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Findings of Fact, Conclusions of Law and Order Granting Default Judgment for Injunction & Other Equitable Relief

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CLERK OF THE COURT

Attorney General's Office
555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

SHAFIK HIRJI, individually; SUSAN ARSLANIAN, individually and as an officer of Susan's Investments, Inc.; VARTAN ARSLANIAN, individually and as an officer of Vartan's Investments, Inc.; VAZGEN DER-GALUSTANIAN, individually and as an officer of SRV Investments, Inc.; DINA KHALIL, individually and as an officer of Dina Enterprises, LLC; CHRISTINE MARDIROSSIAN, individually and as an officer of A1A Investments, Inc., Seto's Investments, Inc., and S.N.S. Investments, Inc.; SETRAK MARDIROSSIAN, individually and as an officer of Al Uma, Inc., Dirossi Investments, Inc., and Sunbar Investments, Inc.; JUDY PHAM, individually and as an officer of Tin's Investments, Inc.; A1A INVESTMENTS, INC., d/b/a Purrfect Auto Service #72; AL UMA, INC., d/b/a Purrfect Auto Service #36; DINA ENTERPRISES, LLC, d/b/a Purrfect Auto Service #263; DIROSSI INVESTMENTS, INC., d/b/a Purrfect Auto Service #111 and Purrfect Auto Service #113; SETO'S INVESTMENTS, INC., d/b/a Purrfect Auto Service #37; S.N.S. INVESTMENTS, INC., d/b/a Purrfect Auto Service #47; SRV INVESTMENTS, INC., d/b/a Purrfect Auto Service #121; SUNBAR INVESTMENTS, INC., d/b/a Purrfect Auto Service #112; SUSAN'S INVESTMENTS, INC., d/b/a Purrfect Auto Service #121; TIN'S INVESTMENTS, INC., d/b/a Purrfect Auto

Case No.: A531745
Dept No.: XIII

~~[PROPOSED]~~ FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING DEFAULT JUDGMENT FOR INJUNCTION AND OTHER EQUITABLE RELIEF

Service #112 and Purrfect Auto Service #119; VARTAN'S INVESTMENTS, INC., d/b/a Purrfect Auto Service #108; DOES I through X; and ROE CORPORATIONS A through Z, inclusive,

Defendants.

THIS CASE having come on for hearing before the Honorable Mark Denton, District Court Judge, on the 6th and 13th days of June, 2011, the Plaintiff STATE OF NEVADA (hereinafter, "STATE") represented by CATHERINE CORTEZ MASTO, Attorney General for the State of Nevada, by and through her deputies, Adriana Escobar and Jeffrey H. Segal, and Defendant SHAFIK HIRJI (hereinafter, "HIRJI") being present, represented by his attorney of record, Malcolm Laverne, and the Court having considered the papers submitted in connection with the proceedings and the evidence adduced, and heard the arguments proffered on behalf of the parties and taken the matter under advisement for further consideration and filed its decision of June 29, 2011.

Now, therefore, the STATE submits the following PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DEFAULT JUDGMENT FOR INJUCTION AND OTHER EQUITABLE RELIEF pursuant to N.R.C. P. 52 as follows:

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INTRODUCTION

This action commenced with the filing of Plaintiff's Complaint on November 17, 2006. At that time, Defendant HIRJI was not named a defendant.

Subsequently, Plaintiff filed an Amended Complaint on July 31, 2007, which names HIRJI as a defendant.

Litigation has ensued over the years with various Assurances of Discontinuance being given to Plaintiff by certain parties resolving the matter as between them. Defendant HIRJI was not the subject of any such items, and the matter was thus scheduled for trial.

At the time of the calendar call for the trial, there was no appearance on the part of Defendant HIRJI. The Court thus entertained and granted an oral motion to enter default of

Defendant HIRJI, and the Order thereon was entered on October 13, 2010. Notably, such Order refers to the fact that Defendant HIRJI had never answered at the time. Thus, there was no pleading to strike in order to enter default. Defendant HIRJI filed an Answer the next day, October 14, 2010.

