

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

In the Matter of the Accusation Against:

**JAMES PAULK DBA JAMES PAULK
AUTO BODY & PAINT**
3000 N. Westlane
Stockton, CA 95204
Automotive Repair Dealer Registration No.
ARD 121114

Case No. 77/11-62

OAH No. 2012101165

Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter. The following typographical errors are noted:

1. Page 2, line 4: The expiration date of Automotive Repair Dealer Registration No. ARD 121114 should be changed from "November 30, 2013" to November 30, 2014."

This Decision shall become effective March 7, 2014.

DATED: FEB 14 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **JAMES PAULK DBA JAMES PAULK**
13 **AUTO BODY & PAINT.**
14 **3000 N. Westlane**
Stockton, CA 95204
15 **Automotive Repair Dealer Registration No.**
ARD 121114
16 Respondent.

Case No. 77/11-62

OAH No. 2012101165

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He
22 brought this action solely in his official capacity and is represented in this matter by Kamala D.
23 Harris, Attorney General of the State of California, by Sterling A. Smith, Deputy Attorney
24 General.

25 2. Respondent James Paulk dba James Paulk Auto Body & Paint (Respondent) is
26 represented in this proceeding by attorney Gregory P. Goehring, whose address is: 321 West
27 Lodi Avenue, Lodi, California 95240
28

CULPABILITY

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2 8. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 77/11-62, if proven at a hearing, constitute cause for imposing discipline upon his
4 Automotive Repair Dealer Registration.

5 9. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
8 those charges.

9 10. Respondent agrees that his Automotive Repair Dealer Registration is subject to
10 discipline and he agrees to be bound by the Director's probationary terms as set forth in the
11 Disciplinary Order below.

12 11. This stipulation shall be subject to approval by the Director of Consumer Affairs or
13 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
14 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
15 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
16 or participation by Respondent or his counsel. By signing the stipulation, Respondent
17 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
18 prior to the time the Director considers and acts upon it. If the Director fails to adopt this
19 stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
20 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
21 the parties, and the Director shall not be disqualified from further action by having considered
22 this matter.

23 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
24 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
25 effect as the originals.

26 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
27 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
28 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
3 writing executed by an authorized representative of each of the parties.

4 14. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Director may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 121114
9 issued to Respondent James Paulk dba James Paulk Auto Body & Paint (Respondent) is revoked.
10 However, the revocation is stayed and Respondent is placed on probation for ^{three (3)} ~~five (5)~~ years on the
11 following terms and conditions.

12 **1. Actual Suspension.** Automotive Repair Dealer Registration No. ARD 121114 issued
13 to Respondent James George Paulk is suspended for fifteen (15) consecutive days to begin on the
14 effective date of the decision.

15 **2. Obey All Laws.** Comply with all statutes, regulations and rules governing
16 automotive inspections, estimates and repairs.

17 ~~3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
18 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
19 conspicuously displayed in a location open to and frequented by customers and shall remain
20 posted during the entire period of actual suspension.~~

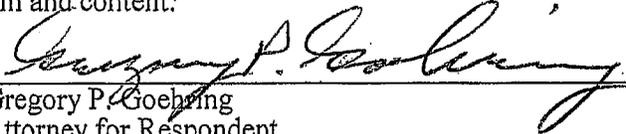
21 **4. Reporting.** Respondent or Respondent's authorized representative must report in
22 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
23 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
24 maintaining compliance with the terms and conditions of probation.

25 **5. Report Financial Interest.** Within 30 days of the effective date of this action, report
26 any financial interest which any partners, officers, or owners of the Respondent facility may have
27 in any other business required to be registered pursuant to Section 9884.6 of the Business and
28 Professions Code.

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I have read and fully discussed with Respondent James Paulk dba James Paulk Auto Body & Paint the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content:

DATED: 1/28/14

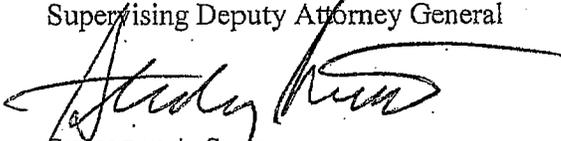

Gregory P. Goehring
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 7-28-2014

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General


STERLING A. SMITH
Deputy Attorney General
Attorneys for Complainant

SA2012104869
Stipulation.rtf

EXHIBIT A

1 KAMALA D. HARRIS
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2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 STERLING A. SMITH
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4 State Bar No. 84287
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DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 **JAMES PAULK AUTO BODY & PAINT**
13 **JAMES GEORGE PAULK, OWNER**
14 **3000 N. Westlane**
Stockton, CA 95204
15 **Automotive Repair Dealer Reg. No. ARD 121114**
16 **Respondent.**

Case No. 77/11-62

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

- 20 1. John Wallauch ("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 1985, the Director of Consumer Affairs ("Director") issued Automotive
23 Repair Dealer Registration Number ARD 121114 to James George Paulk ("Respondent"), owner
24 of James Paulk Auto Body & Paint. Respondent's automotive repair dealer registration was in
25 full force and effect at all times relevant to the charges brought herein and will expire on
26 November 30, 2012, unless renewed.

