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

12 In the Matter of the Accusation Against:

Case No.

77/14-44

13 **NORTHERN AUTO**
14 **MIKE F. DAY, OWNER**
10447 Franklin Blvd.
Elk Grove, CA 95757

ACCUSATION

15 **Automotive Repair Dealer Reg. No. ARD 230189**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity
21 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
22 2. In or about 2003, the Director of Consumer Affairs ("Director") issued Automotive
23 Repair Dealer Registration Number ARD 230189 to Mike F. Day ("Respondent"), owner of
24 Northern Auto. Respondent's automotive repair dealer registration will expire on October 31,
25 2014, unless renewed.

26 **JURISDICTION**

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

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

6 **STATUTORY AND REGULATORY PROVISIONS**

7 5. Code section 9884.7 states, in pertinent part:

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

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

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

20

21 (4) Any other conduct that constitutes fraud.

22

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

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

28 6. Code section 9884.8 states, in pertinent part, that "[a]ll work done by an automotive
repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all
service work done and parts supplied . . ."

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

The automotive repair dealer shall give to the customer a written
estimated price for labor and parts necessary for a specific job. No work shall be done
and no charges shall accrue before authorization to proceed is obtained from the
customer . . .

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

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

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

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

14 11. California Code of Regulations, title 16, section ("Regulation") 3356 states, in
15 pertinent part:

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

19

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

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

24 12. Regulation 3365 states, in pertinent part:

25 The accepted trade standards for good and workmanlike auto body and
26 frame repairs shall include, but not be limited to, the following:

27

28 (b) All corrosion protection shall be applied in accordance with
29 manufacturers' specifications or nationally distributed and periodically updated
30 service specifications that are generally accepted by the autobody repair industry.

31 13. Regulation 3373 states:

32 No automotive repair dealer or individual in charge shall, in filling out an

1 estimate, invoice, or work order, or record required to be maintained by section
2 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
3 information which will cause any such document to be false or misleading, or where
4 the tendency or effect thereby would be to mislead or deceive customers, prospective
5 customers, or the public.

6 **COST RECOVERY**

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

11 **CONSUMER COMPLAINT (HINES): 2003 GMC SIERRA K2500 PICKUP**

12 15. On or about October 2, 2012, Keith Hines' ("Hines") 2003 GMC Sierra K2500
13 pickup was damaged in a collision (the right front body and suspension). Hines made a claim for
14 the damage with Horace Mann Insurance Company ("HMIC").

15 16. On or about October 8, 2012, Art Aguirre of HMIC inspected the vehicle and
16 prepared an itemized written estimate in the net amount of \$2,401.41 (\$2,901.41 less a \$500
17 insurance deductible). HMIC issued Hines' wife, Kimberlie Hines, a check for \$2,401.41.

18 17. On or about October 11, 2012, Keith Hines ("Hines") took the vehicle to
19 Respondent's facility for repair.

20 18. On or about October 24, 2012, HMIC prepared a supplemental estimate, "Supplement
21 1", in the gross amount of \$8,280.37, for additional work on the vehicle.

22 19. On or about October 26, 2012, Hines paid Respondent \$1,600 towards the repairs.

23 20. On or about November 20, 2012, HMIC issued Respondent a check in the amount of
24 \$5,378.96.

25 21. In or about late November 2012, Hines went to the facility to pick up the vehicle and
26 found that the repairs had not been completed. Hines paid the facility \$600 in cash, leaving a
27 balance due of \$701.41, including the \$500 insurance deductible (Respondent had received a total
28 of \$7,578.96 from Hines and HMIC), and removed the vehicle from the facility.

29 22. In or about February 2013, Hines filed a complaint with the Bureau, alleging that
30 Respondent's facility failed to replace parts on the vehicle as paid for by HMIC.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

30. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:

a. Respondent obtained payment from HMIC and Hines for replacing the grille on Hines' 2003 GMC Sierra K2500 pickup. In fact, that part was not replaced on the vehicle.

b. Respondent obtained payment from HMIC and Hines for making custom cuts to fit the grille molding on Hines' 2003 GMC Sierra K2500 pickup. In fact, that repair was not performed on the vehicle.

c. Respondent obtained payment from HMIC and Hines for replacing the right headlamp mounting bracket on Hines' 2003 GMC Sierra K2500 pickup with an original equipment manufacturer part. In fact, the right headlamp mounting bracket was replaced with an aftermarket part.

