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

In the Matter of the Accusation Against:

BEST AMERICAN TIRE WHEEL
WAQAS ALI, OWNER
6303 Watt Avenue
Sacramento, CA 95660

Automotive Repair Dealer Reg. No. ARD 262370

Respondent.

Complainant alleges:

PARTIES

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

2. On or about June 25, 2010, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 262370 to Waqas Ali ("Respondent"), owner of Best American Tire Wheel. The automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2015, unless renewed.
JURISDICTION

3. Business and Professions Code ("Code") section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

4. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

STATUTORY AND REGULATORY PROVISIONS

5. 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.

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

   (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.

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

6. Code section 9884.7, subdivision (c), states, in pertinent part, that the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.
7. Code section 9884.8 states, in pertinent part:

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 . . . One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

8. Code section 9884.9, subdivision (a), states, in pertinent part:

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer when 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 . . .

9. Code section 22, subdivision (a), states:

“Board” as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

10. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

11. California Code of Regulations, title 16, section (“Regulation”) 3356 states, in pertinent part:

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

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

(A) All service and repair work performed, including all diagnostic and warranty work, and the price for each described service and repair.
(B) Each part supplied, in such a manner that the customer can understand what was purchased, and the price for each described part. The description of each part shall state whether the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

**COST RECOVERY**

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

**CONSUMER COMPLAINT (J. G.): 1998 CHRYSLER CONCORDE**

13. On or about June 3, 2013, J. G. took his 1998 Chrysler Concorde to Respondent’s facility and requested a diagnosis because the check engine light was on and the vehicle was overheating. J. G. was assisted by Respondent’s employee, “Kenny”. Kenny did not give J. G. a written estimate for the diagnosis. About one hour later, Kenny told J. G. that the cylinder head gaskets had failed and recommended replacing the engine at a cost of $4,200. J. G. signed a repair order/invoice authorizing the work, paid Kenny a $3,000 cash deposit, and left the facility. 

14. Approximately one week later, J. G.’s wife went to the facility to pick up the vehicle, paid Kenny $1,200, and received a copy of the above repair order/invoice.

15. In or about August 2013, the vehicle began overheating again. J. G. had another repair facility look at the vehicle, and was informed that the engine did not appear to have been replaced.

16. On or about December 5, 2013, J. G. filed a complaint with the Bureau.

17. On December 9, 2013, Bureau representative D. R. went to Respondent’s facility and discussed the complaint with Respondent. Respondent did not recall servicing the vehicle.

18. On December 10, 2013, D. R. received a handwritten note from Respondent, stating that he had no record of the vehicle and that the invoice given to J. G. was a forgery.

19. On January 14, 2014, D. R. and Bureau Representative J. H. met with Respondent and asked him if he had ever employed anyone named Kenny. Respondent told the representatives that he previously had an employee named Kenny; however, Kenny had quit sometime in July 2013 to work for Eagle Eye Auto Repair (“Eagle Eye”).
20. Later that same day, D. R. and J. H. went to Eagle Eye and met with Kenny Melton ("Melton"). D. R. asked Melton if he recalled servicing the vehicle. Melton confirmed that J. G. brought the vehicle in to Respondent's facility because it was overheating. Melton performed a diagnosis of the engine and found that the cylinder head gaskets had failed. Melton discussed his diagnosis with Respondent and told him that the head gaskets could be replaced at a fairly low cost. Respondent instructed Melton to replace the cylinder heads, but to charge J. G. for replacing the engine.

21. On February 5, 2014, D. R. and J. H. inspected the vehicle and found that the serial number on the engine matched the vehicle's VIN (vehicle identification number), indicating that the original engine had not been replaced.

22. On February 14, 2014, D. R. and J. H. returned to Eagle Eye and informed Melton of their findings. Melton stated that after he performed the diagnosis of the vehicle, he advised Respondent the only work needed on the engine was the replacement of the cylinder head gaskets. Respondent told Melton to replace the head gaskets, but to charge J. G. for an engine replacement. Melton replaced only the cylinder head gaskets as he was in fear of losing his job.

