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

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|---|---|
| In the Matter of the Accusation Against:<br><br>**ARTHURS AUTO BODY AND PAINT**<br>**ARTHUR RODRIGUEZ, OWNER**<br>**5480 West Mission #103**<br>**Fresno, California 93722-5073**<br><br>Automotive Repair Dealer Registration No. ARD 160950<br><br>Respondent. | Case No. 77/14-19<br><br>**DEFAULT DECISION AND ORDER**<br><br>[Gov. Code, §11520] |

## FINDINGS OF FACT

1. On or about October 10, 2013, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, filed Accusation No. 77/14-19, attached as Exhibit A and by this reference incorporated herein, against Arthur Rodriguez, Arthurs Auto Body and Paint (Respondent) before the Director of Consumer Affairs (Director).

2. On or about June 6, 1991, the Bureau issued Automotive Repair Dealer Registration No. 160950 to Respondent. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 77/14-19 and expired on June 30, 2014. The Registration has not been renewed. This lapse in licensure does not deprive the Bureau of its authority to institute or continue this disciplinary proceedings pursuant to Business and Professions Code section 118(b).

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3. On or about October 15, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 77/14-19, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 136, is required to be reported and maintained with the Bureau. Respondent's address of record was and is:

5480 West Mission, #103
Fresno, California 93722.

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

5. The aforementioned documents were delivered by the U.S. Postal Service and return receipt for the delivery of the documents by certified mail. The signed receipt is part of Exhibit A and incorporated herein.

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

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

7. Respondent failed to file a Notice of Defense within 15 days after service of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 77/14-19.

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

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

9. After reviewing the proof of service in Exhibit A dated October 15, 2013 by Tanya Chandler and the signed certified mail return receipt, the Director finds Respondent is in default under Government Code section 11520. The Director will take action without further hearing and, based on Accusation, No. 77/14-19, the proof of service and on the Affidavit of Bureau

Representative Arnold Lee, finds that the Respondent was properly served and the allegations in Accusation are true and proven.

**DETERMINATION OF ISSUES**

1. Based on the foregoing findings of fact, Respondent Arthur Rodriguez, Owner; Arthurs Auto Body and Paint has subjected Automotive Repair Dealer Registration No. 160950 to discipline.

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

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

a. Untrue or Misleading Statements; five (5) causes for discipline for violation of Business and Professions Code section 9884.7(a)(1).

b. Fraud; five (5) causes for discipline for violation of Business and Professions Code section 9884.7(a)(4).

c. Failure to Comply with the Automotive Repair Act; five (5) causes for discipline for violation of Business and Professions Code section 9884.7(a)(6)

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## ORDER

**IT IS SO ORDERED** that Automotive Repair Dealer Registration No. 160950 issued to Respondent Arthur Rodriguez, Arthurs Auto Body and Paint, 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 August 12, 2014.

It is so ORDERED July 21, 2014

DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

11338285.DOCX
DOJ Matter ID:SA2013109783

Attachment:
Exhibit A: Accusation

# Exhibit A

Accusation

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**BEFORE THE**
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Patrick Dorais ("Complainant") alleges:

**PARTIES**

1. Complainant brings this Accusation solely in his official capacity as the Acting Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

2. On or about June 6, 1991, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 160950 to Arthur Rodriguez ("Respondent"), owner of Arthurs Auto Body and Paint. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein. The Registration expired on June 30, 2013 and has not been renewed.

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## STATUTORY AND REGULATORY PROVISIONS

3. Business and Professions Code ("Code") section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

4. Code section 9884.7 states:

> (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.
>
> (4) Any other conduct that constitutes fraud.
>
> (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.
>
> (c) Notwithstanding subdivision (b), 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 this chapter, or regulations adopted pursuant to it."

5. Code section 9884.8 states:

> All 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. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a statement indicating whether any crash parts are original equipment manufacturer crash parts or non-original equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

6. Code section 9884.11 states that, "Each automotive repair dealer shall maintain any records that are required by regulations adopted to carry out this chapter. Those records shall be

open for reasonable inspection by the chief or other law enforcement officials. All of those records shall be maintained for at least three years."

7. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

8. Title 16, California Code of Regulations section 3352, subdivision (c), defines "Invoice" as "a document given to the customer that meets the invoice requirements of Business and Professions Code Section 9884.8 and California Code of Regulations Section 3356."

9. Title 16, California Code of Regulations section 3358 states:

> Each automotive repair dealer shall maintain legible copies of the following records for not less than three years:
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> (a) All invoices relating to automotive repair including invoices received from other sources for parts and/or labor.
>
> (b) All written estimates pertaining to work performed.
>
> (c) All work orders and/or contracts for repairs, parts and labor. All such records shall be open for reasonable inspection and/or reproduction by the bureau or other law enforcement officials during normal business hours.

