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

12 | In the Matter of the Accusation Against:

Case No. 77/16-68

13 MONTGOMERY'S AUTO BODY
14 AARON KEITH MONTGOMERY, OWNER
4028 E. Plaza Dr. W
Fresno, CA 93702
15 Mailing Address:
430 N. Larkin Ave.
16 Fresno, CA 93727-3411

ACCUSATION

17 | Automotive Repair Dealer Reg. No. ARD 247802

Respondent.

20 Complainant alleges:

PARTIES

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

24 2. On or about October 31, 2006, the Director of Consumer Affairs (“Director”) issued
25 Automotive Repair Dealer Registration Number ARD 247802 to Aaron Keith Montgomery
26 (“Respondent”), owner of Montgomery’s Auto Body. The automotive repair dealer registration
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 October 31, 2016, unless renewed.

JURISDICTION

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

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

STATUTORY AND REGULATORY PROVISIONS

5. Code section 9884.7 states, in pertinent part:

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

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

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct that constitutes fraud.

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

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

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1 7. Code section 9884.8 states, in pertinent part:

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

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

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

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

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

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

18 11. California Code of Regulations, title 16, section 3303 states, in pertinent part:

19 In this chapter, unless the context otherwise requires:

20 . . .

21 (j) “Authorization” means consent. Authorization shall consist of the
22 customer’s signature on the work order, taken before repair work begins.
23 Authorization shall be valid without the customer’s signature only when oral or
24 electronic authorization is documented in accordance with applicable sections of
25 these regulations.

26 . . .

27 (q) Original Equipment Manufacturer crash part” or OEM crash part”
28 means a crash part made for or by the original vehicle manufacturer that
 manufactured, fabricated or supplied a vehicle or a component part.

29 (r) Non-Original Equipment Manufacturer aftermarket crash part” or non-
30 OEM aftermarket crash part . . .

26 COST RECOVERY

27 12. Code section 125.3 provides, in pertinent part, that a Board may request the
28 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **UNDERCOVER OPERATION #1: 2007 CHEVROLET**

4 13. On or about October 8, 2015, an undercover operator of the Bureau ("operator") took
5 the Bureau's 2007 Chevrolet to Respondent's facility. The front bumper cover, left front fender,
6 and left headlamp assembly were damaged on the Bureau-documented vehicle. The operator met
7 with a male employee and told him that he needed to get the vehicle fixed. The employee asked
8 the operator to go inside and speak with "Aaron." The operator met with Respondent and gave
9 him a written estimate, dated October 1, 2015, in the amount of \$3,521.47 that had been written
10 by California Auto Insurance Company/Mercury Insurance Group ("insurance estimate"). The
11 operator asked Respondent if he could repair the vehicle per the insurance estimate. Respondent
12 reviewed the estimate, looked at the vehicle, and told the operator that he could do the work.
13 Respondent stated that the auto body repairs would take approximately one week. Respondent
14 had the operator fill in his name, address, and telephone number on a document and sign it, then
15 told the operator that Respondent would complete the rest of the document later. The operator
16 left the facility.

17 14. On or about October 9, 2015, Mercury Insurance Group ("Mercury Insurance")
18 issued a check for \$3,021.47 made payable to Respondent's facility.

19 15. On or about October 14, 2015, the operator returned to Respondent's facility to
20 retrieve the vehicle and met with Respondent. Respondent had the operator accompany him to
21 the office. Respondent told the operator that he was only charging him \$300 for the insurance
22 deductible instead of \$500 as indicated in the operator's insurance policy. The operator paid
23 Respondent \$300, received a copy of a receipt, then left the facility.

24 16. On or about October 28, 2015, the Bureau inspected the vehicle using the insurance
25 estimate for comparison and found that Respondent's facility had failed to repair the vehicle as
26 estimated. The total value of the repairs the facility failed to perform on the vehicle is
27 approximately \$724.44.

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FIRST CAUSE FOR DISCIPLINE

(Failure to Provide Customer with Copy of Signed Document)

17. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(3), in that Respondent failed to provide the operator with a copy of the document, identified in paragraph 13 above.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

18. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows: Respondent obtained payment from Mercury Insurance and the operator for replacing the front bumper cover support, front bumper impact bar, and left front door adhesive emblem on the Bureau's 2007 Chevrolet. In fact, those parts were not replaced on the vehicle.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Code)

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

a. **Section 9884.8:** Respondent failed to provide the operator with an invoice for the auto body repairs on the Bureau's 2007 Chevrolet.

b. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator with a written estimate or obtain the operator's authorization for the auto body repairs on the Bureau's 2007 Chevrolet.

