulation 3356 states:

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

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

9 (A) All service and repair work performed, including all diagnostic and warranty work, and
10 the price for each described service and repair.

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

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

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

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

18 (b) If a customer is to be charged for a part, that part shall be specifically listed as an item
19 in the invoice, as provided in subparagraph (B) of paragraph (2) of subsection (a) above. If that
20 item is not listed in the invoice, it shall not be regarded as a part, and a separate charge may not
21 be made for it.

22 (c) Separate billing in an invoice for items generically noted as shop supplies,
23 miscellaneous parts, or the like, is prohibited.

24 (d) The automotive repair dealer shall give the customer a legible copy of the invoice and
25 shall retain a legible copy as part of the automotive repair dealer's records pursuant to Section
26 9884.11 of the Business and Professions Code and Section 3358 of this article.

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1 13. Regulation 3373 states:

2 No automotive repair dealer or individual in charge shall, in filling out an
3 estimate, invoice, or work order, or record required to be maintained by section
4 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
5 information which will cause any such document to be false or misleading, or where
6 the tendency or effect thereby would be to mislead or deceive customers, prospective
7 customers, or the public.

6 COST RECOVERY

7 14. Code section 125.3 provides, in pertinent part, that a Board may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 UNDERCOVER OPERATION #1 RE: PURRFECT AUTO SERVICE #125

12 15. A Bureau Forensic Laboratory Representative (lab representative) documented a
13 Toyota (Toyota) by installing an intentionally damaged cylinder number two spark plug in order
14 to create an ignition system misfire. The shorted number two cylinder spark plug caused the
15 engine to run rough and have a loss of power on acceleration. This malfunction caused the
16 "Check Engine Light" to illuminate. The only repair necessary to correct the defect would have
17 been to replace the number two cylinder spark plug.

18 16. On or about April 03, 2014, Bureau representatives transported the Toyota in its
19 documented condition (as specified above in paragraph 13) to a pre-arranged location, where it
20 was released to an undercover operator who was working on behalf of the Bureau. The
21 undercover operator was instructed to drive the Toyota to Respondent Purrfect Auto #125's
22 facility and request a smog check. The undercover operator then drove the Toyota to Respondent
23 Purrfect Auto #125's facility and requested a smog check for the Toyota from an employee at
24 Respondent Purrfect Auto #125 by the name of "Shawn" (hereinafter referred to as "Shawn"),
25 who identified himself as the manager. The undercover operator also asked how much the smog
26 check would cost, to which Shawn replied "around \$60.00". The undercover operator did not
27 sign or receive a written estimate from the manager.

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1 17. Shortly thereafter, the smog check was completed, at which point Shawn returned
2 and informed the undercover operator that the car had failed and needed further diagnostic
3 testing, at an additional cost of \$160.00. Furthermore, no written estimate for this \$160.00
4 diagnostic service was provided to the undercover operator at that time. Shawn merely informed
5 the undercover operator that he would call him in a few hours with the results of the diagnostic
6 test. The undercover operator then left the premises and awaited a call back from Shawn.
7 Eventually, Shawn called the undercover operator and told him the Toyota would need a fuel
8 management system tune up due to carbon build up, and that the vehicle speed sensor was not
9 working. The undercover operator then asked Shawn how much that work would cost and was
10 told that the total price for such services would be \$1389.90. Shawn also said he would call the
11 undercover operator later that same day to let him know if the car was ready to be picked up. The
12 undercover operator then orally authorized all the work that Shawn had just informed him over
13 the phone would be needed. At approximately 6:00 p.m. that same day, Shawn called the
14 undercover operator and informed him that one of the parts he had ordered was the wrong one,
15 and that the car would not be completed until the following day. On the following day, Shawn
16 informed the undercover operator over the phone that the car had passed a smog check and that it
17 was ready to be picked up. Shawn also told the undercover operator that he owed \$1389.90. for
18 the work that had been done on the vehicle.

