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

14 In the Matter of the Accusation Against:

Case No. 77/16-17596

15 **FMC AUTOMOTIVE SERVICES; FABIO**
16 **ARMANDO MENJIVAR, OWNER**
17 **1137B Palmetto Ave**
Pacifica, CA 94044

A C C U S A T I O N

18 **Automotive Repair Dealer Registration No.**
19 **ARD 273157**

20 Respondent.

21
22 Complainant Patrick Dorais alleges:

23 **PARTIES**

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

26 2. On or about May 24, 2013, the Bureau issued Automotive Repair Dealer Registration
27 Number ARD 273157 to FMC Automotive Services; Fabio Armando Menjivar, Owner
28 (Respondent). Respondent's automotive repair dealer registration was in full force and effect at

1 all times relevant to the charges brought in this Accusation and will expire on May 31, 2019,
2 unless renewed.

3 JURISDICTION

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

8 4. Code section 9882, subdivision (a) states, in relevant part:
9 “There is in the Department of Consumer Affairs a Bureau of Automotive Repair under the
10 supervision and control of the director. The duty of enforcing and administering this chapter is
11 vested in the chief who is responsible to the director. The director may adopt and enforce those
12 rules and regulations that he or she determines are reasonably necessary to carry out the purposes
13 of this chapter and declaring the policy of the bureau, including a system for the issuance of
14 citations for violations of this chapter as specified in Section 125.9.”

15 5. Code section 9884.7, subdivision (c), states, in relevant part, that the Director may
16 refuse to validate, or may invalidate temporarily or permanently, the registration for all places of
17 business operated in this state by an automotive repair dealer upon a finding that the automotive
18 repair dealer has, or is, engaged in a course of repeated and willful violations of the laws and
19 regulations pertaining to an automotive repair dealer.

20 6. Code section 9884.13 states, in relevant part, that the expiration of a valid registration
21 shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an
22 automotive repair dealer or to render a decision invalidating a registration temporarily or
23 permanently.

24 STATUTORY PROVISIONS

25 7. Code section 9884.7 states, in relevant part:
26 “(a) The director, where the automotive repair dealer cannot show there was a bona fide
27 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
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1 dealer for any of the following acts or omissions related to the conduct of the business of the
2 automotive repair dealer, which are done by the automotive repair dealer or any automotive
3 technician, employee, partner, officer, or member of the automotive repair dealer.

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

7 ...

8 “(4) Any other conduct that constitutes fraud.

9 ...

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

12 8. Code section 9884.8 states, in relevant part:

13 All work done by an automotive repair dealer, including all warranty
14 work, shall be recorded on an invoice and shall describe all service work done and
15 parts supplied... One copy of the invoice shall be given to the customer and one copy
shall be retained by the automotive repair dealer.

16 9. Code section 9884.9 states, in relevant part:

17 (a) The automotive repair dealer shall give to the customer a written
18 estimated price for labor and parts necessary for a specific job. No work shall be done
19 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
20 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
21 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
22 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
23 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
24 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
25 specification of the additional parts and labor and the total additional cost.

26 ...

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

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

5 _____
6 (signature or initials)"

7 10. Code section 17200 states:

8 "As used in this chapter, unfair competition shall mean and include any unlawful, unfair
9 or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and
10 any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
11 Business and Professions Code."

12 11. Code section 17500 states:

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

REGULATORY PROVISIONS

26 12. California Code of Regulations, title 16, section (Regulation) 3353 states, in
27 relevant part:

28 "No work for compensation shall be commenced and no charges shall accrue without

1 specific authorization from the customer in accordance with the following requirements:

2 “(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
3 estimated price for parts and labor for a specific job.”

4 13. Regulation section 3356 states, in relevant part:

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

7 . . .

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

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

11 (B) Each part supplied, in such a manner that the customer can
12 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,
13 rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

14 14. Regulation section 3371 states, in relevant part:

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

18 15. Regulation section 3373 states:

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

23 COST RECOVERY

24 16. Section 125.3 of the Code provides, in relevant part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
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1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **UNDERCOVER OPERATION #1: 2001 TOYOTA**

4 17. On February 15, 2017, at approximately 12:00 p.m., an undercover operator
5 (operator) employed by the Bureau drove the Bureau's 2001 Toyota to Respondent's shop (FMC
6 Auto) and requested a brake inspection. Bureau technicians had just assembled and installed the
7 Toyota's brake system to meet manufacturer's specifications; however, the Bureau also
8 intentionally created a malfunction impacting the front brake pads. The only required repair was
9 replacement of the front brake pads. The other components of the brake system, including the
10 front and rear brakes, calipers, brake rotors, and rear brake shoe set, were in good condition.