Subsequently, Defendant HIRJI moved to set aside his default, and such motion was heard and granted on January 31, 2011. The basis for the motion was that Defendant's counsel had inadvertently missed the calendar call. As a condition for setting aside the default, the Court ordered payment of attorneys' fees for the benefit of Plaintiff in the sum of $5,000.00 within 30 days. See Minutes, 1/31/11. No order was ever presented to the Court regarding such motion, and so the Order of October 13, 2010 remained in effect. See Minutes, 5/9/11; Rust v. Clark County School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987); State Div. Child & Fami. Servs. v. Dist. Ct. , 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004). Nor was the payment made on which the set-aside of default was to be conditioned.

Thereafter, Defendant HIRJI'S counsel moved to withdraw and his motion to do so came before the Court on May 9, 2011. See Minutes, 5/9/11. At that time, the Court granted the motion and observed that the default of Defendant HIRJI remained intact and that the scheduled prove-up hearings would remain on calendar as well. Once again, the record does not reflect submission of a proposed order for the entry of an order beyond the Minutes. In any event, Defendant's new counsel, Mr. Lavergne, appeared on behalf of Defendant and represented him at the Prove-Up Hearing.

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~~PROPOSED~~ FINDINGS OF FACT

Plaintiff has demonstrated a prima facie case providing substantial evidence to support the factual allegations made against defendant Hirji as follows:

1. Defendant, SHAFIK HIRJI ("HIRJI") is a Nevada resident with the last known address of 2817 Coast Line Court, Las Vegas, Nevada 89117. At all times material to this complaint, Defendant HIRJI has held himself out to be a "Representative" of Francare, Inc., a Nevada corporation, the Franchiser of all Purrfect Auto Service franchises in the State of

Nevada, and has, acting alone or in concert with others, formulated, directed, controlled, or participated in the acts and practices of the corporate defendants named herein, including the acts and practices set forth in this complaint.

2. Purrfect Auto Service ("PAS") is a franchised chain of automotive maintenance and repair stores that were established in the early 1990s. Paisa, Inc. was the original franchiser of all PAS locations in Nevada and California. The sole officer of Paisa, Inc. was Shafik Hirji ("Hirji"). Paisa, Inc. filed bankruptcy in 1999 and was replaced as the franchiser for all PAS locations in Nevada in May, 1999, by Francare, Inc. At all times relevant hereto, Hirji has held himself out to be a consultant to Francare, Inc.

3. Hirji, in fact, controls in one way or another all PAS locations in Nevada. Francare, Inc. is simply a pass through company where franchise fees and royalty fees are collected and distributed on a weekly basis. The actual PAS franchise locations are controlled by Hirji, either through the investors that he has befriended and the managers at their stores that he controls, or through the repeated re-selling of franchises to new investors when the prior investors refuse to participate in the PAS operational model required by Hirji.

4. The scheme perpetuated at all of the PAS locations controlled by Hirji consists of selling unnecessary repairs and charging for parts that are never installed. This is done through the use of low-price and free inspection advertising including, but not limited to; a $9.95 oil and filter change, a $149.95 or less standard 30/60/90 thousand mile service, free a/c inspection, free brake inspection, and free engine diagnosis. These advertisements, however, are what are commonly known as "loss leaders," as there is little or no profit in the particular service at the advertised price. The advertisements are instead used to bring in customers so the location can sell additional repairs and services, which, in most if not all cases, are unnecessary. Also, in most if not all cases, customers pay for what are commonly called "phantom services" where, although paid for by the customer, services are not done and parts are not replaced.

5. The Defendants named herein, who collectively own and operate at least eleven (11) PAS locations in southern Nevada, and their co-conspirators, have for many years engaged in a pattern and practice of deceiving consumers through the sale of unnecessary automobile

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repair services and the failure to provide automobile repair services. The Defendants advertised jointly for low-cost repairs and free inspections to entice customers to visit the PAS location in their area. Customers who brought their cars in, regardless of the reason stated, were told their cars were inspected for purposes of determining what additional services would be offered. Regardless of whether additional services were necessary, however, customers were regularly told that one or more additional services were needed and were provided an Inspection Report by the location's manager to support these claims. Customers who agreed to the up-sell of additional services were then turned over to the Service Writer, who completed the service order and provided the written estimate to the consumer.

