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7

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

10
11 In the Matter of the Accusation Against:

Case No.

77/14-09

12 **JOHN'S AUTO BODY**
JOHN JOSEPH THILL, Owner
13 **770 Mark West Springs Road**
Santa Rosa, CA 95404

A C C U S A T I O N

14 **Automotive Repair Dealer Registration No.**
15 **ARD 209299**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 **Automotive Repair Dealer Registration**

23 2. On or about March 1, 2000, the Bureau issued Automotive Repair Dealer Registration
24 Number ARD 209299 to John Joseph Thill (Respondent), doing business as, John's Auto Body.
25 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
26 charges brought herein and will expire on February 28, 2014, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Director of Consumer Affairs (Director) for the

1 Bureau, under the authority of the following laws. All section references are to the Business and
2 Professions Code (Code) unless otherwise indicated.

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

7 5. Code section **9884.13** provides, in pertinent part, that the expiration of a valid
8 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
9 proceeding against an automotive repair dealer or to render a decision invalidating a registration
10 temporarily or permanently.

11 **STATUTORY PROVISIONS**

12 6. Code section **490** provides, in pertinent part, that a board may suspend or revoke a
13 license on the ground that the licensee has been convicted of a crime substantially related to the
14 qualifications, functions, or duties of the business or profession for which the license was issued.

15 7. Code section **9884.7** states:

16 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
17 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
18 dealer for any of the following acts or omissions related to the conduct of the business of the
19 automotive repair dealer, which are done by the automotive repair dealer or any automotive
20 technician, employee, partner, officer, or member of the automotive repair dealer.

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

24 "...

25 (4) Any other conduct that constitutes fraud.

26 "...

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

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

4 "...

5 "(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
6 probation the registration for all places of business operated in this state by an automotive repair
7 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
8 and willful violations of this chapter, or regulations adopted pursuant to it."

9 8. Code section **9884.8** states:

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

20 9. Code section **9884.9** states:

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

1 regulation the procedures to be followed by an automotive repair dealer if an authorization or
2 consent for an increase in the original estimated price is provided by electronic mail or facsimile
3 transmission. If that consent is oral, the dealer shall make a notation on the work order of the date,
4 time, name of person authorizing the additional repairs and telephone number called, if any,
5 together with a specification of the additional parts and labor and the total additional cost, and
6 shall do either of the following:

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

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

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

13 _____
14 (signature or initials)"

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

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

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

1 aftermarket crash part.

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

10 **REGULATORY PROVISIONS**

11 10. California Code of Regulations, title 16, section 3353, states, in pertinent part:

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

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

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

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

26 "(1) If the authorization from the customer for additional repairs, parts, or labor in excess
27 of the written estimated price is obtained orally, the dealer shall also make a notation on the work
28 order and on the invoice of the date, time, name of the person authorizing the additional repairs,

1 and the telephone number called, if any, together with the specification of the additional repairs,
2 parts, labor and the total additional costs.

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

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

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

16 "...

17 "(e) Revising an Itemized Work Order. If the customer has authorized repairs according to
18 a work order on which parts and labor are itemized, the dealer shall not change the method of
19 repair or parts supplied without the written, oral, electronic authorization of the customer. The
20 authorization shall be obtained from the customer as provided in subsection (c) and Section
21 9884.9 of the Business and Professions Code.

22 "...

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

27 11. California Code of Regulations, title 16, section 3356, states:

28 "(a) All invoices for service and repair work performed, and parts supplied, as provided for

1 in Section 9884.8 of the Business and Professions Code, shall comply with the following:

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

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

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

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

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

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

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

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

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

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

25 12. California Code of Regulations, title 16, section 3358, states:

26 "Each automotive repair dealer shall maintain legible copies of the following records for
27 not less than three years:

28 "(a) All invoices relating to automotive repair including invoices received from other

1 sources for parts and/or labor.

2 "(b) All written estimates pertaining to work performed.