**COST RECOVERY**

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

**VEHICLE INSPECTION - OWNER D.D.**

11. On or about January 14, 2011, "D.D.'s" 2006 Ford Mustang was damaged in a collision. D.D. had the vehicle transported to Respondent's facility for repairs. On or about January 19, 2011, an insurance adjuster from Farmer's Insurance Group inspected the damaged vehicle and prepared an itemized estimate totaling $3,802.58 ("insurance estimate"). On or about January 19, 2011, Farmers issued a check in the amount of $3,052.58 payable to "S.D." and Respondent for repairs to D.D.'s 2006 Ford Mustang. S.D. endorsed the check to Respondent.

12. D.D. subsequently paid the amount of his insurance deductible so that Respondent was paid in full for the repairs described in the insurance estimate. D.D. was then permitted to take possession of the Mustang.

13. The Mustang was inspected by Farmers on or about November 14, 2011, and by the Bureau on or about May 24, 2012. Both inspections revealed that Respondent failed to repair D.D's 2006 Ford Mustang in accord with the insurance estimate.

14. On or about July 12, 2012, the Bureau asked Respondent to provide the Bureau with all repair records (invoices, estimates and parts receipts) for the period September 2010 to July 2011. Respondent provided D.D.'s 2006 Ford Mustang insurance estimate. Respondent told a Bureau Representative that he repaired the vehicle according to the insurance estimate and that the insurance estimate was his invoice.

**FIRST CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

15. Respondent is subject to discipline under Code section 9884.7(a)(1), in that Respondent made statements which he knew or which by exercise of reasonable care should have known to be untrue or misleading by falsely representing to D.D. and a Bureau representative that D.D.'s 2006 Ford Mustang had been repaired pursuant to the insurance estimate dated January 19, 2011. The true facts are Respondent failed to perform services and/or repairs as follows:

a. The windshield Reservoir Assembly was not replaced.

b. The right side Stripe Tape was not replaced.

c. The left side Stripe Tape was not replaced.

d. The old Stripe Tape was not removed.

e. The front impact bar was not replaced and painted.

**SECOND CAUSE FOR DISCIPLINE**

**(Fraud)**

16. Respondent is subject to discipline under Code section 9884.7(a)(4), in that on or about January 19, 2011, Respondent committed acts constituting fraud by charging and receiving payment for repairs that were not performed and for parts that were not supplied, as described in

paragraph 15., incorporated herein.

**THIRD CAUSE FOR DISCIPLINE**

**(Failure to Comply with the Automotive Repair Act)**

17. Respondent is subject to discipline under Code section 9884.7(a)(6), because Respondent violated Code section 9884.8 by failing to provide D.D. with a final invoice and Code section 9884.11 failing to maintain records as required by Title 16, California Code of Regulations section 3358.

**VEHICLE INSPECTION– OWNERS K.R & B.R. NO. 1**

18. On or about December 5, 2010, "K.R.'s and B.R's" 2001 Toyota Tacoma was damaged in the first of two collisions. Following the December collision, the Tacoma was transported to Respondent's facility for repairs. On or about December 10, 2010, an insurance adjuster from Farmer's Insurance Group inspected the damaged vehicle and prepared an itemized estimate totaling $1,516.42 ("insurance estimate"). On or about December 10, 2010, Farmers issued a check in the amount of $1,016.42 payable to K.R. and Respondent for repairs to K.R.'s Tacoma. K.R. endorsed the check to Respondent.

19. B.R., K.R's spouse and an owner of the Tacoma, paid Respondent $500.00 representing the deductible on their insurance policy so that Respondent was paid in full for the repairs described in the insurance estimate. B.R. was then permitted to take possession of the Tacoma.

20. The Tacoma was inspected on or about November 14, 2011, by Farmers, and on or about June 20, 2012, by the Bureau. Both inspections revealed that Respondent failed to repair K.R.'s 2001 Toyota Tacoma in accord with the insurance estimate.

21. On or about July 12, 2012, the Bureau requested Respondent to provide the Bureau with his repair records (invoices, estimates and parts receipts) for the period September 2010 to July 2011. Respondent provided the insurance estimate only for K.R.'s December 5, 2010, collision and repairs. Respondent told a Bureau Representative that he repaired the vehicle according to the insurance estimate and that the insurance estimate was his invoice.

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## FOURTH CAUSE FOR DISCIPLINE

**(Untrue or Misleading Statements)**

22. Respondent is subject to discipline under Code section 9884.7(a)(1), in that Respondent made statements which he knew or which by exercise of reasonable care should have known to be untrue or misleading by falsely representing to K.R., B.R. and a Bureau representative that the Tacoma had been repaired in accord with the insurance estimate dated December 10, 2010. The true facts are Respondent failed to replace the left pickup box outer panel and the pick up box assembly was not removed and installed.