11 18. After the operator dropped off the Toyota at FMC Auto, the Respondent technician
12 told the operator that he would call her back later that day to inform her of the results of the brake
13 inspection. The operator did not receive an estimate from Respondent technician before leaving
14 the shop.

15 19. At or about 2:54 p.m. on February 15, 2017, the operator called the facility and spoke
16 with Respondent technician. Respondent technician told her that the front brake pads were worn
17 out and needed to be replaced. He also told the operator that the following repairs were needed:

- 18 a. The front brake caliper was leaking and needed to be rebuilt or replaced.
- 19 b. A front brake rotor was bent and needed to be replaced.
- 20 c. The rear brakes needed adjustment.

21 Respondent technician did not provide an estimate for the repairs. The operator told Respondent
22 technician she would call him back.

23 20. At or about 3:05 p.m. on February 15, 2017, the operator called Respondent
24 technician, who re-confirmed the same repairs listed in paragraph 19, above, were required, and
25 quoted the operator \$360.00 for parts and labor. The operator authorized \$360.00 for the repairs.
26 Respondent technician told the operator the work would be completed the next day, February 16,
27 2017, and she could pick up the Toyota then. The operator did not receive a written estimate
28 from FMC Auto.

1 21. On February 16, 2017, when the operator called to check on the status of the repairs,
2 Respondent technician told her the repair work was complete. Respondent technician also
3 explained that he did not remember how much he previously quoted the operator. He said that
4 although the actual charge for the completed work was \$681.21, he was only going to charge the
5 operator \$436.21. Respondent technician requested a cash payment for the repair work.

6 22. At approximately 1:25 p.m. on February 16, 2017, the operator picked up the Toyota
7 at FMC Auto. After paying \$436.21 cash for the repairs, she was provided with an unnumbered
8 invoice dated February 16, 2017. The invoice listed a total cost for services of \$436.21. After
9 reviewing the invoice and inspecting the Toyota on February 7, 2017, the Bureau inspector
10 identified the following invoice-specific errors:

- 11 a. The invoice did not describe the diagnostic work completed.
- 12 b. The invoice was not signed or initialed by the operator.
- 13 c. The invoice did not include a notation by Respondent technician confirming oral
14 consent by the operator for the repairs.
- 15 d. The invoice did not list parts for the charged "caliper rebuilt." (sic)
- 16 e. The invoice did not include the brake fluid used for the caliper rebuild and brake
17 bleed.

18 23. The Bureau inspector also determined that although invoiced and paid for by the
19 operator, the caliper piston seals were not replaced and the rear brake wheel cylinders were not
20 bled. Respondent technician also failed to properly bleed the brake hydraulic system as invoiced.

21 In total, the following repair-related deficiencies were identified:

- 22 a. The front brake rotors were unnecessarily replaced.
- 23 b. Rebuilding the right front brake caliper, including replacement of the dust boots,
24 was unnecessary. The caliper piston seals were not replaced.
- 25 c. The rear brake shoe adjustment was unnecessary and improperly performed. The
26 rear brake shoes were over-adjusted beyond the manufacturer's specifications,
27 causing the rear wheels to drag; as a result, the Toyota vibrated at highway speeds.
- 28 d. The brake system as a whole was not properly bled.

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FIRST CAUSE FOR DISCIPLINE
Making or Authorizing Untrue or Misleading Statements
(Bus. & Prof. Code sections 9884.7, subs. (a)(1) and (6) and 17200;
Cal. Code of Regs., title 16, section 3371)

24. Respondent has subjected its ARD registration to discipline for publishing or making untrue or misleading statements (Bus. & Prof. Code, §§ 9884.7, subd. (a)(1), (6) and 17200; Cal. Code Regs., tit. 16, § 3371). On or about February 15, 2017, Respondent represented that the Toyota's brake caliper system needed to be rebuilt, the brake pads needed to be replaced, and other brake-related work was necessary. However, most of the repair-related recommendations were untrue and misleading, because only the front brake pads required repair. When the Board inspector re-inspected after the work was completed and paid for, it was discovered that significant portions of the work had not been completed, or had been improperly performed. Additionally, Respondent charged for and accepted payment for some repairs that were unnecessary. The circumstances are further explained in paragraphs 17-23, above.