**FIRST CAUSE FOR DISCIPLINE**

(Untrue or Misleading Statements)

23. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent represented on the repair order/invoice that the engine in J. G.'s 1998 Chrysler Concorde had been replaced. In fact, the existing engine had not been replaced on the vehicle.

**SECOND CAUSE FOR DISCIPLINE**

(Failure to Record Odometer Reading)

24. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(2), in that Respondent's employee, Melton, caused or allowed J. G. to sign the repair order/invoice which did not state the odometer reading of the 1998 Chrysler Concorde.

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THIRD CAUSE FOR DISCIPLINE
(Fraud)

25. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows: Respondent obtained payment from J. G: for replacing the engine on his 1998 Chrysler Concorde. In fact, the existing engine had not been replaced on the vehicle.

FOURTH CAUSE FOR DISCIPLINE
(Violations of the Code)

26. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in the following material respects:
   a. Respondent’s employee, Melton, failed to provide J. G. with a written estimate for the diagnosis of his 1998 Chrysler Concorde.
   b. Respondent failed to record on the repair order/invoice J. G.’s authorization for the additional repairs on his 1998 Chrysler Concorde, the replacement of the engine.

FIFTH CAUSE FOR DISCIPLINE
(Violations of Regulations)

27. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivision (a)(2)(B), in a material respect, as follows: Respondent failed to list separately on the invoice the prices for the coolant, oil, and oil filter supplied or installed on J. G.’s 1998 Chrysler Concorde.

CONSUMER COMPLAINT (Y. D.): 2009 HYUNDAI ACCENT

28. In or about September 2012, Y. D. filed a complaint with the Bureau, alleging that Respondent’s facility failed to perform a wheel alignment on his 2009 Hyundai Accent even though he paid them $30 for the service. On October 31, 2012, Bureau Representative D. B. made a field visit to the facility and obtained copies of their repair records on the vehicle, including a repair order/invoice dated September 20, 2012. Respondent told D. B. that they performed the wheel alignment (initial alignment inspection) on the vehicle and advised Y. D.
that the left side camber was significantly out of specifications. The facility recommended that a camber adjustment kit be installed on the vehicle, but Y. D. declined the repair.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Record Odometer Reading)

29. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(2), in that Respondent caused or allowed Y. D. to sign the repair order/invoice which did not state the odometer reading of his 2009 Hyundai Accent.

CONSUMER COMPLAINT (S.D.): 1999 BUICK REGAL

30. In or about September 2012, S. D. had B. B. take her 1999 Buick Regal to respondent’s facility to have a coolant leak diagnosed. The facility found that the coolant leak was coming from the lower intake manifold gaskets. S. D. had the facility replace the gaskets. Later, B. B. returned the vehicle to the facility due to an engine noise. The facility found that the engine had lost oil pressure due to the failure of the oil pump, causing damage to the push rods.

31. On or about September 26, 2012, S. D. filed a complaint with the Bureau, alleging, among other things, that the facility failed to provide a written estimate for the repairs.

32. On October 31, 2012, Bureau Representative D. B. made a field visit to the facility and obtained copies of their records on the vehicle, including a repair order/invoice signed by B. B. relating to the replacement of the lower intake manifold gaskets. D. B. interviewed the technician, who performed the diagnosis of the vehicle and replaced the lower intake manifold gaskets. The technician told D. B. that he had cleaned the gasket material with a cleaning disk (surface conditioning disk) while replacing the intake manifold gaskets, and showed D. B. the cleaning disk.

33. At the conclusion of their investigation, the Bureau determined that Respondent’s facility failed to follow General Motors Technical Service Bulletin (GM-TSB) No. 00-06-01-012D in their repair of the vehicle, as set forth below.