19 18. A Bureau representative then met with the undercover operator and provided him
20 with \$1500 in cash to pay for the repairs at Respondent Purrfect Auto #125's facility. The
21 undercover operator was subsequently dropped off at the Respondent's Purrfect Auto #125's
22 facility, paid the \$1389.90, and after receiving invoices and Vehicle Inspection Reports from
23 Respondent Purrfect Auto #125's employee, drove away in the Toyota. Thereafter, the
24 undercover operator met the Bureau representative and relinquished possession of the Toyota to
25 him, at which point the Bureau representative transported the Toyota directly back to the
26 Bureau's Documentation Lab.

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1 19. The Bureau's lab representative subsequently confirmed that the only repair that
2 actually would have been necessary to correct the defect would have been to identify the problem
3 cylinder for the misfire, and replace the damaged spark plug.

4 20. In regard to the work that Respondent Purrfect Auto #125 claimed that it performed
5 and actually received payment for, the Bureau's lab representative made the following
6 determinations: The replacement of all of the spark plugs was actually done, and such was
7 reasonable and acceptable under the circumstances. However, the idle and timing speed was not
8 adjusted despite being billed for, as no provision for adjustment exists. Purge and decarb
9 induction and injection chambers were not needed even though it was billed for, and in fact was
10 not performed. Replacement of the vehicle speed sensor was billed for, but was not needed and
11 in fact, not even performed. Repair of a parasitic draw was billed for, but was not needed and in
12 fact, not even performed. Resetting and relearning computer memory was billed for but not
13 completed, as the evaporative system monitor was incomplete. Based upon the dollar values
14 listed on the invoice, Respondent Purrfect Auto #125 charged the undercover operator \$1,244.53
15 for parts and labor that were not needed and not provided as invoiced.

16 21. In essence, Respondent Purrfect Auto #125 charged the undercover operator
17 \$1,244.53 for work that was not required to repair the vehicle's misfire condition, which was also
18 ultimately not even performed. Respondent Purrfect Auto #125 told the undercover operator that
19 they could not return his parts because such parts were smog related and the undercover operator
20 was not a "smog official". Respondent Purrfect Auto #125 told the undercover operator that the
21 cost of the Smog Check inspection would be around \$60.00, but did not provide him a written
22 estimate prior to performing the inspection. Respondent Purrfect Auto #125 gave the undercover
23 operator an invoice that contained the entry "purge & decarb induction & injection chambers",
24 which did not adequately describe the nature of the service work that was actually performed.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Untrue or Misleading Statements)**

27 22. Respondent Purrfect Auto #125's ARD registration and station license are subject to
28 disciplinary action pursuant to Code section 9884.7, subdivisions (a)(1) and (4), and California

1 Code of Regulations section 3373, in that Respondent Purrfect Auto #125 made or authorized
2 statements which it knew or in the exercise of reasonable care should have known to be untrue or
3 misleading, as follows:

4 a. In regard to the subject Toyota, the idle and timing speed was not adjusted despite
5 being billed for, as no provision for adjustment exists. Purge and decarb induction and injection
6 chambers were not needed even though it was billed for, and in fact was not performed.
7 Replacement of the vehicle speed sensor was billed for, but was not needed and in fact, not even
8 performed. Repair of a parasitic draw was billed for, but was not needed and in fact, not even
9 performed. Resetting and relearning computer memory was billed for but not completed, as the
10 evaporative system monitor was incomplete. Based upon the dollar values listed on the invoice,
11 Respondent Purrfect Auto #125 charged the undercover operator \$1,244.53 for parts and labor
12 that were not needed and not provided as invoiced. Respondent Purrfect Auto #125 also told the
13 undercover operator that they could not return his parts because such parts were smog related and
14 the undercover operator was not a "smog official", which was untrue. Complainant further refers
15 to and hereby incorporates paragraphs 15 through 21 above as though set forth fully.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Failure to Return Parts When Requested)**