6. The Defendants named herein, and their co-conspirators, knowingly and intentionally followed a specific PAS operations model directed by Hirji and carried out by the managers that he controls. The operations model required, in part, that the locations sell additional services to a minimum of 6 out of every 10 customers who responded to one of the low-cost repair or free inspection advertisements. The operations model also required that Outside Parts Purchases, a.k.a. OSP, represented 8% or less of weekly sales and that weekly sales of $20,000.00 or more were achieved.

7. Because PAS locations only maintain oil, filters, belts and other basic parts on their premises, OSP would represent a significantly higher percentage of gross weekly sales if the parts required in the services orders were actually purchased and utilized. And, a location that actually purchased and utilized all of the parts required in the service orders would, at best, achieve weekly sales figures of $12,000.00 to $15,000.00, which, in turn, would result in a loss of approximately $100,000.00 in the first year of business. Thus, the PAS operations model implemented by Hirji and knowingly and intentionally followed by the other Defendants named herein, and their co-conspirators, required a consistent pattern and practice of the sale of unnecessary parts and services and the failure to provide parts and services when sold.

8. Managers who, at Hirji's direction and with the knowledge of the other Defendants named herein, facilitated the fraudulent PAS operations model stated above, were paid with a combination of payroll checks and cash money. The Defendants all shared a common

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accountant, who, among other services; handled the payroll functions of each PAS location. The cash payments to the managers were made by either Hirji or by the franchise owner, and the amounts were determined by the weekly sales. Managers also lived in houses provided by Hirji, and their rent was deducted from their pay.

9. On or about November 3, 2006, through November 8, 2006, Plaintiff, by and through agents of the Nevada Attorney General's Bureau of Consumer Protection ("BCP"), and the Consumer Affairs Division, Nevada Department of Business and Industry ("CAD"), conducted an undercover investigation aimed at identifying violations of Nevada law in the sale of automobile maintenance and repair goods and services.

10. In preparation for its undercover investigation, the BCP obtained several fictitious license plates and registration documents from the Nevada Department of Motor Vehicles issued to an Acura 3.2 CL Type S motor vehicle ("Acura") belonging to the BCP.

11. BCP and CAD investigators examined advertisements and coupons that were issued by the Defendants, which described the various services and repairs that could be purchased from Purrfect Auto Service locations, including but not limited to the locations owned and operated by the Defendants named herein.

12. Using the advertisements and coupons, the BCP and CAD investigators identified several service items that were included in a 60,000-mile service offered by Purrfect Auto Service locations, as well as other additional up-sell services. These service items included: oil filter replacement; oil change; transmission fluid flush and replacement; air filter replacement; radiator fluid flush and replacement; spark plugs replacement; fuel injector cleaning; crank case filter replacement; PCV valve replacement; differential fluid replacement, and windshield fluid refill.

13. Areas of equipment of the Acura vehicle that would have to be changed, altered or moved in order to perform the identified service items were then marked by BCP Investigators in such a way as to identify whether those service items were performed. These markings were also photographed by BCP Investigators, and the vehicle was outfitted with hidden cameras underneath the car and inside the hood.

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14. On or about November 3, 2006, through November 8, 2006, the Acura vehicle was taken to Purrfect Auto Service #36, Purrfect Auto Service #108, Purrfect Auto Service #112, and Purrfect Auto Service #121, respectively, and a 60,000-mile service was requested at each location. Once the service was performed at each of the stated locations, the invoices and receipts were examined to determine which service items were claimed to have been performed on the vehicle. The Acura was then re-examined to determine whether the stated service items had actually been performed on the vehicle. Upon examination of the Acura parts they had previously marked, BCP and CAD Investigators conclusively determined that a majority of the service items charged for had not actually been performed by the locations in question.

15. As of the date of filing this action, the Nevada Attorney General's Bureau of Consumer Protection and the Consumer Affairs Division of the Nevada Department of Business and Industry, collectively, have received more than 250 complaints against various PAS locations including, but not limited to, the locations owned and operated by the Defendants named herein. Of those complaints, approximately 200 fall within the four-year statute of limitations provided for violations of the Nevada Deceptive Trade Practices Act. The complaints, taken together, provide specific evidence of fraudulent operations the same or substantially similar to the scheme set forth in Section IV(B), above.