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SEVENTH CAUSE FOR DISCIPLINE
(FAILURE TO RECORD ODOMETER READING)

34. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(2), in that Respondent caused or allowed B. B. to sign the repair order/invoice which did not state the odometer reading of S. D.'s 1999 Buick Regal.

EIGHTH CAUSE FOR DISCIPLINE
(DEPARTURE FROM TRADE STANDARDS)

35. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative, in a material respect, as follows: Respondent used a surface conditioning disk to clean the gasket surfaces of the cylinder heads while replacing the intake manifold gaskets on S. D.'s 1999 Buick Regal, in disregard of GM-TSB No. 00-06-01-012D (the bulletin provides that surface conditioning disks should not be used to clean the gasket surfaces of engine components due to the risk of internal engine damage from debris created by the disks.)

NINTH CAUSE FOR DISCIPLINE
(VIOLATIONS OF THE CODE)

36. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent failed to provide S. D. or B. B. with a written estimate for the diagnosis or repair of S. D.'s 1999 Buick Regal.

TENTH CAUSE FOR DISCIPLINE
(VIOLATIONS OF REGULATIONS)

37. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivision (a)(2)(B), in a material respect, as follows: Respondent failed to list on the repair order/invoice the quantity of intake manifold gaskets that were installed on S. D.'s 1999 Buick Regal or the cost of the parts.
CONSUMER COMPLAINT (S.G.): 1999 FORD RANGER

38. On or about November 15, 2012, S. G. had her 1999 Ford Ranger towed to Respondent’s facility because it would not start. The facility found that the fuel pump had failed. S. G. authorized them to replace the part for $259.65. Soon after the repairs were completed, S. G. noticed fuel leaking from the vehicle while filling the gas tank (the gas ran out on the ground). S. G. contacted Respondent. Respondent sent a technician out to the gas station to inspect the vehicle. The technician “adjusted” a hose, which stopped the fuel leak.

39. On or about April 12, 2013, S. G. took the vehicle to the facility, complaining of a fuel smell. The facility replaced a fuel injector O-ring, which resolved the problem with the fuel leak.

40. In or about April 2013, S. G. filed a complaint with the Bureau.

41. On May 28, 2013, Bureau Representative P. M. went to Respondent’s facility and requested copies of their repair records on the vehicle, including all estimates, repair orders, invoices, and parts receipts, for the time period from November 15, 2012, to April 12, 2013.

42. On May 29, 2013, P. M. returned to the facility and was given copies of various repair records, including the records identified below. The records showed that additional parts were installed on the vehicle, including a timing belt kit, power steering pump, bleeder valve cap, and injector O-rings.

ELEVENTH CAUSE FOR DISCIPLINE
(Violations of the Code)

43. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in the following material respects:


b. Respondent failed to document on his invoice dated December 5, 2012, S. G.’s authorization for the replacement of the power steering pump on her 1999 Ford Ranger.

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c. Respondent failed to document on his invoice dated April 12, 2013, S. G.'s authorization for the replacement of the bleeder valve cap and injector O-rings on her 1999 Ford Ranger.

TWELFTH CAUSE FOR DISCIPLINE
(Violations of Regulations)

44. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivision (a)(2)(B), in the following material respects:

a. Respondent failed to state on his invoice dated November 16, 2012, whether the fuel pump installed on S. G.'s 1999 Ford Ranger was new, used, reconditioned or rebuilt.

b. Respondent failed to list, describe or identify on his invoice dated December 5, 2012, the parts that were included in the timing belt kit installed on S. G.'s 1999 Ford Ranger. Further, Respondent failed to state whether the power steering pump installed on the vehicle was new, used, reconditioned or rebuilt.

CONSUMER COMPLAINT (A. M.): 1997 FORD F-150

45. In or about mid-August 2013, A. M. took his 1997 Ford F-150 to Respondent's facility to diagnose a noise near the rear of the vehicle. The facility found that the noise was coming from the rear axle assembly and recommended replacing the part.