18 23. Respondent Purrfect Auto #125's ARD registration and station license are subject to
19 disciplinary action pursuant to Code section 9884.10, in that Respondent Purrfect Auto #125 also
20 told the undercover operator that they could not return his parts because such parts were smog
21 related and the undercover operator was not a "smog official", which was untrue. Complainant
22 further refers to and hereby incorporates paragraphs 15 through 21 above as though set forth
23 fully.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 24. Respondent's ARD registration and station license are subject to disciplinary action
27 pursuant to Code section 9884.7, subdivision (a)(4), and California Code of Regulations section
28 3373, in that Respondent committed acts constituting fraud, as follows: In regard to the subject

1 Toyota, the idle and timing speed was not adjusted despite being billed for, as no provision for
2 adjustment exists. Purge and decarb induction and injection chambers were not needed even
3 though it was billed for, and in fact was not performed. Replacement of the vehicle speed sensor
4 was billed for, but was not needed and in fact, not even performed. Repair of a parasitic draw
5 was billed for, but was not needed and in fact, not even performed. Resetting and relearning
6 computer memory was billed for but not completed, as the evaporative system monitor was
7 incomplete. Based upon the dollar values listed on the invoice, Respondent charged the
8 undercover operator \$1,244.53 for parts and labor that were not needed and not provided as
9 invoiced. Complainant further refers to and hereby incorporates paragraphs 15 through 21 above
10 as though set forth fully.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Violations of Written Estimate and Invoice Requirements)**

13 25. Respondent Purrfect Auto #125's ARD registration and station license are subject to
14 disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), and California Code of
15 Regulations sections 3353 and 3356, in that Respondent Purrfect Auto #125 failed to comply with
16 section 9884.9, subdivision (a), of that Code in the following material respects: Respondent
17 Purrfect Auto #125 failed to provide the undercover operator with a written estimate for parts
18 and/or labor necessary for a specific job, and failed to obtain the undercover operator's
19 authorization for the initial diagnosis of the subject Toyota. Respondent Purrfect Auto #125
20 ultimately gave the undercover operator an invoice that contained the entry "purge & decarb
21 induction & injection chambers", which did not adequately describe the nature of the service
22 work that was actually performed. Complainant further refers to and hereby incorporates
23 paragraphs 15 through 21 above as though set forth fully.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Violations of the Code)**

26 26. Respondent Purrfect Auto #125's ARD registration and station license are subject to
27 disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent
28 Purrfect Auto #125 failed to comply with section 9884.9, subdivision (a), of that Code in the

1 following material respects: Respondent Purrfect Auto #125 failed to provide the undercover
2 operator with a written estimate for parts and/or labor necessary for a specific job for the subject
3 Toyota. Respondent Purrfect Auto #125 ultimately gave the undercover operator an invoice that
4 contained the entry "purge & decarb induction & injection chambers", which did not adequately
5 describe the nature of the service work that was actually performed. Complainant further refers
6 to and hereby incorporates paragraphs 15 through 21 above as though set forth fully.

7 **UNDERCOVER OPERATION #2 RE: PURRFACT AUTO SERVICE #125**

8 27. A Bureau Forensic Laboratory Representative (lab representative) documented a
9 Honda (Honda) by way of an intentionally damaged cylinder number five spark plug to create an
10 ignition system misfire. The shorted number five cylinder spark plug caused the engine to run
11 rough and have a loss of power on acceleration. This malfunction also caused the "Check Engine
12 Light" to illuminate. The only repair necessary to correct the defect would have been to replace
13 the spark plug.