16. The Defendants named herein continue to engage in the deceptive trade practices alleged herein, which practices have caused consumers to suffer substantial monetary losses. Absent injunctive granted by this court, Defendants are likely to continue to injure consumers in Nevada.

AMONG THE NUMEROUS VIOLATIONS PROVEN, THE MOST EGREGIOUS INCLUDE, WITHOUT LIMITATION, THE FOLLOWING:

17. Ross Banuelos took his BMW to PA #108 on June 30, 2006 for an oil change and fluid change of the transmission, for a charge of $88.28. After the completion of the service, Banuelos had driven approximately five miles when the car's temperature gage registered that the temperature had risen to the maximum level on the meter. The car was towed back to PA

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#108. Personnel at PA #108 recommended several services in addition to replacing the water pump. Banuelos agreed to the services at the cost of $960. The car was picked up on July 3, 2006. As Banuelos was driving away from the garage, water started to leak profusely from the engine block. Banuelos was told by the manager of PA #108 to take the car to a shop that works on BMWs. The car was taken to another shop where additional work needed to be performed on the car. The receipt from the second shop noted, "Inspected water pump, water pump had not been replaced." The additional cost was $2764.77.

18. Syed Hasan had taken this Ford truck to PA #108 because a brake light was not working. Hasan was informed by personnel that a brake light switch needed to be replaced. After agreeing to the work, Hasan paid $113.73 for the repair. Shortly thereafter, Hasan noticed that the brake light was still not working and he returned to PA #108. Hasan was told that the problem was a loose wire. The problem persisted. Eventually, Hasan took the vehicle to another shop to have the problem fixed. Hasan was informed that the original brake light switch was still on the vehicle.

19. In December 2005, Jeanie Hudson had taken her 2002 Pontiac to PA #37 for an oil change. After the oil change was completed, Hudson noticed that one of the engine repair lights activated. In addition, Hudson said that the car was not running properly. Hudson felt that the mechanic had done something to the car in order to cause this problem. When Hudson returned the car to the garage, Hudson was told that she needed a "speed sensor" and a transmission sensor. The repairs were completed for a total of $580.47. The car was still not running properly, so Hudson took the car to a different shop. A repair order from the second shop was given to Hudson that showed the two sensors mentioned did not appear to have been replaced.

20. Charles Everett had noticed a noise coming from the front brakes of his 2002 Toyota and he decided to have the car checked out at PA #36. On September 20, 2006, mechanics at this garage informed Everett that he needed to have the rotors and the calipers replaced on both of the front wheels. Everett was surprised by this because he had new brake pads installed only five months earlier, but no mention was made of needed additional repairs.

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After the repairs were made at the cost of $900, Everett requested the old parts to be returned to him. Everett showed the rotors to another mechanic in another shop. This mechanic said that the rotors were still good, and that they did not need to be replaced. In addition, Everett was informed that the calipers had not been replaced on his car as indicated on the PA receipt.

21. Alex Hidveghy's truck was taken to PA #47 because the truck had difficult starting when it was cold. When the truck was running, the truck ran very "rough", as if the truck was not getting fuel. Diagnostic tests were performed on the truck and repairs were made. The invoice showed the repairs included a tune-up, complete with changing spark plugs and wires for an eight cylinder engine. However, the truck only had a four cylinder engine. Two days later, the truck would not start and it was taken back to PA #47. A second set of repairs was completed, including replacing a mass air flow sensor (MAFS). The total for the two repairs was $890.63. After the truck was repaired, it still would not start properly. The truck was taken to a Ford dealership. Mechanics at the dealership found that the fuel had been contaminated. A mechanic at the dealership pointed out that replacing the MAFS was not needed. The repairs made by PA #47 were not only overcharged to Hidveghy (8 cyl. vs 4 cyl.) but also were unnecessary.