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UNDERCOVER OPERATION #2: 2007 TOYOTA

2 20. On or about December 23, 2015, the operator called Respondent's facility and told
3 Respondent that Respondent had previously repaired the operator's 2007 Chevrolet. Respondent
4 told the operator that he remembered the operator. The operator stated that his 2007 Toyota
5 needed auto body repairs and that he wanted Respondent to perform the work. Respondent asked
6 the operator to meet him at his shop.

7 21. That same day, the operator took the Bureau's 2007 Toyota to Respondent's facility.
8 The left front fender, left headlamp, and front bumper cover were damaged on the Bureau-
9 documented vehicle. The operator met with Respondent and gave him a written estimate, dated
10 December 22, 2015, in the amount of \$3,213.38 that had been written by California Auto
11 Insurance Company/Mercury Insurance ("insurance estimate"). The operator asked Respondent
12 if he could repair the vehicle per the insurance estimate. Respondent took the estimate from the
13 operator, and told the operator that he would order the parts the next day. The operator left
14 Respondent's facility.

15 22. On or about December 28, 2015, Mercury Insurance issued a check for \$2,713.38
16 made payable to Respondent's facility.

17 23. On or about January 5, 2016, the operator returned to Respondent's facility to retrieve
18 the vehicle and met with Respondent. Respondent told the operator that he replaced the bumper,
19 fender, and headlamp with new parts. When the operator tried to pay the \$500 insurance
20 deductible, Respondent told the operator that he did not owe Respondent anything because the
21 operator's insurance company overpaid Respondent for the auto body repairs. The operator left
22 Respondent's facility.

23 24. On or about January 11, 2016, the Bureau inspected the vehicle using the insurance
24 estimate for comparison and found that Respondent's facility had failed to repair it as estimated.
25 The total value of the repairs the facility failed to perform on the vehicle is approximately
26 \$3,067.31.

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FOURTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

25. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:
Respondent represented to the operator that he replaced the bumper, fender, and headlamp on the Bureau's 2007 Toyota with new parts. In fact, the left front fender had not been replaced on the vehicle, but was repaired and refinished instead.

FIFTH CAUSE FOR DISCIPLINE

(Fraud)

26. 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 Mercury Insurance for replacing the front bumper cover on the Bureau's 2007 Toyota with a new OEM part. In fact, the front bumper cover was replaced with an aftermarket part instead.

b. Respondent obtained payment from Mercury Insurance for replacing the left front bumper cover support, front bumper impact absorber, front bumper reinforcement bar, front bumper seal, front bumper spoiler, left front bumper protector, and right front bumper protector on the Bureau's 2007 Toyota. In fact, none of those parts were replaced on the vehicle.

c. Respondent obtained payment from Mercury Insurance for replacing the left front combination lamp assembly on the Bureau's 2007 Toyota with an OEM part. In fact, the left front combination lamp assembly was replaced with an aftermarket part instead.

d. Respondent obtained payment from Mercury Insurance for replacing the left front fender on the Bureau's 2007 Toyota. In fact, that part was not replaced on the vehicle, but was repaired and refinished instead.

e. Respondent obtained payment from Mercury Insurance for replacing the left fender liner on the Bureau's 2007 Toyota. In fact, that part was not replaced on the vehicle.

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f. Respondent obtained payment from Mercury Insurance for blending the left front door on the Bureau's 2007 Toyota. In fact, that operation was not performed on the vehicle.

g. Respondent obtained payment from Mercury Insurance for removing and reinstalling the left front rear review mirror, left front outer door belt molding, left front door trim panel, and the left front outer door handle on the Bureau's 2007 Toyota. In fact, those parts were not removed and reinstalled on the vehicle.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Code)

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

a. **Section 9884.8:** Respondent failed to provide the operator with an invoice for the auto body repairs on the Bureau's 2007 Toyota.

b. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator with a written estimate or obtain the operator's authorization for the auto body repairs on the Bureau's 2007 Toyota.

OTHER MATTERS

28. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Aaron Keith Montgomery, owner of Montgomery's Auto Body, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 247802, issued to Aaron Keith Montgomery, owner of Montgomery's Auto Body;

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

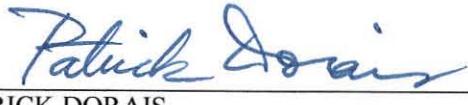
1 Aaron Keith Montgomery;

2 3. Ordering Aaron Keith Montgomery, owner of Montgomery's Auto Body, to pay the
3 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
4 case, pursuant to Business and Professions Code section 125.3; and

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

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7 DATED: August 15, 2016


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

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