14 28. On June 12, 2014, Bureau representatives transported the Honda in its documented
15 condition (as specified above in paragraph 27) to a pre-arranged location, where it was released to
16 an undercover operator (hereinafter "undercover operator") who was working on behalf of the
17 Bureau. The undercover operator was instructed to drive the Honda to Respondent Purrfect Auto
18 #125's facility and request a smog check. The undercover operator then drove the Toyota to
19 Respondent Purrfect Auto #125's facility and requested a smog check for the Toyota from an
20 employee at Respondent Purrfect Auto #125's facility by the name of "Tom" (hereinafter referred
21 to as "Tom") who identified himself as one of the managers at the facility. Tom later returned
22 and advised the undercover operator that the Honda had failed the smog test. Tom further
23 advised the undercover operator that a diagnostic test had to be done on the vehicle, that it would
24 cost \$89.95, and that the undercover operator should call back later that day to receive the results
25 of the diagnostic test. The undercover operator did not sign or receive a written estimate from
26 Tom. The undercover operator then departed the facility. When the undercover operator later
27 called Tom to receive the results of the diagnostic test, Tom told him that there was excessive
28 carbon build up, that three injectors were not giving a signal to the Honda's computer, and that

1 the injectors were non-sequential with the cam and crank sensors. Tom also told the undercover
2 operator that the control units for the cam and crank sensors appeared to be bad, that the cam and
3 crank timing was off, and that there was excessive carbon build up on the airflow sensor and EGR
4 systems, which was slowing down the signals to the computer. Tom further advised that there
5 were many things that could be wrong with the vehicle and that it may take until the end of the
6 day to determine any such things. Tom then asked if the undercover operator could leave the
7 Honda and until the end of the day or the following morning. The undercover operator agreed
8 and left the Honda at the facility overnight.

9 29. On the following day, June 13, 2014, the undercover operator called the Respondent
10 Purrfect Auto #125's facility and spoke with Tom, who advised that the Honda had excessive
11 carbon build up and that all the EGR passages were plugged. Tom further stated that in order for
12 the Honda to pass a smog check, all of the passages and carbon had to be cleaned out. Tom also
13 informed the undercover operator that the sensors would not be effective if the carbon is not
14 removed. Additionally, Tom told the undercover operator that after the intake system was
15 cleaned and decarbonized, the spark plugs would have to be replaced in order for the Honda to
16 pass a smog check.

17 30. The undercover operator then asked what these services Tom had just spoken of
18 would cost and was told the total would be \$595.29, tax included. After the undercover operator
19 then orally authorized the work, Tom said he would call him when the car was ready.

20 31. When the undercover operator later went to the facility to pay for the work and pick
21 up the Honda, Tom told him that the spark plugs had been replaced, and gave the old ones back to
22 the undercover operator, as requested. The undercover operator then asked Tom if the
23 Respondent Purrfect Auto #125's facility had replaced any other parts on the Honda had been
24 replaced and was told that nothing else had been replaced – that all of the remaining charges in
25 addition to the spark plugs were for labor.

26 32. The undercover operator then paid the entire \$595.29 bill and was provided with
27 various documents (an invoice and two Vehicle Inspection Reports) – and drove away in the
28 Honda to another location, where he met with Bureau representatives who took custody of the

1 Honda. Thereafter, a Bureau representative transported the Honda back to the Bureau's Forensic
2 Laboratory.

3 33. The Bureau's lab representative subsequently confirmed that the only repair
4 necessary to correct the defect would have been to identify the problem cylinder for the misfire,
5 and replace the damaged spark plug. In regard to the work that Respondent Purrfect Auto #125
6 claimed that it performed and actually received payment for, the Bureau's lab representative
7 made the following determinations: The replacement of all of the spark plugs was actually done,
8 and such was reasonable and acceptable under the circumstances. However, although the invoice
9 reflected that the air filter had been replaced, it had not been. The lab representative also found
10 that EGR passage cleaning had been performed but was not needed, and that the purge and decarb
11 service listed on the invoice (and charged for) was not needed.

12 34. Based upon the dollar values listed on the invoice, it was determined that Respondent
13 Purrfect Auto #125 had charged the undercover operator \$471.70 for parts and labor that were
14 either not needed or not provided.

