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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 **TABOADA'S AUTO BODY & PAINT**
13 **DON TABOADA, OWNER**
14 **924 West F Street**
Oakdale, CA 95361
15 **Automotive Repair Dealer Reg. No. ARD 131405**
16 Respondent.

Case No. *77/15-22*

ACCUSATION

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 1987, the Director of Consumer Affairs ("Director") issued Automotive
23 Repair Dealer Registration Number ARD 131405 to Don Taboada ("Respondent"), owner of
24 Taboada's Auto Body & Paint. The automotive repair dealer registration was in full force and
25 effect at all times relevant to the charges brought herein and will expire on March 31, 2015,
26 unless renewed.
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1 **JURISDICTION**

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

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

8 **STATUTORY AND REGULATORY PROVISIONS**

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

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

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

19 ...

20 (4) Any other conduct that constitutes fraud.

21 ...

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

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

27 6. Code section 9884.7, subdivision (c), states, in pertinent part, that the Director may
28 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 9884.9, subdivision (a), states, in pertinent part:

2 The automotive repair dealer shall give to the customer a written
3 estimated price for labor and parts necessary for a specific job. No work shall be
4 done and no charges shall accrue before authorization to proceed is obtained from the
5 customer. No charge shall be made for work done or parts supplied in excess of the
6 estimated price without the oral or written consent of the customer that shall be
7 obtained at some time after it is determined that the estimated price is insufficient and
8 before the work not estimated is done or the parts not estimated are supplied. Written
9 consent or authorization for an increase in the original estimated price may be
10 provided by electronic mail or facsimile transmission from the customer. The bureau
11 may specify in regulation the procedures to be followed by an automotive repair
12 dealer when an authorization or consent for an increase in the original estimated price
13 is provided by electronic mail or facsimile transmission. If that consent is oral, the
14 dealer shall make a notation on the work order of the date, time, name of person
15 authorizing the additional repairs and telephone number called, if any, together with a
16 specification of the additional parts and labor and the total additional cost

17 8. Code section 22, subdivision (a), states:

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

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

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

26 In this chapter, unless the context otherwise requires:

27 . . .

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

. . .

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

(r) Non-Original Equipment Manufacturer aftermarket crash part" or non-
OEM aftermarket crash part" means aftermarket crash parts not made for or by the
manufacturer; of the motor vehicle.

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1 11. Regulation 3356 states, in pertinent part:

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

5 (1) The invoice shall show the automotive repair dealer's registration
6 number . . . as shown in the Bureau's records . . .

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

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

11 (B) Each part supplied, in such a manner that the customer can
12 understand what was purchased, and the price for each described part . . .

13 **COST RECOVERY**

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

18 **CONSUMER COMPLAINT (K.T.): 2002 TOYOTA CAMRY**

19 13. In or about July 2012, K.T. was involved in an accident while driving her 2002
20 Toyota Camry, resulting in damage to the front and underside of the vehicle. K.T. had the vehicle
21 towed to Respondent's facility for repair, then made a claim for the collision damage with her
22 insurance company, AAA Northern California, Nevada & Utah Insurance Exchange ("AAA").

23 14. On or about August 11, 2012, AAA issued a check in the amount of \$5,600.61 made
24 payable to Respondent's facility and K.T. for the collision repairs.

25 15. On or about September 9, 2012, K.T. went to Respondent's facility to pick up her
26 vehicle, paid Respondent's facility \$519.86 for the insurance deductible and tire betterment, and
27 received a copy of an estimate, "Supplement 2 (F F)," dated August 9, 2012, in the net amount of
28 \$5,600.61, prepared by Kirk's Appraisal on behalf of AAA ("insurance estimate"). K.T. was also
given a "Vehicle Repair Completion" dated September 6, 2012, prepared by Respondent's
facility.

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1 original back to the operator. Christie did not have the operator sign any paperwork. The
2 operator left Respondent's facility. Later, Mercury issued a check in the amount of \$3,604.22
3 made payable to Respondent's facility.

4 25. On or about March 10, 2014, the operator returned to Respondent's facility to pick up
5 the vehicle, paid Christie \$500 for the insurance deductible (for total payments on the repairs of
6 \$4,104.22), and received a copy of a work order/invoice.

7 26. On or about March 18, 2014, the Bureau inspected the vehicle using the insurance
8 estimate for comparison and found that Respondent's facility failed to repair the vehicle as
9 estimated.

10 27. At the conclusion of the undercover operation, the Bureau determined that
11 Respondent committed insurance fraud by obtaining approximately \$1,863.20 for repairs that had
12 not been performed on the vehicle as estimated.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

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

17 a. Respondent obtained payment from Mercury and the operator for replacing the left
18 rear pick up bed wheel opening flare on the Bureau's 2006 Chevrolet. In fact, that part had not
19 been replaced on the vehicle.

20 b. Respondent obtained payment from Mercury and the operator for replacing the
21 tailgate on the Bureau's 2006 Chevrolet. In fact, that part had not been replaced on the vehicle; it
22 had been repaired instead.

23 c. Respondent obtained payment from Mercury and the operator for replacing the left
24 rear bumper bracket on the Bureau's 2006 Chevrolet. In fact, that part had not been replaced on
25 the vehicle.

26 d. Respondent obtained payment from Mercury and the operator for replacing the left
27 rear tail lamp assembly on the Bureau's 2006 Chevrolet with a new original equipment
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1 manufacturer (“OEM”) part. In fact, the left rear tail lamp assembly was replaced with an
2 aftermarket part.

3 e. Respondent obtained payment from Mercury and the operator for replacing the rear
4 bumper face bar (chrome bumper) on the Bureau’s 2006 Chevrolet with a new OEM part. In fact,
5 the rear bumper face bar was replaced with an aftermarket part.

6 f. Respondent obtained payment from Mercury and the operator for replacing the rear
7 bumper center step pad on the Bureau’s 2006 Chevrolet with a new OEM part. In fact, the rear
8 bumper center step pad was replaced with an aftermarket part.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Violations of the Code)**

11 29. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
12 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
13 that Code in a material respect, as follows: Respondent’s employee, Christie, failed to obtain or
14 document on the work order/invoice the operator’s authorization for the auto body repairs on the
15 Bureau’s 2006 Chevrolet.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 **(Violations of Regulations)**

18 30. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
19 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following
20 material respects:

21 a. **Subdivision (a)(1)**: Respondent failed to show his automotive repair dealer
22 registration number on the work order/invoice.

23 b. **Subdivision (a)(2)(A) & (B)**: Respondent failed to list, describe, or identify on the
24 work order/invoice all repair work performed and parts supplied on the Bureau’s 2006 Chevrolet.

25 **OTHER MATTERS**

26 31. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
27 or place on probation the registration for all places of business operated in this state by
28 Respondent Don Taboada, owner of Taboada’s Auto Body & Paint, upon a finding that

1 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
2 regulations pertaining to an automotive repair dealer.

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 131405, issued to Don Taboada, owner of Taboada's Auto Body & Paint;
- 8 2. Revoking or suspending any other automotive repair dealer registration issued to Don
9 Taboada;
- 10 3. Ordering Don Taboada, owner of Taboada's Auto Body & Paint, to pay the Director
11 of Consumer Affairs the reasonable costs of the investigation and enforcement of this case,
12 pursuant to Business and Professions Code section 125.3; and,
- 13 4. Taking such other and further action as deemed necessary and proper.

14
15 DATED: October 15, 2014 Patrick Dorais

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

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