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1 obtained at some time after it is determined that the estimated price is insufficient and
2 before the work not estimated is done or the parts not estimated are supplied. Written
3 consent or authorization for an increase in the original estimated price may be
4 provided by electronic mail or facsimile transmission from the customer. The bureau
5 may specify in regulation the procedures to be followed by an automotive repair
6 dealer when an authorization or consent for an increase in the original estimated price
7 is provided by electronic mail or facsimile transmission. If that consent is oral, the
8 dealer shall make a notation on the work order of the date, time, name of person
9 authorizing the additional repairs and telephone number called, if any, together with a
10 specification of the additional parts and labor and the total additional cost . . .

11 8. 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 9. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes
17 "registration" and "certificate."

18 10. California Code of Regulations, title 16, section ("Regulation") 3303 states, in
19 pertinent part:

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

25 (m) "Section" or "Sectioning" means the replacement of less than a whole
26 part or component by splicing the part or component at non-factory seams" . . .

27 11. Regulation 3365 states:

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

(a) Repair procedures including but not limited to the sectioning of
component parts, shall be performed in accordance with OEM service specifications
or nationally distributed and periodically updated service specifications that are
generally accepted by the autobody repair industry.

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

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1 COST RECOVERY

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

6 CONSUMER COMPLAINT (GARCIA): 1999 PONTIAC GRANT AM GT

7 13. On or about October 15, 2010, Jennifer Garcia's ("Garcia") 1999 Pontiac Grand AM
8 GT was damaged in a collision. Garcia took the vehicle to Respondent's facility for repair and
9 made a claim for the collision damage with State Farm Insurance Company ("State Farm").

10 14. On or about November 10, 2010, a State Farm adjuster inspected the vehicle and
11 prepared an itemized estimate totaling \$1,771.12 ("insurance estimate"). That same day, State
12 Farm issued a check for \$1,771.12 made payable to Garcia. Garcia subsequently endorsed the
13 check over to Respondent's facility.

14 15. On or about December 16, 2010, Garcia filed a complaint with the Bureau, alleging
15 that the facility failed to properly repair the vehicle. Garcia also stated that the facility never had
16 her sign "any paperwork" for the collision repairs.

17 16. On February 23, 2011, the Bureau inspected the vehicle using the insurance estimate
18 for comparison, and found that the facility failed to repair the vehicle as estimated and had not
19 performed the repairs to accepted trade standards. The total estimated value of the repairs the
20 facility failed to perform on the vehicle is approximately \$1,366.81. Later that same day,
21 representatives of the Bureau met with Respondent at the facility. Respondent told the
22 representatives that the facility had changed the method of repair on the vehicle and gave the
23 representatives a copy of the insurance estimate. A note had been written on the estimate,
24 indicating that the facility had repaired the rear bumper instead of replacing it with a quality
25 recycled part (as called for on the insurance estimate), and that the facility would be issuing State
26 Farm a refund of \$100.85. There was no indication on the document or the note that the change
27 in the method of repair had been authorized by Garcia.

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1 17. On March 8, 2011, the Bureau received copies of State Farm's records on the vehicle.
2 There was no indication in the records that the facility had notified State Farm of the changes in
3 the method of repair.

4 18. On March 23, 2011, the Bureau contacted State Farm and was informed that the
5 insurance company had not received a refund from the facility on Garcia's claim.

6 **FIRST CAUSE FOR DISCIPLINE**

7 (Fraud)

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

10 a. Respondent obtained payment from State Farm for repairing (pulling) the frame/rear
11 unibody structure on Garcia's 1999 Pontiac Grand AM GT. In fact, the rear unibody structure
12 had not been pulled on the vehicle, as set forth in paragraph 20 below.

13 b. Respondent obtained payment from State Farm for removing and reinstalling the right
14 rocker panel molding on Garcia's 1999 Pontiac Grand AM GT. In fact, that part had not been
15 removed and reinstalled on the vehicle.

16 c. Respondent obtained payment from State Farm for removing and reinstalling the left
17 rocker panel molding on Garcia's 1999 Pontiac Grand AM GT. In fact, that part had not been
18 removed and reinstalled on the vehicle.

19 d. Respondent obtained payment from State Farm for repairing the rear body panel on
20 Garcia's 1999 Pontiac Grand AM GT. In fact, that part had not been repaired on the vehicle.

21 e. Respondent obtained payment from State Farm for refinishing the rear body panel on
22 Garcia's 1999 Pontiac Grand AM GT, including a full clear coat. In fact, that part had not been
23 refinished on the vehicle and the clear coat had not been applied.

24 f. Respondent obtained payment from State Farm for repairing the right rear side rail
25 (frame rail) on Garcia's 1999 Pontiac Grand AM GT. In fact, that part had not been repaired on
26 the vehicle.

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1 g. Respondent obtained payment from State Farm for replacing the right outer rear body
2 sidemember reinforcement on Garcia's 1999 Pontiac Grand AM GT. In fact, that part had not
3 been replaced on the vehicle.