15 35. In essence, Respondent Purrfect Auto #125 charged the undercover operator \$471.70
16 for work that was not required to repair the Honda's misfire condition. Respondent Purrfect Auto
17 #125 failed to advise the undercover operator of the cost of a Smog Check inspection, and also
18 failed to provide the undercover operator with a written estimate prior to performing the
19 inspection.

20 SIXTH CAUSE FOR DISCIPLINE

21 (Untrue or Misleading Statements)

22 36. Respondent Purrfect Auto #125's ARD registration and station license are subject to
23 disciplinary action pursuant to Code section 9884.7, subdivisions (a)(1)and(4), and California
24 Code of Regulations section 3373, in that Respondent Purrfect Auto #125 made or authorized
25 statements which it knew or in the exercise of reasonable care should have known to be untrue or
26 misleading, in that Respondent Purrfect Auto #125 fraudulently charged the undercover operator
27 \$471.70 for work that was not required to repair the Honda's misfire condition. Complainant
28

1 further refers to and hereby incorporates paragraphs 27 through 35 above as though set forth
2 fully.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 37. Respondent Purrfect Auto #125 is subject to disciplinary action pursuant to Code
6 section 9884.7, subdivision (a)(4), in that Respondent Purrfect Auto #125 committed acts
7 constituting fraud, as follows: Respondent Purrfect Auto #125 fraudulently charged the
8 undercover operator \$471.70 for work that was not required to repair the Honda's misfire
9 condition. Complainant further refers to and hereby incorporates paragraphs 27 through 35 above
10 as though set forth fully.

11 **EIGHTH CAUSE FOR DISCIPLINE**

12 **(Violations of Written Estimate and Invoice Requirements)**

13 38. Respondent Purrfect Auto #125's ARD registration and station license are subject to
14 disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), and California Code of
15 Regulations sections 3353 and 3356, in that Respondent Purrfect Auto #125 failed to comply with
16 section 9884.9, subdivision (a), of that Code in the following material respects: Respondent
17 Purrfect Auto #125 failed to advise the undercover operator of the cost of a Smog Check
18 inspection on the Honda, and also failed to provide the undercover operator with a written
19 estimate prior to performing the inspection. Respondent Purrfect Auto #125 further gave the
20 undercover operator an invoice that contained the entry "purge & decarb induction & injection
21 chambers", which did not adequately describe the nature of the service work that was actually
22 performed. Complainant further refers to and hereby incorporates paragraphs 27 through 35
23 above as though set forth fully.

24 **NINTH CAUSE FOR DISCIPLINE**

25 **(Violations of the Code)**

26 39. Respondent Purrfect Auto #125's ARD registration and station license are subject to
27 disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent
28 Purrfect Auto #125 failed to comply with section 9884.9, subdivision (a), of that Code in the

1 following material respects: Respondent Purrfect Auto #125 failed to provide the undercover
2 operator with a written estimate for parts and/or labor necessary for a specific job. Respondent
3 Purrfect Auto #125 ultimately gave the undercover operator an invoice that contained the entry
4 "purge & decarb induction & injection chambers", which did not adequately describe the nature
5 of the service work that was actually performed. Complainant further refers to and hereby
6 incorporates paragraphs 27 through 35 above as though set forth fully.

7 **UNDERCOVER OPERATION RE: PURRFACT AUTO SERVICE**

8 40. A Bureau lab representative documented a Chevrolet Truck (Chevrolet Truck), by
9 intentionally damaging the number six cylinder spark plug to create an ignition system misfire.
10 This malfunction caused the "Service Engine Soon" lamp to illuminate, the engine to run rough
11 and have a loss of power on acceleration. The only repair necessary to correct the defect would
12 have been to replace the number six cylinder spark plug, though replacing all the spark plugs
13 would also have been acceptable.