## FIFTH CAUSE FOR DISCIPLINE

**(Fraud)**

23. Respondent is subject to discipline under Code section 9884.7, in that on or about December 10, 2010, Respondent committed acts constituting fraud by charging and receiving payment for repairs that were not performed and for parts that were not supplied, as described in paragraph 22, incorporated herein.

## SIXTH CAUSE FOR DISCIPLINE

**(Failure to Comply with the Automotive Repair Act)**

24. Respondent is subject to discipline under Code section 9884.7(a)(6), because Respondent violated Code sections 9884.8 by failing to provide K.R. and B.R. with a final invoice and Code section 9884.11 by failing to maintain records as required by Title 16, California Code of Regulations section 3358.

## VEHICLE INSPECTION – OWNERS K.R AND B.R. TACOMA NO. 2

25. On or about July 8, 2010, "K.R.'s and B.R.s" 2001 Toyota Tacoma was damaged in the second collision. B.R. had the vehicle transported to Respondent's facility for repairs. On or about September 8, 2010, an insurance adjuster from Farmer's Insurance Group inspected the Tacoma and prepared an itemized estimate totaling $3,339.62 ("insurance estimate"). On or about September 8, 2010, Farmers issued a check in the amount of $2,731.19 payable to B.R. and Respondent for repairs to B.R.'s 2001 Toyota Tacoma. B.R. endorsed the check to Respondent.

26. Approximately one week later, B.R. paid Respondent $500.00 representing the insurance deductible so that Respondent was paid in full for the amount in the insurance estimate. B.R. was then permitted to take possession of the Tacoma.

27. The Tacoma was inspected on or about November 14, 2011, by Farmers, and on or about June 20, 2012, by the Bureau. Both inspections revealed that Respondent failed to repair B.R.'s 2001 Toyota Tacoma in accord with the insurance estimate.

28. On or about July 12, 2012, the Bureau asked Respondent to provide the Bureau with his repair records (invoices, estimates and parts receipts) for the period September 2010 to July 2011. Respondent did not provide any records for B.R.'s July 8, 2010, collision repairs. Respondent told a Bureau Representative that he repaired the vehicle according to the insurance estimate.

**SEVENTH CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

29. Respondent is subject to discipline under Code section 9884.7(a)(1), in that Respondent made statements which he knew or which by exercise of reasonable care should have known to be untrue or misleading by falsely representing to B.R. and a Bureau representative that B.R.'s 2001 Toyota Tacoma had been repaired in accord with the insurance estimate dated September 8, 2010. The true facts are Respondent failed to perform services and/or repairs specified in the estimate, as follows:

a. The vacuum diagram and emission labels under the hood were not replaced.

b. The grille was not replaced with an original equipment manufacturer replacement part.

c. The upper tie bar was not replaced and painted.

d. The radiator assembly was not removed and installed.

e. The antifreeze was not replaced.

f. The cooling shroud was not removed and installed.

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## EIGHTH CAUSE FOR DISCIPLINE

**(Fraud)**

30. Respondent is subject to discipline under Code section 9884.7(a)(4), in that on or about September 8, 2010, Respondent committed acts constituting fraud by charging and receiving payment for repairs that were not performed and parts that were not supplied, as described in paragraph 29 incorporated herein.

## NINTH CAUSE FOR DISCIPLINE

**(Failure to Comply with the Automotive Repair Act)**

31. Respondent is subject to discipline under Code section 9884.7(a)(6), in that Respondent failed to comply with the provisions of Code section 9884.11 by failing to maintain records of B.R's Tacoma as required by Title 16, California Code of Regulations section 3358.

## VEHICLE INSPECTION – OWNER G.M.

32. On or about May 25, 2011, "G.M.'s" 2007 Toyota Sienna was damaged in a collision. G.M. had the vehicle transported to Respondent's facility for repairs. On or about May 27, 2011, an insurance adjuster from Farmers Insurance Group inspected G.M.'s damaged vehicle and prepared an itemized estimate totaling $4,226.04 ("insurance estimate"). On or about May 27, 2011, Farmers issued a check in the amount of $3,726.04 payable to G.M. and Respondent for the repairs to G.M.'s 2007 Toyota Sienna. G.M. endorsed the check to Respondent.

33. G.M. paid Respondent $500.00 representing G.M.'s insurance deductible so that Respondent was paid in full for the amount of repairs described in the insurance estimate. G.M. was then permitted to take possession of the Sienna.

34. The Sienna was inspected on or about January 18, 2012, by Farmers, and on or about June 20, 2012, by the Bureau. Both inspections revealed that Respondent failed to repair G.M.'s 2007 Toyota Sienna in accord with the insurance estimate.