d. Respondent obtained payment from HMIC and Hines for replacing the radiator support on Hines' 2003 GMC Sierra K2500 pickup. In fact, that part was not replaced on the vehicle.

e. Respondent obtained payment from HMIC and Hines for replacing the radiator support label on Hines' 2003 GMC Sierra K2500 pickup. In fact, that part was not replaced on the vehicle.

f. Respondent obtained payment from HMIC and Hines for replacing the right front splash shield on Hines' 2003 GMC Sierra K2500 pickup. In fact, that part was not replaced on the vehicle.

g. Respondent obtained payment from HMIC and Hines for replacing the front frame cross member on Hines' 2003 GMC Sierra K2500 pickup. In fact, that part was not replaced on the vehicle.

h. Respondent obtained payment from HMIC and Hines for replacing the front suspension cross member brace on Hines' 2003 GMC Sierra K2500 pickup. In fact, that part was not replaced on the vehicle.

1 i. Respondent obtained payment from HMIC and Hines for replacing the right front
2 upper control arm on Hines' 2003 GMC Sierra K2500 pickup. In fact, that part was not replaced
3 on the vehicle.

4 j. Respondent obtained payment from HMIC and Hines for replacing the left front
5 shock absorber on Hines' 2003 GMC Sierra K2500 pickup. In fact, that part was not replaced on
6 the vehicle.

7 k. Respondent obtained payment from HMIC and Hines for replacing the right front
8 shock absorber on Hines' 2003 GMC Sierra K2500 pickup. In fact, that part was not replaced on
9 the vehicle.

10 l. Respondent obtained payment from HMIC and Hines for replacing the U-bolts on
11 Hines' 2003 GMC Sierra K2500 pickup. In fact, those parts were not replaced on the vehicle.

12 m. Respondent obtained payment from HMIC and Hines for shipping fees relating to the
13 repair of Hines' 2003 GMC Sierra K2500 pickup. In fact, Respondent's facility did not incur the
14 shipping charges.

15 **CONSUMER COMPLAINT (PALOMINO): 1970 CHEVROLET CHEVELLE SS**

16 31. On or about June 3, 2011, Omar Palomino ("Palomino") had his 1970 Chevrolet
17 Chevelle SS towed to Respondent's facility to have certain auto body repairs performed and the
18 vehicle painted (Respondent had given Palomino a verbal estimate of \$4,000 – 5,000 for the
19 work). Over the next eight months, Palomino made periodic visits to the facility and authorized
20 additional repairs on the vehicle. Palomino paid Respondent approximately \$7,000. In or about
21 February 2012, a dispute arose over the repairs, and Palomino had the vehicle towed out of the
22 facility. Palomino was dissatisfied with the repairs and filed a complaint with the Bureau.

23 32. On or about May 2, 2012, a representative of the Bureau inspected and photographed
24 the vehicle. One of the photographs showed that rust was developing at the inner side of the left
25 front fender.

26 33. On or about May 8, 2012, the representative met with Respondent and had him
27 review the photographs, including the photo of the left fender. Respondent admitted that he failed
28 to apply corrosion protection to the inner side of the fender.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 34. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
5 standards for good and workmanlike repair without the consent of the owner or the owner's duly
6 authorized representative in a material respect, as follows: Respondent failed to apply corrosion
7 protection to the left front inner fender of Palomino's 1970 Chevrolet Chevelle SS, in violation of
8 Regulation 3365, subdivision (b), resulting in the development of rust at that location of the
9 vehicle.

10 **CONSUMER COMPLAINT (GREENACRE): 1970 CHEVROLET CAMARO**

11 35. On or about August 3, 2012, the Bureau received a complaint from David Greenacre
12 ("Greenacre"), indicating that Respondent's facility failed to properly repair and paint his vehicle.