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

6 13. California Code of Regulations, title 16, section **3364** states:

7 "(a) An automotive repair dealer shall not remove, paint over, or otherwise deface any label
8 or sticker which has been affixed to the doorpost, dash, underhood, windshield, or other location
9 on a vehicle, and which contains identifying information regarding the vehicle or its emission
10 control system components. An automotive repair dealer shall replace any such label or sticker
11 which would otherwise be destroyed as part of the repair process, unless the replacement label or
12 sticker is not reasonably available.

13 "(b) The above requirements shall apply to any label or sticker mandated by the bureau or
14 other governmental agency as well as those included with the vehicle as part of its original
15 manufacture and those added onto a vehicle as part of a manufacturer's authorized recall
16 program."

17 14. California Code of Regulations, title 16, section **3371**, states:

18 "No dealer shall publish, utter, or make or cause to be published, uttered, or made any false
19 or misleading statement or advertisement which is known to be false or misleading, or which by
20 the exercise of reasonable care should be known to be false or misleading. Advertisements and
21 advertising signs shall clearly show the following:

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

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

28 15. California Code of Regulations, title 16, section **3373**, states:

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

6 COST RECOVERY

7 16. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
11 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
12 included in a stipulated settlement.

13 FACTS

14 17. On or about May 20, 2009, Consumer A.A. took a 2008 Lexus RX350 to
15 Respondent's facility, John's Auto Body, for collision damage repair of the front of her vehicle.

16 18. Respondent did not provide Consumer A.A. with a written estimate for the repairs.

17 19. On or about May 21, 2009, the California State Automobile Association ("CSAA")
18 issued Respondent a check for \$10,787.12, to pay for the repairs of consumer's vehicle.

19 20. On or about August 11, 2009, CSAA issued Respondent another check for \$500.00 to
20 pay for the repairs of Consumer's vehicle.

21 21. Consumer A.A. picked up the 2008 Lexus about eight weeks later once the repairs
22 were completed.

23 22. Respondent did not provide Consumer A.A. with a final invoice for the repairs when
24 Consumer A.A. picked up the 2008 Lexus.

25 23. Respondent did not provide Consumer A.A. with an itemized estimate for all parts
26 and labor that indicated whether parts would be new, used, rebuilt, reconditioned, OEM parts, or
27 non-OEM aftermarket crash parts, prior to performing the repairs.

28 24. After receiving the 2008 Lexus from Respondent, Consumer A.A. took the vehicle to

1 a Lexus dealer for diagnosis of an engine overheating problem. The Lexus dealer recommended
2 that Consumer A.A. return the 2008 Lexus to Respondent for diagnosis and repair of the
3 overheating problem because the radiator did not appear to have been replaced as was specified in
4 the CSAA estimate. The Lexus dealer also expressed concerns about Respondent's repairs on the
5 2008 Lexus.

6 25. Consumer A.A. returned the 2008 Lexus to Respondent for repair of the overheating
7 problem. Respondent resolved the overheating problem by installing a new radiator.

8 26. Sometime later, Consumer A.A. took the 2008 Lexus to Windsor Collision for
9 diagnosis and repair of moisture accumulation inside the right headlight assembly. Windsor
10 Collision expressed concerns about the quality of Respondent's repairs on the 2008 Lexus.

11 27. On or about March 7, 2012, Consumer A.A. filed a complaint with the Bureau and
12 requested an inspection of her 2008 Lexus.

13 28. On or about March 29, 2012 and April 26, 2012, the Bureau performed a post-repair
14 inspection of the 2008 Lexus using the CSAA estimate of record, dated May 20, 2009. The
15 inspection revealed that the following parts had not been replaced and labor had not been
16 performed:

17 a. The coolant notice label had not been replaced as specified in line item 1 of the
18 CSAA estimate of record.

19 b. The emission control label had not been replaced as specified in line item 2 of the
20 CSAA estimate of record.

21 c. The label vacuum diagram label had not been replaced as specified in line item 3 of
22 the CSAA estimate of record.

23 d. The information label had not been replaced specified in line item 4 of the CSAA
24 estimate of record.

25 e. The front bumper impact absorber had not been replaced as specified in line item 13
26 of the CSAA estimate of record.