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SECOND CAUSE FOR DISCIPLINE
Fraud
(Bus. and Prof. Code section 9884.7, subd. (a)(4))

25. Respondent has subjected its ARD registration to discipline for fraud (Bus. & Prof. Code, § 9884.7, subd. (a)(4)). On or about February 16, 2017 Respondent fraudulently charged for and received payment for automotive parts that were not provided and labor that was not performed, or unnecessarily performed. The circumstances are further explained in paragraphs 17-23, above.

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THIRD CAUSE FOR DISCIPLINE
Failing to Comply with Invoice Requirements
(Bus. & Prof. Code section 9884.8;
Cal. Code of Regs., title 16, sections 3356, subd. (a)(2)(B) and 3373)

26. Respondent has subjected its ARD registration to discipline for failing to comply with invoice requirements, including failing to describe all service work performed on the invoice. (Bus. & Prof. Code, § 9884.8; Cal. Code Regs., tit. 16, § 3356). On or about February 16, 2017, Respondent misrepresented the work completed on the invoice by including misleading

1 and untrue representations about the work. (Cal. Code Regs., tit. 16, § 3373.) The circumstances
2 are further explained in paragraphs 17-23, above.

3 **FOURTH CAUSE FOR DISCIPLINE**
4 **Failing to Give a Customer a Written Estimate for Parts and Labor**
5 **(Bus. & Prof. Code section 9884.9, subd. (a);**
6 **Cal. Code of Regs., title 16, section 3353, subd. (a))**

7 27. Respondent has subjected its ARD registration to discipline because, on or about
8 February 15, 2017, he failed to provide the operator/customer a written estimate for parts and
9 labor for a specific job. (Bus. & Prof. Code, § 9884.9, subd. (a); Cal. Code Regs., tit. 16, § 3353,
10 subd. (a)). The circumstances are further explained in paragraphs 17-23, above.

11 **FIFTH CAUSE FOR DISCIPLINE**
12 **Failing to Properly Document Oral Consent**
13 **(Bus. & Prof. Code section 9884.9, subd. (a)(2))**

14 28. Respondent has subjected its ARD registration to discipline because, on or about
15 February 15-16, 2017, he failed to properly document oral consent for additional repairs, either by
16 having the customer sign or provide initial acknowledgment of notice and consent or by
17 documenting the facts of oral consent on the invoice. (Bus. & Prof. Code, § 9884.9, subd. (a)(2)).
18 The circumstances are further explained in paragraphs 17-23, above.

19 **SIXTH CAUSE FOR DISCIPLINE**
20 **Unfair Competition**
21 **(Bus. & Prof. Code section 17500)**

22 29. On or about February 15-16, Respondent subjected its ARD registration to
23 discipline by committing acts, including making false and misleading statements, that constitute
24 unfair competition. (Bus. & Prof. Code, § 17500). The circumstances are further explained in
25 paragraphs 17-23, above.

26 **UNDERCOVER OPERATION #2: 2001 CHEVROLET**

27 30. On August 30, 2017, an undercover operator with the Bureau took the Bureau's
28 2001 Chevrolet to Respondent's shop for inspection. A Bureau technician determined that repair
of the Chevrolet's engine misfire required replacement of the inoperative number five fuel
injector. No other repairs were required. The "check engine light" was on, and Diagnostic

1 Trouble Codes (DTCs) identified the following issues: P0300, Engine Misfire Detected and
2 P0205, Injector 5 Control Circuit. The Bureau technician installed tamper indicators on various
3 system components within the Chevrolet to detect access or removal of those components.

4 31. At approximately 11:20 a.m., the operator asked Respondent technician to diagnose
5 the cause of the check engine light and identify why the engine was running rough. Later that
6 day, Respondent technician called the operator, told him that repair costs would be between
7 \$400.00 and \$500.00, and identified the following repairs as required: a fuel injector, fuel rail
8 pipe, spark plugs, and an engine tune up. The operator gave FMC Auto permission to proceed
9 with the repairs. At no point on August 30, 2017, did the operator sign or receive a written
10 estimate.