22. On October 25, 2006, Dorrance McCullen noticed a "check engine" light come on in his vehicle. The car was taken to PA #47 where a number of different services and repairs were made, including replacing the manifold gasket for a total of $1598.04. Approximately a week later, the light was activated again. Additional repairs were made at PA #47 for a total of $1377.03. The repairs included new gaskets for the manifold, again. A note was written on the invoice by the manager, Deborah, that McCullen would be refunded his money if the engine light came on again in the next one thousand miles recorded on the vehicle. In December 2006, McCullen took his vehicle to a Chevrolet dealership because the light came on once more. A mechanic reviewed the PA invoices and he informed McCullen that any one of the completed repairs would have caused the light to come on, but not all of them at once, making the remainder of the repairs unnecessary. A third set of repairs were made to the vehicle, including a leaking manifold gasket. When McCullen tried to get his refund from PA #47, he was told that

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due to new ownership of the store, no records existed and therefore he would not be given a refund.

23. In April 2006, Eddie Williams took his Honda Civic to PA #47 to have the air conditioning unit looked at by a mechanic because even though the fan would blow out air, the air was warm, and was not cooling at all. After a mechanic looked at the car, Williams was told that he needed a new compressor. Williams agreed to the repair and he paid $737 for the service. According to Williams, he was told that the mechanic would flush the system, as well as obtain a new compressor directly from Honda. When the repair was completed, Williams asked to see the receipt from Honda for the new parts. However, Williams was told that receipts are not given to the customers. After leaving the garage, Williams noticed that even though the fan was blowing out air, the air was not cool. Williams let the car run for a while to ensure that he was giving the system enough time to work. Williams returned to PA #47 a few days later to have the problem addressed. A new manager was now working at the garage. When the problem was explained, the new manager said that Williams did not have the system flushed, which led to the new compressor being ruined. The manager told Williams that he would have to pay another $600 for another compressor. Williams returned to the store with a copy of his receipt which showed he was charged for flushing the A/C system. After several return trips to PA #47 in order for the mechanic to attempt to fix the car, Williams was able to speak with the District Manager who said they would fix William's car. Eventually, Williams paid an additional $650 in June 2006 for new parts to get the A/C working properly. However, this did not repair the air conditioning, either. Williams could document eight visits to PA #47 through August 2006 for repair of the A/C, but the A/C was never repaired. Williams paid over $1300 for a service that he never received.

24. In September 2005, Mary Phayre took her 2001 Pontiac to PA #112 for the advertised $12.95 smog check. Phayre was advised by PA personnel that she needed to have certain parts on her car cleaned up as they were a fire hazard. Phayre routinely had her car serviced at a Pontiac dealership so she thought this was out of the ordinary. But to prevent any problems, she agreed to the additional service and she signed a blank work order for the

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garage informed Toland that the maintenance light is automatically activated at regular mileage intervals as a reminder to change the oil of the car. The mechanic reset the maintenance light for no charge.

27. Darring Sinclair was traveling through Nevada on November 11, 2006 when he experienced a problem with his van. Sinclair felt that the van was losing power and a mechanic at PA suggested a number of repairs including rebuilding the transmission. Sinclair was charged $3872.04 for the repair. Immediately after driving the van, Sinclair felt that the problem was not completely fixed and he returned to PA #112. The mechanic said that the transmission needed to be broken in. Sinclair left for Alabama. Sinclair noticed that he was having problems again around Flagstaff, Arizona. Sinclair called a friend who worked for a PA in Arizona. Sinclair was told to bring the van to a PA location in Phoenix. Several repairs were made to the transmission. After leaving Phoenix, Sinclair felt that the van was again losing power. Sinclair stopped at a truck stop where he removed and cleaned out the fuel filter. The van drove fine until the problem reoccurred. Sinclair cleaned out the filter again. When he reached his destination in Alabama, he had the van checked at a Buick dealership. The problem was determined to be something in the gas tank that was contaminating the fuel. Sinclair felt he never needed to have any work done to the transmission.

