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

In the Matter of the Accusation Against:
**TABOADA'S AUTO BODY & PAINT
DON TABOADA, OWNER
924 West F Street
Oakdale, CA 95361
Automotive Repair Dealer Reg. No. ARD
131405**
Respondent.

Case No. 77/15-22
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 15, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 77/15-22 against Taboadas Auto Body & Paint; Don Taboada, Owner (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)
2. In or about 1987, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 131405 to Don Taboada, owner of Taboada's Auto Body & Paint. The automotive repair dealer registration was in full force and effect at all times

1 relevant to the charges brought in the Accusation and will expire on March 31, 2015, unless
2 renewed.

3 3. On or about October 21, 2014, Respondent was served by Certified and First Class
4 Mail copies of Accusation No. 77/15-22, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
7 section 136, is required to be reported and maintained with the Bureau. Respondent's address of
8 record was and is:
9 924 West F Street
10 Oakdale, CA 95361.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 5. On or about October 22, 2014, the aforementioned documents were returned by the
15 U.S. Postal Service marked "Refused By Addressee."

16 6. Government Code section 11506 states, in pertinent part:

17 (c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts
19 of the accusation not expressly admitted. Failure to file a notice of defense shall
20 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
21 may nevertheless grant a hearing.

22 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
23 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
24 77/15-22.

25 8. California Government Code section 11520 states, in pertinent part:

26 (a) If the respondent either fails to file a notice of defense or to appear at the
27 hearing, the agency may take action based upon the respondent's express admissions
28 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

9 Pursuant to its authority under Government Code section 11520, the Director after
having reviewed the proof of service dated October 21, 2014, signed by Aja D. Lynch, and USPS
Track & Confirm Notice No. 7196 9008 9111 2439 6231, finds Respondent is in default. The

1 Director will take action without further hearing and, based on Accusation No. 77/15-22, proof of
2 service, and on the Affidavit of Bureau Representative James Enos, finds that the allegations in
3 the Accusation are true.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Taboadas Auto Body & Paint;
6 Don Taboada, Owner has subjected his Automotive Repair Dealer Registration No. ARD 131405
7 to discipline.

8 2. The agency has jurisdiction to adjudicate this case by default.

9 3. The Director of Consumer Affairs is authorized to revoke Respondent's Automotive
10 Repair Dealer Registration based upon the following violations alleged in the Accusation which
11 are supported by the evidence contained in the affidavit of Bureau Representative James Enos in
12 this case:

13 a. Respondent violated Business and Professions Code section 9884.7, subdivision
14 (a)(1), in that on or about September 9, 2012, Respondent made or authorized a statement which
15 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
16 follows: Respondent represented on a Vehicle Repair Completion form that the "AAA Insurance
17 Repairs" had been completed on K.T.'s vehicle, when, in fact, Respondent failed to repair the
18 vehicle as estimated, as set forth in paragraphs 3(b)-(c) below.

19 b. Respondent violated Business and Professions Code section 9884.7, subdivision
20 (a)(4), in that in and between July 1 and September 9, 2012, Respondent committed acts
21 constituting fraud, as follows:

22 i. Respondent obtained payment from K.T. and AAA Insurance for replacing and
23 refinishing the front body radiator support on K.T.'s 2002 Toyota Camry. In fact, that part was
24 not completely replaced or refinished on the vehicle.

25 ii. Respondent obtained payment from K.T. and AAA Insurance for replacing one
26 of the tires on K.T.'s 2002 Toyota Camry with a new part. In fact, the tire was replaced with a
27 used part.

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1 iii. Respondent obtained payment from K.T. and AAA Insurance for replacing the
2 right front suspension strut on K.T.'s 2002 Toyota Camry. In fact, that part was not replaced on
3 the vehicle.

4 c. Respondent violated Business and Professions Code section 9884.7, subdivision
5 (a)(7), in that in and between July 1 and September 9, 2012, Respondent willfully departed from
6 or disregarded accepted trade standards for good and workmanlike repair without the consent of
7 the owner or the owner's duly authorized representative, in a material respect, as follows:

8 Respondent cut off the right front engine cradle brace on K.T.'s 2002 Toyota Camry.

9 d. Respondent violated Business and Professions Code section 9884.7, subdivision
10 (a)(4), in and between February 21 and March 10, 2014, in that Respondent committed acts
11 constituting fraud, as follows:

12 i. Respondent obtained payment from Mercury Insurance and the Bureau's
13 undercover operator for replacing the left rear pick up bed wheel opening flare on the Bureau's
14 2006 Chevrolet. In fact, that part had not been replaced on the vehicle.

15 ii. Respondent obtained payment from Mercury Insurance and the Bureau's
16 undercover operator for replacing the tailgate on the Bureau's 2006 Chevrolet. In fact, that part
17 had not been replaced on the vehicle; it had been repaired instead.

18 iii. Respondent obtained payment from Mercury Insurance and the Bureau's
19 undercover operator for replacing the left rear bumper bracket on the Bureau's 2006 Chevrolet.
20 In fact, that part had not been replaced on the vehicle.

21 iv. Respondent obtained payment from Mercury Insurance and the Bureau's
22 undercover operator for replacing the left rear tail lamp assembly on the Bureau's 2006 Chevrolet
23 with a new original equipment manufacturer ("OEM") part. In fact, the left rear tail lamp
24 assembly was replaced with an aftermarket part.

25 v. Respondent obtained payment from Mercury Insurance and the Bureau's
26 undercover operator for replacing the rear bumper face bar (chrome bumper) on the Bureau's
27 2006 Chevrolet with a new OEM part. In fact, the rear bumper face bar was replaced with an
28 aftermarket part.

1 vi. Respondent obtained payment from Mercury Insurance and the Bureau's
2 undercover operator for replacing the rear bumper center step pad on the Bureau's 2006
3 Chevrolet with a new OEM part. In fact, the rear bumper center step pad was replaced with an
4 aftermarket part.

5 e. Respondent violated Business and Professions Code section 9884.7, subdivision
6 (a)(6), in that in and between February 21 and March 10, 2014, Respondent failed to comply with
7 section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent's
8 employee, Christie, failed to obtain or document on the work order/invoice the Bureau's
9 undercover operator's authorization for the auto body repairs on the Bureau's 2006 Chevrolet.

10 f. Respondent violated Business and Professions Code section 9884.7, subdivision
11 (a)(6), in that in and between February 21 and March 10, 2014, Respondent failed to comply with
12 California Code of Regulations, title 16, section 3356 in the following material respects:

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

15 ii. **Subdivision (a)(2)(A) & (B):** Respondent failed to list, describe, or identify on
16 the work order/invoice all repair work performed and parts supplied on the Bureau's 2006
17 Chevrolet.

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ORDER

IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 131405, heretofore issued to Respondent Taboadas Auto Body & Paint; Don Taboada, Owner, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 10, 2015.

It is so ORDERED February 17, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

11613974.DOC
SA2014116774

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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. 77/15-22

13 **TABOADA'S AUTO BODY & PAINT**
14 **DON TABOADA, OWNER**
924 West F Street
Oakdale, CA 95361

ACCUSATION

15 **Automotive Repair Dealer Reg. No. ARD 131405**

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 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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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. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer when an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost . . .

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

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

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

10. California Code of Regulations, title 16, section (“Regulation”) 3303 states, in pertinent part:

In this chapter, unless the context otherwise requires:

...

(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.

///

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,
shall comply with the following:

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

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
8 warranty work, and the price for each described service and repair.

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

10 **COST RECOVERY**

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

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

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

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

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

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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