11 32. On August 31, 2017, at approximately 4:15 p.m., Respondent technician confirmed
12 that the repairs were completed and the operator indicated he would pick up the car the next day.
13 Respondent technician did not provide the operator with an estimate for the repair costs.

14 33. On September 1, 2017, at approximately 11:10 a.m., the operator returned to FMC
15 Auto to pick up the Chevrolet. Respondent technician explained that the charge for the repairs
16 was \$918.18; however, he had discounted the cost to \$721.86. Respondent technician provided
17 the operator with an unsigned, unnumbered invoice, and failed to return the change that the
18 operator was owed totaling \$18.14¹.

19 34. On February 25, 2009, the Bureau technician inspected the vehicle and found that
20 FMC Auto performed unnecessary repairs on the Chevrolet. Furthermore, in addition to
21 addressing the required repair, FMC Auto charged for, but did not perform, other repairs.
22 Specifically, the following problems were identified by the Bureau inspector after reviewing the
23 invoice and re-inspecting the Chevrolet:

- 24 a. The spark plugs and spark plug wires were not in need of replacement.
- 25 b. The PCV valve was not in need of replacement
- 26 c. The fuel filter, air filter, and fuel rail were not in need of replacement.

27 _____
28 ¹ The operator gave Respondent \$740.00 in cash to pay the \$721.86 bill and did not tell
Respondent to keep the change.

- 1 d. The manifold bolts did not require tightening.
- 2 e. The fuel injector cleaning service was unnecessary.
- 3 f. Although the items listed in a-d, above, were invoiced, they were not actually
- 4 replaced or repaired.

5 **SEVENTH CAUSE FOR DISCIPLINE**
6 **Making or Authorizing Untrue or Misleading Statements**
7 **(Bus. & Prof. Code sections 9884.7, subdivision (a)(1) and (6) and 17200;**
8 **Cal. Code of Regs., title 16, section 3371)**

9 35. Respondent has subjected its ARD registration to discipline for publishing or

10 making untrue or misleading statements (Bus. & Prof. Code, §§ 9884.7, subd. (a)(1), (6) and

11 17200; Cal. Code Regs., tit. 16, § 3371). On or about August 31, 2017, Respondent represented

12 that the Chevrolet needed services and repairs that were beyond the scope and in excess of the

13 only service that was required, that of the replacement of the number five fuel injector. The

14 underlying facts relevant to this cause for discipline are set forth in paragraphs 30-34, above.

15 **EIGHTH CAUSE FOR DISCIPLINE**
16 **Fraud**
17 **(Bus. & Prof. Code section 9884.7, subd. (a)(4))**

18 36. Respondent has subjected its ARD registration to discipline for fraud (Bus. & Prof.

19 Code, § 9884.7, subd. (a)(4)). On or about September 1, 2017, Respondent fraudulently charged

20 for and received payment for automotive parts that were not provided and labor and parts that was

21 not performed, or unnecessarily performed. The underlying facts relevant to this cause for

22 discipline are set forth in paragraphs 30-34, above.

23 **NINTH CAUSE FOR DISCIPLINE**
24 **Failing to Comply with Invoice Requirements**
25 **(Bus. & Prof. Code section 9884.8;**
26 **Cal. Code of Regs., title 16, sections 3356, subd. (a)(2)(B) and 3373)**

27 37. Respondent has subjected its ARD registration to discipline for failing to comply

28 with invoice requirements. (Bus. & Prof. Code, § 9884.8; Cal. Code Regs., tit. 16, § 3356). On

or about September 1, 2017, Respondent misrepresented the work he completed by providing

misleading and untrue representations about the work on the invoice. (Cal. Code Regs., tit. 16, §

3373). The circumstances are further explained in paragraphs 30-34, above.

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TENTH CAUSE FOR DISCIPLINE
Failing to Give a Customer a Written Estimate for Parts and Labor
 (Bus. & Prof. Code section 9884.9, subd. (a);
 Cal. Code of Regs., title 16, section 3353, subd. (a))

38. Respondent has subjected its ARD registration to discipline for failing, on or about August 31, 2017, to give the operator/customer a written estimate for parts and labor for a specific job. (Bus. & Prof. Code, § 9884.9, subd. (a); Cal. Code Regs., tit. 16, § 3353, subd. (a)). The circumstances are further explained in paragraphs 30-34, above.