4 h. Respondent obtained payment from State Farm for replacing the rear bumper
5 assembly on Garcia's 1999 Pontiac Grand AM GT with a "quality recycled" (used) part. In fact,
6 the rear bumper assembly had not been replaced on the vehicle in that the rear bumper cover had
7 been repaired, the rear bumper reinforcement had been replaced with an aftermarket part and not
8 a used part, and the existing, damaged rear bumper absorber had been reinstalled on the vehicle.
9 Further, the rear bumper cover had been glued at the side mounting areas, which were coming
10 apart, causing the bumper cover to become detached from the body on the left side of the vehicle.
11 In addition, various clips and fasteners were missing on the rear bumper cover.

12 i. Respondent obtained payment from State Farm for replacing the rear bumper molding
13 on Garcia's 1999 Pontiac Grand AM GT. In fact, that part had not been replaced on the vehicle.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Departure from Trade Standards)**

16 20. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
17 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
18 standards for good and workmanlike repair without the consent of the owner or the owner's duly
19 authorized representative in a material respect, as follows: Respondent failed to pull the rear
20 unibody structure/structural components on Garcia's 1999 Pontiac Grand AM GT to "stress
21 relieve"¹ the metal (structural steel) and left the floor pan, rear body panel, and right rear
22 sidemember (frame rail) buckled or damaged.

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28 ¹ Stress relieving is a collision industry practice of taking tension off of a part.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Departure from Trade Standards)

3 29. 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 follow Nissan's
7 specifications for replacing the right quarter panel on Cazares' 2005 Nissan Altima in that
8 Respondent spliced or sectioned the right quarter panel horizontally at the lower area of the panel
9 between the rear body panel and wheelhouse.

10 SIXTH CAUSE FOR DISCIPLINE

11 (Violations of the Code)

12 30. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
13 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
14 that Code in the following material respects:

15 a. Respondent failed to properly document on the "Related Prior Damage" form
16 Cazares' authorization for the collision repairs on her 2005 Nissan Altima, as follows:

17 Respondent stated on the form that on December 1, 2010, Cazares had "okayed" the "work" on
18 the vehicle, but failed to specify the repairs or the nature of the work.

19 b. Respondent failed to obtain Cazares' authorization for the change in the method of
20 repair on her 2005 Nissan Altima; i.e., the repair and sectioning of the right quarter panel on the
21 vehicle.

22 VEHICLE INSPECTION: 2007 HONDA ODYSSEY EX

23 31. On or about April 16, 2010, Charlotte Flanary's ("Flanary") 2007 Honda Odyssey EX
24 was damaged in a front-end collision. Flanary had the vehicle taken to Respondent's facility for
25 repair and made a claim for the collision damage with CSAA.

26 32. On or about May 18, 2010, a CSAA adjuster inspected the vehicle and prepared an
27 itemized estimate, "Supplement 1 (F F)", in the gross amount of \$12,462.38 ("insurance
28 estimate").

1 33. In and between April and May 2010, CSAA issued checks totaling \$11,962.38 made
2 payable to Flanary and/or Respondent's facility.

3 34. On July 18, 2011, the Bureau received a call from Corroo regarding the vehicle.
4 Corroo stated that the vehicle was at Bruce's Body Shop ("Bruce's") located in Stockton and had
5 been taken there for collision repairs (the vehicle had been involved in a second front end
6 collision). Corroo told the Bureau that there were discrepancies regarding the prior repairs
7 performed by Respondent's facility. That same day, a representative of the Bureau contacted
8 Flanary. Flanary stated that Bruce's had discovered prior damage to the vehicle that had not been
9 repaired by Respondent. Later, the representative went to Bruce's and inspected the vehicle using
10 the insurance estimate for comparison. The representative found that Respondent's facility had
11 failed to replace the sub-frame on the vehicle and perform other repairs as estimated, and that the
12 facility had not performed the repairs to accepted trade standards. The total estimated value of
13 the repairs the facility failed to perform on the vehicle is approximately \$2,078.46.

14 35. On July 19, 2011, the representative and another employee of the Bureau went to
15 Respondent's facility to discuss the findings from the inspection. Respondent provided the
16 representatives with an envelope containing a check for \$1,146.07 made payable to CSAA.
17 Respondent claimed that he had intended to refund CSAA for the sub-frame, that his manager had
18 caused the issues in his facility and had been fired, and that he (Respondent) had kept the check
19 because his manager had failed to "follow up" on the matter. Respondent admitted that he was
20 ultimately responsible for the actions of the business and that the "situation" constituted fraud.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Fraud)**

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

25 a. Respondent obtained payment from CSAA for refinishing the front bumper impact
26 bar (front bumper reinforcement) on Flanary's 2007 Honda Odyssey EX. In fact, that part had not
27 been refinished on the vehicle.

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1 3. Ordering James George Paulk, owner of James Paulk Auto Body & Paint, to pay the
2 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
3 case, pursuant to Business and Professions Code section 125.3;

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

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6 DATED: JUNE 18, 2012



7 JOHN WALLAUCH
8 Chief
9 Bureau of Automotive Repair
10 Department of Consumer Affairs
11 State of California
12 *Complainant*

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