35. On or about July 12, 2012, the Bureau asked Respondent to provide the Bureau with his repair records (invoices, estimates and parts receipts) for the period September 2010 to July 2011. Respondent produced the insurance estimate for G.M's vehicle. Respondent told a Bureau

Representative that he repaired the vehicle according to the insurance estimate and that the insurance estimate was his invoice.

**TENTH CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

36. Respondent is subject to discipline under Code section 9884.7(a)(1), in that Respondent made statements which he knew or which by exercise of reasonable care should have known to be untrue or misleading by falsely representing to G.M. and a Bureau representative that G.M.'s 2007 Toyota Sienna had been repaired in accord with the insurance estimate dated May 27, 2011. The true facts are Respondent failed to perform services and/or repairs specified in the insurance estimate, as follows:

a. The left side loading door outer panel was not replaced.

b. The left side panel was not replaced.

c. The left side panel protector was not replaced.

**ELEVENTH CAUSE FOR DISCIPLINE**

**(Fraud)**

37. Respondent is subject to discipline under Code section 9884.7(a)(4), in that on or about May 27, 2011, Respondent committed acts constituting fraud by charging and receiving payment for repairs that were not performed or for parts that were not supplied, as described in paragraph 36 incorporated herein.

**TWELFTH CAUSE FOR DISCIPLINE**

**(Failure to Comply with the Automotive Repair Act)**

38. Respondent is subject to discipline under Code section 9884.7(a)(6), in that Respondent failed to comply with provisions of the Code by violating Code section 9884.8 by failing to provide G.M. with a final invoice and Code section 9884.11 by failing to maintain records as required by Title 16, California Code of Regulations section 3358.

**VEHICLE INSPECTION – OWNER R.S.**

39. On or about November 22, 2010, R.S.'s 2004 Toyota RAV4 was damaged in a collision. The vehicle was towed to Respondent's facility for repairs. On or about November 27,

2010, an insurance adjuster from Farmers Insurance Group inspected the damaged RAV4 and prepared an itemized estimate totaling $5,873.26 ("insurance estimate"). On or about November 27, 2010, Farmers issued a check in the amount of $5,373.26 payable to R.S. and Respondent for repairs to R.S.'s 2004 Toyota RAV4. R.S. endorsed the check to Respondent.

40. R.S. paid Respondent $500.00 representing the insurance deductible so that Respondent was paid in full for the repairs described in the insurance estimate. R.S. was then permitted to take possession of the RAV4.

41. R.S.'s RAV4 was inspected on or about November 14, 2011, by Farmers, and on or about June 20, 2012, by the Bureau. Both inspections revealed that Respondent failed to repair R.S.'s 2004 Toyota RAV4 in accord with the insurance estimate.

42. On or about July 12, 2012, the Bureau asked Respondent to provide the Bureau with his repair records (invoices, estimates and parts receipts) for the period September 2010 to July 2011. Respondent provided the insurance estimate for R.S.'s vehicle. Respondent told a Bureau Representative that he repaired the vehicle according to the insurance estimate and that the insurance estimate was his invoice.

**THIRTEENTH CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

43. Respondent is subject to discipline under Code section 9884.7(a)(1), in that Respondent made statements which he knew or which by exercise of reasonable care should have known to be untrue or misleading by falsely representing to R.S. and a Bureau representative that R.S.'s 2004 Toyota RAV4 had been repaired in accord with the insurance estimate dated November 27, 2010. Respondent failed to perform services and/or repairs in the insurance estimate because the right hinge pillar was not replaced and the right center pillar and rocker were not replaced.

**FOURTEENTH CAUSE FOR DISCIPLINE**

**(Fraud)**

44. Respondent is subject to discipline under Code section 9884.7(a)(4), in that on or about November 27, 2010, Respondent committed acts constituting fraud by charging and

receiving payment for repairs that were not performed or for parts that were not supplied as described in paragraph 43 incorporated herein.

**FIFTEENTH CAUSE FOR DISCIPLINE**

**(Failure to Comply with the Automotive Repair Act)**

45. Respondent is subject to discipline under Code section 9884.7(a)(6), in that Respondent failed to comply with provisions of Code section 9884.8 by failing to provide R.S. with a final invoice and Code section 9884.11 by failing to maintain records as required by Title 16, California Code of Regulations section 3358.

**OTHER MATTERS**

46. Pursuant to Code section 9884.7(c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Arthur Rodriguez, owner of Arthurs Auto Body and Paint, 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 160950, issued to Arthur Rodriguez, owner of Arthurs Auto Body and Paint;

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

3. Ordering Arthur Rodriguez 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; and,

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

DATED: 10/10/13

PAT DORAIS by DOUG BALATTI

Patrick Dorais
Acting Chief
Bureau of Automotive Repair (CPO)
Department of Consumer Affairs
State of California
*Complainant*

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