ELEVENTH CAUSE FOR DISCIPLINE
Failing to Properly Document Oral Consent
 (Bus. & Prof. Code section 9884.9, subd. (a)(2))

39. Respondent has subjected its ARD registration to discipline for failing on or about August 31, 2017 and September 1, 2017, to properly document oral consent for additional repairs, either by having the customer sign or provide initial acknowledgment of notice and consent, or by documenting the facts of oral consent on the invoice. (Bus. & Prof. Code, § 9884.9, subd. (a)(2)). The circumstances are further explained in paragraphs 30-34, above.

TWELFTH CAUSE FOR DISCIPLINE
Unfair Competition
 (Bus. & Prof. Code section 17500)

40. Respondent has subjected its ARD registration to discipline by committing acts, including making false and misleading statements, that constitute unfair competition. (Bus. & Prof. Code, § 17500). The circumstances are further explained in paragraphs 30-34, above.

UNDERCOVER OPERATION #3: 2001 MITSUBISHI

41. On November 16, 2017, at or about 11:45 a.m., a Bureau undercover operator took the Bureau's 2001 Mitsubishi to FMC Auto for a check engine diagnosis. A Bureau inspector had previously determined that the Mitsubishi only required replacement of the Exhaust Gas Recirculation (EGR) solenoid. The Mitsubishi's "check engine" light was on, and its engine was idling "rough." The Bureau technician installed tamper indicators on various system components within the Mitsubishi to detect access or removal of those components.

42. Respondent technician told the operator that the Mitsubishi might need a new engine, but that he would call him with an update once the diagnosis was complete. At no point on

1 November 16, 2017 did the operator sign or receive a written estimate.

2 43. At approximately 2:49 p.m., Respondent technician called the operator and explained
3 that while the Mitsubishi did not need a new engine, it required a cylinder head valve job, new
4 spark plugs, and an EGR solenoid. He quoted the operator \$1,600 for the repairs, which he
5 explained would require removing the two cylinder heads and sending them to a machine shop.

6 44. At or about 5:00 p.m., the operator called Respondent technician, who confirmed that
7 the repairs described in paragraph 43, above, were necessary. The operator authorized the
8 repairs, and Respondent technician said the Mitsubishi would be ready for pickup the next day.

9 45. On November 20, 2017, Respondent technician called the operator and told him that
10 although the repair costs totaled \$1,656.66, he had decided to give him a 50% discount, so the
11 repair costs would only be \$862.80. When the operator returned to pick up the Mitsubishi, he
12 received an unsigned, unnumbered invoice, totaling \$1,656.66, with a separate, handwritten total
13 charge of \$862.80.

14 46. On November 20, 2017, the Bureau technician inspected the Mitsubishi and found
15 that, in addition to addressing the required repair, FMC Auto performed unnecessary repairs.
16 Further, FMC Auto charged for, but did not perform, other repairs. Specifically, the following
17 problems were identified by the Bureau inspector after reviewing the invoice and re-inspecting
18 the Mitsubishi:

- 19
- 20 a. The invoice did not itemize costs for the EGR solenoid, nor did it indicate that the
EGR solenoid had been replaced.
 - 21 b. Although invoiced, no tune-up parts were installed; a tune-up was unnecessary.
 - 22 c. Although invoiced, compression checks were not completed on the cylinders.
 - 23 d. Although invoiced, the manifold bolts were not tightened; such tightening was
24 unnecessary.
 - 25 e. Although invoiced, a valve clearance service was not performed; valve clearance
26 is not adjustable on a 2001 Mitsubishi.
 - 27 f. Although invoiced, no "machine shop" services were provided, nor were these
28 services required.

1 **THIRTEENTH CAUSE FOR DISCIPLINE**
2 **Making or Authorizing Untrue or Misleading Statements**
3 **(Bus. and Prof. Code sections 9884.7, subs. (a)(1) and (6) and 17200;**
4 **Cal. Code of Regs., title 16, section 3371)**

5 47. Respondent has subjected its ARD registration to discipline for publishing or
6 making untrue or misleading statements (Bus. & Prof. Code, §§ 9884.7, subd. (a)(1), (6) and
7 17200; Cal. Code Regs., tit. 16, § 3371). On or about November 16-20, 2017, Respondent misled
8 the operator into believing that the Mitsubishi needed services and repairs that were not required.
9 The circumstances are further explained in paragraphs 41-46, above.