28. In August 2006, John Danko took his car into PA #112 for a routine oil change and smog check. It was recommended to Danko by PA personnel to have several other recommended services. Danko agreed to the repairs and he paid the bill of $1005.53, which included servicing of the air conditioning unit. The car was not performing properly and Danko brought the car back to PA. Danko was told he needed a new compressor for the A/C unit. Danko agreed to the additional service, which cost another $1000. Danko left on a trip to Arizona, where his car broke down outside of Tuscon, Arizona. The car was towed to a garage in Tuscon. At the garage, a mechanic found that the new A/C compressor had froze up, causing a fan belt to break. The mechanic also found that the car had been tampered with by installing an electrical wire to the compressor that would bypass a circuit switch that would cause the compressor to shut down in the event that too much pressure built up inside of the compressor.

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This bypass wire led the compressor to become overloaded and wear out prematurely. The mechanic prepared an affidavit of his findings at Danko's request. All of the A/C work, along with other damage caused by the overload, had to be performed again.

29. On January 7, 2005, Vidya Francis attempted to start his car, but was unable to do so. Approximately two hours later, Francis returned to this car and he was able to get it started on this attempt. The following day, Francis' car stalled while he was driving the car. Francis had the car towed to PA #112, as this was much closer than Francis' regular mechanic shop. After performing diagnostic tests, Francis was informed that the "ECM module" needed to be replaced. The cost of the repair was $437.70. Once repaired, the car was driven away from PA by Francis' spouse to go shopping. When Mrs. Francis attempted to start the car again, the car would not start. The car was towed to PA for the second time. When Francis was told the car was working fine, he returned to PA #112 to find he could not start his car. Mechanics performed more tests to determine that the ignition module needed to be replaced at the cost of approximately $450. The manager refused to credit the first repair. Francis had the car towed to his regular mechanic who replaced the ignition module for only $230. In addition, Francis' regular mechanic replaced the new ECM module with the old one. The car ran properly with the old unit reinstalled. Francis felt that he was sold on an unnecessary repair because the new part was not needed to make the car perform properly.

30. Sonny Calderone took his 2002 Honda Accord to PA #112 for an advertised oil change on July 7, 2006. The manager of the garage made several recommendations to Calderone regarding additional services for the vehicle. The services included replacing the spark plugs. Calderone agreed to the services for which he paid $224.36. Calderone consulted the owner's manual for the car, which stated that the spark plugs should be changed when the vehicle had traveled 100,000 miles. Calderone's vehicle only had 23,721 miles on the car, which was noted on the PA invoice. Calderone had his neighbor remove one of the spark plugs to find that the spark plug was not new. The spark plugs were obviously not changed. Calderone questioned which of the other paid services had not been performed.

31. In January 2006, Ning Xu's spouse, Xiaolin Wang, noticed an odor coming from

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the front end of her vehicle. In addition, Wang could hear strange noises when she turned the steering wheel. The car was taken to PA #112, where the PA personnel said that the steering pump needed to be replaced. The repair was made for the cost of $700. The following day, the problems persisted. Wang took the car to two different auto repair shops regarding the problem. Mechanics at both shops looked at the steering pump and determined that the original pump was still on the car.

32. On June 6, 2005, Gerald Berry had taken his car to PA #72 because he needed to have a smog check performed. At the time the smog check was performed, one of the engine maintenance lights was on. Yet, the car passed the smog check. Berry was informed by personnel at the garage that they had to repair the car at PA #72 because they had sent in the smog report. The repair services consisted primarily of performing an oil change and replacing some gaskets. The cost of the repair was $390.00. When the repair was completed, the light was still on. Berry took his vehicle to another garage that was able to reset the light for no charge. Berry also contacted the Nevada Department of Motor Vehicles where he learned that if a repair was needed in order to pass a smog check, the repair can be completed anywhere, regardless of the garage that submitted the smog check report.

33. In January 2006, Jesse Vela took his car to PA #121 for a problem with his radiator. After the new radiator was installed, Vela paid the bill of $438.25. Shortly after the repair, Vela returned to the garage because the car was running poorly. Vela agreed to have the engine rebuilt. Periodically, Vela or his son would stop to check on the progress. On one occasion, Vela's son was shown the rebuilt engine that had been received to install in Vela's car. The engine block had been painted blue. However, upon getting the car back, Vela noted the engine block was orange. The repairs took over three months to complete. When Vela went to pick up the car, the engine would not start. Vela was told by the manager that nothing more could be done to the car. The total amount paid was $4638.25. Vela ended up towing the car to another shop that did get the car running at an additional cost. While at the second garage, a mechanic showed Vela that the new radiator was an old radiator, possibly the original radiator, which had been repainted. The mechanic could identify that the radiator was not new because

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of dents that existed on the radiator.