13 36. In or about December 2011, Respondent entered into an agreement with Greenacre to
14 repaint his son's 1970 Chevrolet Camaro with custom stripes for \$4,900, including the removal of
15 all trim. Greenacre paid Respondent a total of \$4,900 for the work. Respondent picked up the
16 vehicle from Greenacre's workplace and took it to his repair facility. Greenacre claimed that he
17 did not receive a copy of the work order prior to the commencement of the job. Approximately
18 four months later, Greenacre contacted Respondent and told him that he would be picking up the
19 vehicle whether the work was completed or not given the length of time it was taking to finish the
20 job. In or about April 2012, Greenacre went to the facility to retrieve the vehicle, and noted that
21 the back glass was damaged, the passenger door glass was loose, the hood and fender trim were
22 missing, and the hood stripes were poorly painted. Greenacre claimed that he was given an
23 invoice. The vehicle was subsequently returned to the facility for corrective repairs. Greenacre
24 obtained a written agreement from Respondent, dated April 25, 2012, which he provided to J. D.
25 Respondent had agreed to strip down and repaint the entire vehicle, including the rally stripes,
26 and install the back glass by May 25, 2012. Greenacre supplied the facility with the back glass
27 and related parts as well as the paint material. The job was not completed for another two
28

1 months, and Geenacre was dissatisfied with Respondent's workmanship. In addition, Greenacre
2 did not receive a final invoice for the additional work or repaint job.

3 37. On or about August 13, 2012, Bureau Representatives J. D. and M. G. inspected the
4 vehicle.

5 38. On or about September 26, 2012, J. D. and M. G. went to the facility and requested
6 copies of Respondent's repair records on the vehicle. Respondent provided J. D. with an invoice
7 dated December 12, 2011, which was signed by Greenacre. Respondent told J. D. that the invoice
8 was actually a work order and that the document was signed prior to the commencement of the
9 work. Respondent agreed to refinish the stripes on the hood of the vehicle and to refund
10 Greenacre \$539.99 for the back glass and paint material supplied by Greenacre.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Failure to Record Odometer Reading)**

13 39. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
14 subdivision (a)(2), in that Respondent caused or allowed Greenacre to sign the invoice or work
15 order dated December 12, 2011, which did not state the odometer reading of the 1970 Chevrolet
16 Camaro.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Violations of the Code)**

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

22 a. **Section 9884.8:** Respondent failed to provide Greenacre with an invoice for the
23 corrective repairs, including the repainting of the 1970 Chevrolet Camaro, including the rally
24 stripes, and the installation of the back glass.

25 b. **Section 9884.9, subdivision (a):** Respondent failed to list on the invoice or work
26 order dated December 12, 2011 an estimated price for all labor and parts necessary for the paint
27 job and related repairs on the 1970 Chevrolet Camaro. Further, Respondent failed to generate or
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1 provide Greenacre with a written estimate for the corrective repairs on the vehicle, set forth in
2 subparagraph (a) above.

3 **CONSUMER COMPLAINT (CASTILLO): 2002 VOLKSWAGEN GOLF**

4 41. In or about January 2013, the Bureau received a complaint from Bryan Castillo
5 (“Castillo”), alleging that Respondent’s facility damaged his 2002 Volkswagen Golf during their
6 repair of the vehicle.

7 42. On or about January 31, 2013, a representative of the Bureau contacted Castillo and
8 reviewed the allegations in the complaint. Castillo told the representative that in November 2011,
9 the vehicle had been towed to the facility and that approval had been given for the replacement of
10 the timing chain and clutch and the repair of the cylinder head. Castillo claimed that when the job
11 was completed, the vehicle was returned to him with several problems. Castillo provided the
12 Bureau with a copy of an invoice dated November 19, 2011 relating to the repairs.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations)**

15 43. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
16 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivision
17 (a)(2)(A), in a material respect, as follows: Respondent listed on the invoice the parts that were
18 supplied or installed on Castillo’s 2002 Volkswagen Golf, but failed to list, describe or identify
19 the repairs or labor performed on the vehicle.

20 **OTHER MATTERS**

21 44. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
22 or place on probation the registration for all places of business operated in this state by
23 Respondent Mike F. Day, owner of Northern Auto, upon a finding that Respondent has, or is,
24 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
25 automotive repair dealer.

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PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 230189, issued to Mike F. Day, owner of Northern Auto;
2. Revoking or suspending any other automotive repair dealer registration issued to Mike F. Day;
3. Ordering Mike F. Day, owner of Northern Auto, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
4. Taking such other and further action as deemed necessary and proper.

DATED: 2/27/14

PAT DORAIS by Doug Balatt
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
DOUG BALATT,