14 41. On June 18, 2014 a Bureau representative instructed a Bureau undercover operator
15 ("the undercover operator") to drive the Chevrolet Truck from an undisclosed location to
16 Respondent Purrfect Auto, and request a Smog Check. The undercover operator then drove the
17 Chevrolet Truck to Respondent Purrfect Auto and spoke to an employee behind the counter who
18 identified himself as the facility's manager ("the manager"). The undercover operator asked the
19 manager if he had time to do a Smog Check that day while he (the undercover operator) waited,
20 and the manager said that he could do so. The manager then took the keys to the Chevrolet Truck
21 from the undercover operator, but did not provide him with a written estimate. The manager then
22 left the counter area. When he returned a short time later, the manager told the undercover
23 operator that the Chevrolet Truck had failed and that a diagnostic would have to be done. The
24 undercover operator then asked how much the diagnostic would cost, and the manager told him
25 the price was \$89.99. The undercover operator orally authorized the diagnostic and waited for
26 the results; no written estimate for this diagnostic service was provided to him. About forty five
27 minutes later, the manager approached the undercover operator with an "estimate worksheet", and
28 proceeded to advise the undercover operator that the Chevrolet Truck needed spark plugs – but

1 also spark plug wires, a distributor cap, an ignition rotor, an air filter, and a resetting of the
2 vehicle's computer. He added that he would need to "run the monitors" on the vehicle and a lot
3 of built-up carbon would also have to be cleaned out. When the undercover operator asked how
4 much these services would cost, the manager told him that although normally the price would be
5 about \$1100.00, but that he would only charge the undercover operator \$750.00. Though the
6 undercover operator orally authorized the services that had just been suggested to him by the
7 manager, he was not asked to sign a written estimate for this work.

8 42. After the undercover operator informed the manager that he would probably have to
9 leave the Chevrolet Truck overnight because he had to go to work at that point, he left the
10 premises of Respondent Purrfect Auto on foot and was picked up by the Bureau representative
11 less than a mile away. On the following morning, the undercover operator called Respondent
12 Purrfect Auto and spoke with the same manager, who told him the vehicle had passed the test and
13 was now ready to be picked up. When the undercover operator then inquired about being
14 provided with the parts that Respondent Purrfect Auto had replaced on the vehicle, the manager
15 told him that he had not asked for the old parts early enough for them to be retained, and that they
16 had been thrown away. The manager also stated that the total cost of all the services rendered
17 was going to be around \$900.00, because of the initial test and diagnostic services that were done.
18 No additional authorization for the price increase from \$750.00 to \$900.00 was ever asked for by
19 the manager or given by the undercover operator. The undercover operator subsequently returned
20 to Respondent Purrfect Auto later that same day, paid the \$900.00 in cash, and left with the
21 Chevrolet Truck after he was provided with an invoice and a VIR in connection with the work
22 that had just been performed.

23 43. Thereafter, between June 19, 2014 and July 8, 2014, the Bureau's lab representative
24 inspected the Chevrolet Truck and confirmed that the only repair that had actually been necessary
25 to correct the previously documented defect would have been to identify the problem cylinder,
26 and replace the spark plug (though replacing all the spark plugs would also have been
27 acceptable). The Bureau's lab representative found that the distributor cap, distributor rotor and
28

1 spark plug wire set had been replaced as invoiced, despite the fact that the replacement of these
2 parts had not been necessary.

3 44. Based upon the amount shown on the invoice, Respondent Purrfect Auto Service
4 charged \$215.01 for parts and labor which were not necessary to repair the vehicle's previously
5 documented misfire condition.