34. In August 2006, John Jablonski took his Nissan Altima to PA #121 because he had noticed that his car was starting to leak oil. After a mechanic looked over the car, he told Jablonski that he needed service repairs including electrical parts. Jablonski felt that the car was running fine but the personnel insisted that the parts were necessary. At that point, the car had only 56,025 recorded miles on the odometer. The repairs included replacing the distributor, the distributor cap, the rotor, new spark plugs and ignition wires. A fuel injection cleaner was included in the repairs. The total invoice came to a total of $1031.75, which Jablonski paid. Jablonski felt that these repairs were completely unnecessary because they related to the ignition of the motor, not the oil. After the repairs were completed, the car continued to leak oil. No seals were ever addressed in the repair.

35. Shannon Dufore took her Honda Accord to PA #111 for a routine oil change. Dufore was going to leave the car at the garage, and return in approximately an hour. According to Dufore, approximately twenty minutes after she left the garage, she received a telephone call from the manager who informed her that the car needed several repairs to prevent further damage to the car. At the time of the repair, the car had less than 67,000 miles. Dufore was given a verbal estimate of the costs between $1200 and $1500. Dufore was told she needed to pay in advance to order some of the parts needed for the repairs. Dufore returned to PA #111 and she was given a bill of $2089.78, which she paid. No written estimate was given to Dufore. The manager said the entire repair could take up to three weeks to complete. After the work was completed, Dufore felt that the work was unnecessary. In addition, Dufore found discrepancies with the final invoice. Dufore was billed twice for two rear struts at $339.90 for both billings. Dufore was billed for a water pump that was never installed on her car. Dufore also questioned exactly what happened to her car while it was at PA #111. On one occasion Dufore stopped at the shop to check on the progress of her repair. Dufore observed that the rear seats had been removed from the car.

36. On July 15, 2006, Loma Hitchcock (Vanderbur) attempted to start his Toyota truck, but was unsuccessful. Hitchcock contacted PA #119 to verify that they would be able to work on

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her truck. Hitchcock called a tow truck to move the truck to the PA garage. When the tow truck driver arrived at Hitchcock's residence, he used a "jump box" from his truck and he was able to get the truck started for Hitchcock. The "jump box" tested the battery and the alternator of the truck to determine that the alternator was operating correctly, but the battery was dead. Hitchcock drove the truck to PA #119 to have the battery replaced. Personnel at PA said they would check over the truck, and give her a call before any repairs were made. When a mechanic called Hitchcock, he said that the alternator was actually not functioning and needed to be replaced. In addition, other services were needed, but they were not related to the electrical system. Hitchcock agreed to the recommended repairs for a total of $800. Hitchcock picked up her vehicle when the repairs were completed. Later that night, Hitchcock was unable to start her vehicle. The following day, Hitchcock purchased a new battery and she installed it herself. She was able to start the vehicle. Hitchcock contacted PA #119 because she wanted her alternator returned because she felt it was not the problem with the truck. (Hitchcock had been charged $375 for the new alternator, plus $150 for installation.) When Hitchcock contacted PA #119, she learned that they were unable to locate and return her alternator. Hitchcock felt that purchase of the alternator was unnecessary for her vehicle.

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CONCLUSIONS OF LAW

37. Although the allegations in the pleadings are deemed admitted as a result of entry of default, the admission does not relieve the non-offending party's obligation to present sufficient evidence to establish a prima facie case, which includes substantial evidence that the damages sought are consistent with the claims for which the non-offending party seeks compensation. In other words, where the non-offending party seeks monetary relief, a prima facie case requires the non-offending party to establish that the offending party's conduct resulted in damages, the amount of which is proven by substantial evidence. *Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042, 1050 (2010); See also *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 787 P.2d 777 (1990) and *Hamlett v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998).