27 f. The front bumper reinforcement had not been replaced as specified in line item 14 of
28 the CSAA estimate of record.

1 g. The A/C was not evacuated and recharged as specified in line item 28 of the CSAA
2 estimate of record.

3 h. The air conditioning condenser was not replaced with an Original Equipment
4 Manufacture (OEM) part as specified in line item 30 of the CSAA estimate of record.

5 The Bureau determined that the total value of parts that were not replaced and labor that
6 was not performed as specified in the CSAA estimate of record was \$ 1,280.39.

7 29. The Bureau's inspection also revealed that the following work, performed by
8 Respondent, was below accepted trade standards:

9 a. The front radiator support welding repairs were of poor quality and showed signs of
10 rust and/or corrosion.

11 b. The refinishing and/or painting of the vehicle's hood showed signs of "bubbling" and
12 "lifting."

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Untrue and/or Misleading Statements)

15 30. Respondent's ARD Registration is subject to discipline under Code section 9884.7,
16 subdivisions (a)(1), and (a)(6), and under California Code of Regulations, title, 16, sections 3371
17 and 3373, in that Respondent made untrue and/or misleading statements by representing that the
18 vehicle had been repaired as specified in the CSAA estimate of record, as set forth above in
19 paragraphs 17-29.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Fraud)

22 31. Respondent's ARD Registration is subject to discipline under Code section 9884.7,
23 subdivisions (a)(4) and (a)(6), in that Respondent committed fraud when he accepted payment for
24 parts that were not supplied and for repairs that were not performed, as set forth above in
25 paragraphs 17-29.

26 **THIRD CAUSE FOR DISCIPLINE**

27 (Departure from Trade Standards)

28 32. Respondent's ARD Registration is subject to discipline under Code section 9884.7,

1 subdivisions (a)(6) and (a)(7) in that he willfully departed from and/or disregarded accepted trade
2 standards for good and workmanlike repair, in a material respect, when he failed to properly weld
3 the front radiator and failed to properly paint and refinish the vehicle's hood, as set forth above in
4 paragraphs 17-29.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 (Failure to Comply with Vehicle Identification Information Requirement)

7 33. Respondent's ARD Registration is subject to discipline under Code section 9884.7,
8 subdivisions (a)(6), and under California Code of Regulations, title 16, section 3364, subdivision
9 (a), in that Respondent failed to replace the factory emissions control label on the underside of the
10 replacement hood, as set forth above in paragraphs 17-29.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 (Failure to Provide Estimate)

13 34. Respondent's ARD Registration is subject to discipline under Code section 9884.7,
14 subdivisions (a)(6), and 9884.9, subdivision (a), and under California Code of Regulations, title
15 16, section 3353, in that Respondent failed to provide Consumer an estimated price for the repair
16 of her vehicle, as set forth above in paragraphs 17-29.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 (Failure to Provide Itemized Estimate)

19 35. Respondent's ARD Registration is subject to discipline under Code section 9884.7,
20 subdivisions (a)(6), and 9884.9, subdivision (c), and under California Code of Regulations, title
21 16, section 3356, subdivision (b), in that Respondent failed to provide Consumer an itemized
22 estimate for all parts and labor that indicated whether the parts were new, used, reconditioned,
23 rebuilt, OEM crash parts, or non-OEM aftermarket crash parts prior to performing the repairs, as
24 set forth above in paragraphs 17-29.

25 **SEVENTH CAUSE FOR DISCIPLINE**

26 (Failure to Provide Final Invoice)

27 36. Respondent's ARD Registration is subject to discipline under Code section 9884.7,
28 subdivisions (a)(6), and 9884.8, and under California Code of Regulations, title 16, section 3356,

1 in that Respondent failed to provide Consumer a final invoice for the repair of her vehicle, as set
2 forth above in paragraphs, 17-29.

3 **PRAYER**


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

6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
7 209299, issued to John Joseph Thill;

8 2. Ordering John Joseph Thill to pay the Bureau of Automotive Repair the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3;

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

12
13
14 DATED: August 2, 2013


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

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