6 **TENTH CAUSE FOR DISCIPLINE**

7 **(Untrue or Misleading Statements)**

8 45. Respondent Purrfect Auto's ARD registration and station license are subject to
9 disciplinary action pursuant to Code section 9884.7, subdivisions (a)(1) and (4), and California
10 Code of Regulations section 3373, in that Respondent Purrfect Auto made or authorized
11 statements which it knew or in the exercise of reasonable care should have known to be untrue or
12 misleading, as follows:

13 a. In regard to the subject Chevrolet Truck, Respondent Purrfect Auto charged \$215.01
14 for parts and labor which were not necessary to repair the vehicle's previously documented
15 misfire condition. Complainant further refers to and hereby incorporates paragraphs 40 through
16 44 above as though set forth fully.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Return Parts When Requested)**

19 46. Respondent Purrfect Auto's ARD registration and station license are subject to
20 disciplinary action pursuant to Code section 9884.10, in that Respondent Purrfect Auto told the
21 undercover operator when he paid for the services rendered that they could not return the parts
22 they had replaced on the Chevrolet Truck to him because they had thrown them away.
23 Complainant further refers to and hereby incorporates paragraphs 40 through 44 above as though
24 set forth fully.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 47. Respondent Purrfect Auto's ARD registration and station license are subject to
4 disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), and California Code of
5 Regulations section 3373, in that Respondent committed acts constituting fraud, as follows: In
6 regard to the subject Chevrolet Truck, Respondent Purrfect Auto charged \$215.01 for parts and
7 labor which were not necessary to repair the vehicle's previously documented misfire condition.
8 Complainant further refers to and hereby incorporates paragraphs 40 through 44 above as though
9 set forth fully.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

11 **(Violations of Written Estimate and Invoice Requirements)**

12 48. Respondent Purrfect Auto's ARD registration and station license are subject to
13 disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), and California Code of
14 Regulations sections 3353 and 3356, in that Respondent failed to comply with section 9884.9,
15 subdivision (a), of that Code in the following material respects: Respondent failed to provide the
16 undercover operator with a written estimate for parts and/or labor necessary for a specific job, and
17 failed to obtain the undercover operator's authorization for the initial diagnosis of the subject
18 Chevrolet Truck. Complainant further refers to and hereby incorporates paragraphs 40 through
19 44 above as though set forth fully.

20 **FOURTEENTH CAUSE FOR DISCIPLINE**

21 **(Violations of the Code)**

22 49. Respondent Purrfect Auto's ARD registration and station license are subject to
23 disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed
24 to comply with section 9884.9, subdivision (a), of that Code in the following material respects:
25 Respondent failed to provide the undercover operator with a written estimate for parts and/or
26 labor necessary for a specific job. Complainant further refers to and hereby incorporates
27 paragraphs 40 through 44 above as though set forth fully.

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1 OTHER MATTERS

2 50. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
3 or place on probation the registration and/or station licenses for all places of business operated in
4 this state by Respondent Mohammad Hanif Khan – President/Vice President/Secretary/Treasurer
5 of FIS, Inc., dba Purrfect Auto Service #125, and President/Secretary/Treasurer of FIS, Inc., dba
6 Purrfect Auto Service, upon a finding that Respondent Mohammad Hanif Khan has, or is,
7 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
8 automotive repair dealer and or station license owner.

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 270946, issued to FIS, Inc., dba Purrfect Auto Service #125; Mohammad Hanif Khan;
- 14 2. Revoking or suspending Smog Check Station License Number RC 270946, issued to
15 FIS, Inc., dba Purrfect Auto Service #125; Mohammad Hanif Khan;
- 16 3. Revoking or suspending Automotive Repair Dealer Registration Number ARD
17 261008, issued to FIS, Inc., dba Purrfect Auto Service; Mohammad Hanif Khan;
- 18 4. Revoking or suspending Smog Check Station License Number RC 261008, issued to
19 FIS, Inc., dba Purrfect Auto Service; Mohammad Hanif Khan;
- 20 5. Ordering Mohammad Hanif Khan and to pay the Bureau of Automotive Repair the
21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
22 Professions Code section 125.3;

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

DATED:

February 26, 2016

Patrick Dorais

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