10 **FOURTEENTH CAUSE FOR DISCIPLINE**
11 **Fraud**
12 **(Bus. & Prof. Code section 9884.7, subd. (a)(4))**

13 48. Respondent has subjected its ARD registration to discipline for fraud (Bus. & Prof.
14 Code, § 9884.7, subd. (a)(4)). On or about November 20, 2017, Respondent fraudulently charged
15 for and received payment for automotive parts that were not provided and labor and parts that was
16 not performed, or unnecessarily performed. The circumstances are further explained in
17 paragraphs 41-46, above.

18 **FIFTEENTH CAUSE FOR DISCIPLINE**
19 **Failing to Comply with Invoice Requirements**
20 **(Bus. & Prof. Code section 9884.8;**
21 **Cal. Code of Regs., title 16, sections 3356, subs. (a)(2)(B) and 3373)**

22 49. Respondent has subjected its ARD registration to discipline for failing to comply
23 with invoice requirements. (Bus. & Prof. Code, § 9884.8; Cal. Code Regs., tit. 16, § 3356). On or
24 about November 20, 2017, Respondent misrepresented the work he completed by including
25 misleading and untrue representations about the work on the invoice. (Cal. Code Regs., tit. 16, §
26 3373). The circumstances are further explained in paragraphs 41-46, above.

27 **SIXTEENTH CAUSE FOR DISCIPLINE**
28 **Failing to Give a Customer a Written Estimate for Parts and Labor**
 (Bus. & Prof. Code section 9884.9, subd. (a);
 Cal. Code of Regs., title 16, section 3353, subd. (a))

 50. On or about November 16-20, 2017, Respondent subjected its ARD registration to
discipline for failing to provide the operator/customer a written estimate for parts and labor for a

1 specific job. (Bus. & Prof. Code, § 9884.9, subd. (a); Cal. Code Regs., tit. 16, § 3353, subd. (a)).
2 The circumstances are further explained in paragraphs 41-46, above.

3 **SEVENTEENTH CAUSE FOR DISCIPLINE**
4 **Failing to Properly Document Oral Consent**
5 **(Bus. and Prof. Code section 9884.9, subd. (a)(2))**

6 51. On or about November 16-20, 2017, Respondent subjected its ARD registration to
7 discipline for failing to properly document oral consent for additional repairs, either by having the
8 customer sign or provide initial acknowledgment of notice and consent, or by documenting the
9 facts of oral consent on the invoice. (Bus. & Prof. Code, § 9884.9, subd. (a)(2)). The
10 circumstances are further explained in paragraphs 41-46, above.

11 **EIGHTEENTH CAUSE FOR DISCIPLINE**
12 **Unfair Competition**
13 **(Bus. & Prof. Code section 17500)**

14 52. On or about November 16-20, 2017, Respondent subjected its ARD registration to
15 discipline by committing acts, including making false and misleading statements, that constitute
16 unfair competition. (Bus. & Prof. Code, § 17500.) The circumstances are further explained in
17 paragraphs 41-46, above.

18 **OTHER MATTERS**

19 53. Under Business and Professions Code section 9884.7, subdivision (c), the
20 Director may suspend, revoke, or place on probation the registration for all places of business
21 operated in this state by FMC Automotive Services or Fabio Armando Menjivar upon a finding
22 that they engaged in a course of repeated and willful violations of the laws and regulations
23 pertaining to an automotive repair dealer.

24 54. Under Health and Safety Code section 44072.8, if Automotive Repair Dealer
25 Registration Number ARD 273157, issued to FMC Automotive Services; Fabio Armando
26 Menjivar, Owner, is revoked or suspended, any additional license issued under this chapter in the
27 name of said licensee may likewise be suspended or revoked.

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1 **PRAYER**


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

4 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
5 273157, issued to FMC Automotive Services; Fabio Armando Menjivar, Owner;

6 2. Revoking or suspending any other automotive repair dealer registration issued to
7 FMC Automotive Services or Fabio Armando Menjivar;

8 3. Ordering Fabio Armando Menjivar to pay the Bureau of Automotive Repair the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3; and,

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

12
13 DATED: February 19, 2019 

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

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