46. On or about August 29, 2013, A. M. returned the vehicle to the facility to have the rear axle assembly replaced and paid the facility $750 to order the part.

47. On or about September 13, 2013, A. M. went to the facility to pick up the vehicle, paid the remaining balance due on the repair, and received an invoice dated August 29, 2013. A. M. also paid the facility $80 for gear oil; however, the gear oil was not listed on the invoice. While driving the vehicle home, A. M. noticed that it was vibrating and the alignment felt wrong. A. M. contacted Respondent. Respondent asked A. M. to drive the vehicle for a couple of days and to bring it back in for re-inspection if he was still experiencing the same problems.

48. About two days later, A. M. returned the vehicle to the facility as it was still vibrating. A. M. also noticed that the passenger side rear wheel was missing one of the wheel
Several days later, A.M. called the facility and was informed that an alignment and wheel balance had been performed on the vehicle. A.M. went to the facility to retrieve the vehicle. Respondent told A.M. that they did not replace the wheel stud because it needed to be welded in and they did not have a welder. A.M. was not given an invoice for the warranty repairs. As A.M. was driving the vehicle home, he noted that it was still vibrating.

49. Several days later, A.M. took the vehicle back to the facility; however, Respondent was not able to resolve the problems with the vehicle.

50. On or about September 30, 2013, A.M. filed a complaint with the Bureau.

51. On October 8, 2013, Bureau Representatives D. R. and J. H. went to the facility and met with Respondent. Respondent told the representatives that he did not provide A.M. with any paperwork during his follow-up visits to the facility because the inspections and other work were performed free of charge. D. R. asked Respondent what type of gear oil they used during the installation of the rear axle assembly and whether they had installed the friction modifier specified by the vehicle manufacturer. Respondent admitted that the facility had not installed the friction modifier and offered to install it in the vehicle free of charge.

52. On October 24, 2013, D. R. received a call from A.M., informing him that the facility had installed the friction modifier in the vehicle. A.M. reported later that the vibration was still present in the vehicle despite the repair.

53. On November 15, 2013, D. R. went to the facility and obtained copies of Respondent’s estimate dated October 19, 2013, and invoice dated October 20, 2013, relating to the installation of the friction modifier.

**THIRTEENTH CAUSE FOR DISCIPLINE**

(Violations of the Code)

54. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code in the following material respects:

a. **Section 9884.8:** Respondent failed to provide A.M. with invoices for the warranty repairs on his 1997 Ford F-150 during his return visits to Respondent’s facility.
b. **Section 9884.9, subdivision (a):**

1. Respondent failed to provide A. M. with a written estimate for the initial inspection or diagnosis of his 1997 Ford F-150.

2. Respondent failed to state on the estimate dated October 19, 2013, that the friction modifier was installed in A. M.’s 1997 Ford F-150 free of charge.


**FOURTEENTH CAUSE FOR DISCIPLINE**

**(Violations of Regulations)**

55. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following material respects:

a. **Subdivision (a)(2)(A):** Respondent failed to list, describe or identify on the invoice dated August 29, 2013, the diagnosis performed on A. M.’s 1997 Ford F-150 or the results of the diagnosis, and failed to list the repair work or labor relating to the replacement of the rear axle assembly on the vehicle.

b. **Subdivision (a)(2)(B):** Respondent failed to state on the invoice dated August 29, 2013, whether the rear axle assembly installed on A. M.’s 1997 Ford F-150 was new, used, reconditioned or rebuilt. Further, Respondent failed to list, describe or identify on the invoice the gear oil or lubricant that was used during the installation of the rear axle assembly on the vehicle, including the quantity and type of gear oil/lubricant used.

**OTHER MATTERS**

56. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Waqas Ali, owner of Best American Tire Wheel, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.
PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 262370, issued to Waqas Ali, owner of Best American Tire Wheel;

2. Revoking or suspending any other automotive repair dealer registration issued to Waqas Ali;

3. Ordering Waqas Ali, owner of Best American Tire Wheel, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: January 14, 2015

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