38. The Court holds that the principle set forth in *Foster v. Dingwall*, which specifically addressed monetary relief, requiring the need for a quantum of evidence in a default setting applies equally when it comes to injunctive relief.

39. The Court also pointed out that reference to an obligation to prove a prima facie case as to damages so that the latter can be deemed to be supported by substantial evidence is not the same as saying that damages must be proved by a preponderance of the evidence in a default setting. The term "prima facie case" relates to the existence of evidence that could be deemed substantial in the sense that it could, standing alone, "...permit a trier of fact to infer the fact at issue and rule in the party's favor." Id.

40. The Court concludes that the conduct set forth in the Findings of Facts herein constitute deceptive trade practices in violation NRS 598.0903 et. seq. and that Defendant HIRJI is liable for said violations.

41. The Court concludes that Defendant HIRJI is liable to Plaintiff for restitution in the amount of $118,474.93 pursuant to NRS 598.0993.

42. The Court concludes that Defendant HIRJI is liable for civil penalties in the amount of $100,000.00 ($5,000.00 for each of the 20 most egregious violations set forth in the Findings of Fact herein pursuant to NRS 598.0999(2)).

43. The Court concludes that Defendant HIRJI shall be permanently enjoined from engaging in the automotive repair business except by way of open and transparent ownership and/or control in compliance with the laws of the State of Nevada and its political subdivisions and municipalities wherein business is engaged by him to include, without limitation, laws, ordinances, and regulations pertaining to the formation of business organizations, use of fictitious firm names, licensure, workman's compensation, employment security, and taxation. NRS 598.0963(3), NRS 598.0989.

44. The Court concludes that Defendant HIRJI shall be permanently enjoined against deceptive trade practices as defined pursuant to NRS 598.0903 et. seq. to the extent that he does engage in the automotive repair business in the State of Nevada in compliance with the conditions imposed hereinabove, the same to include, without limitation, the following practices:

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(1) Advertising products or services without the intent to provide the products or services at the advertised price and terms; (2) Requesting or accepting payments for products or services not provided; and (3) Selling or recommending consumers purchase products or services that are not required.

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ORDER

Based on the Findings of Fact and Conclusions of Law contained herein:

IT IS HEREBY ORDERED that the Application for Default Judgment is hereby **GRANTED.**

IT IS FURTHER ORDERED that Plaintiff recover of and from Defendant SHAFIK HIRJI the principal sum of $218,474.93, together with interest accruing on the principal amount at the legal rate ~~of _____% per month~~ from October 13, 2010, and attorneys' fees in the amount of $75,000.00.

IT IS FURTHER ORDERED that Defendant SHAFIK HIRJI is permanently enjoined against continuing to engage or participate in the automotive repair business in any manner, either directly or indirectly, except by way of open and transparent ownership and/or control and in compliance with the laws of the State of Nevada and its political subdivisions and municipalities wherein business is engaged by him to include, without limitation, laws,

ordinances, and regulations pertaining to formation of business organizations, use of fictitious firm names, licensures, workman's compensation, employment security, and taxation.

IT IS FURTHER ORDERED that Defendant SHAFIK HIRJI is permanently enjoined against deceptive trade practices as defined pursuant to NRS 598.0903 et. seq. to the extent that he does engage in the automotive repair business in the State of Nevada in compliance with the conditions imposed hereinabove, the same to include, without limitation, the following practices: (1) Advertising products or services without the intent to provide the products or services at the advertised price and terms; (2) Requesting or accepting payments for products or services not provided; and (3) Selling or recommending consumers purchase products or services that are not required.

DATED this 28th day of September, 2011.

DISTRICT COURT JUDGE

RESPECTFULLY SUBMITTED:

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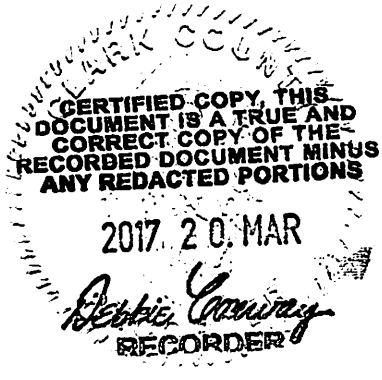
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