

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

In the Matter of the Accusation Against:

**SKEETERS AUTO  
BRENDA KAYCEE HOWELL**  
Automotive Dealer Registration  
No. ARD 192102

Case No. 77/12-1

Respondents.

**DECISION AFTER REMAND**

The Bureau of Automotive Repair (Complainant) filed Accusation Number 77/12-1 against Brenda Kaycee Howell (Respondent) on July 3, 2012 alleging that the latter committed acts that constituted ground for disciplinary action. Subsequent to a disciplinary hearing, the Department of Consumer Affairs (Director) issued a disciplinary order on August 27, 2014. The Director adopted the Proposed Decision resulting from the disciplinary hearing. The Proposed Decision found that Respondent had committed acts that constituted grounds for discipline. Consequently, Respondent's Automotive Repair Dealer Registration license was revoked and the revocation was stayed subject to various terms of probation and suspension. Said order was to become effective on October 7, 2014.

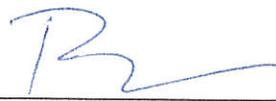
Thereafter, Respondent filed on October 6, 2014 a Petition for Writ of Mandamus in Orange County Superior Court, Case No. 30-2014-00748875-CU-WM-CJC. Subsequently, the parties desired to resolve the matter without further

litigation or court appearance. The parties stipulated to have the Court remand the matter to the Director with jurisdiction to take further action. In addition, the parties stipulated to request the Director to adopt the terms of the stipulation attached herein as the Disciplinary Order. Should the Director not adopt the terms of the attached stipulation, the matter will be put back on calendar for the Court to consider the petition.

The matter having been remanded to the Director for consideration, and having considered it and upon written stipulation of the parties, the Director hereby adopts the stipulated settlement as the decision in the present case. A copy of the parties' stipulation is attached as Attachment "A".

This Decision shall become effective April 15, 2016

IT IS SO ORDERED this 30<sup>th</sup> day of March, 2016.

  
\_\_\_\_\_  
TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

## Attachment A

**ELECTRONICALLY RECEIVED**

Superior Court of California,  
County of Orange

02/06/2016 at 08:17:20 AM

Clerk of the Superior Court  
By Luz Fuentes, Deputy Clerk

**FILED**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

FEB 10 2016

ALAN CARLSON, Clerk of the Court

BY C BOLISAY

NO FEE PURSUANT  
TO GOVERNMENT  
CODE SECTION 6103

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Affairs, Bureau of Automotive Repair*  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ORANGE

12 CENTRAL JUSTICE CENTER  
13

14 BRENDA KAYCEE HOWELL,

Petitioner,

16 v.

17 DEPARTMENT OF CONSUMER  
18 AFFAIRS, BUREAU OF AUTOMOTIVE  
19 REPAIR,

Respondent.  
20

Case No. 30-2014-00748875-CU-WM-CJC

STIPULATION AND [PROPOSED]  
ORDER FOR REMAND AND ORDER

Action Filed: October 6, 2014  
Hearing Date: April 1, 2016  
Hearing Time: 9:00 a.m.  
Dept: C-20

21 IT IS HEREBY STIPULATED by and between the parties, Petitioner Brenda Kaycee

22 Howell, represented by Drew Levine, Esq., and Respondent Department of Consumer Affairs,

23 Bureau of Automotive Repair (the Bureau), represented by Kamala D. Harris, Attorney General

24 of the State of California, and by Adrian R. Contreras, Deputy Attorney General:

25 1. On July 3, 2012, John Wallauch, in his official capacity as Chief of the Bureau of  
26 Automotive Repair, filed Accusation No. 77/12-1 requesting the Director of Consumer Affairs  
27 discipline Howell's Automotive Repair Dealer Registration. A copy of Accusation No. 77/12-1 is  
28 attached as exhibit A and incorporated herein by reference. On or about August 27, 2014, the

1 Director of Consumer Affairs issued a disciplinary decision and order, effective October 7, 2014,  
2 for Accusation Number 77/12-1. The Director of Consumer Affairs found that Howell committed  
3 acts constituting grounds for disciplinary action. On that basis, the Director of Consumer Affairs  
4 revoked Howell's Automotive Repair Dealer Registration, with the revocation stayed subject to  
5 various terms of probation and suspension.

6 2. On October 6, 2014, Howell filed this petition for writ of mandamus against the  
7 Director of Consumer Affairs, challenging the Director of Consumer Affairs's findings and  
8 disciplinary order.

9 3. The parties wish to resolve this matter without further litigation or court appearance.  
10 Therefore, through their respective counsel, the parties agree thusly:

11 a. The parties wish to set aside the Director of Consumer Affairs's Disciplinary  
12 Order Number 77/12-1 and modify the penalty imposed by the Director of Consumer Affairs in  
13 that Decision.

14 b. The parties request that the Court, without ruling on the merits of the petition  
15 for writ of administrative mandamus, remand the matter to the Director of Consumer Affairs for  
16 further consideration, thereby vesting the Director of Consumer Affairs with jurisdiction to take  
17 further action.

18 c. Upon remand to the Director of Consumer Affairs, the Director of Consumer  
19 Affairs will consider whether to impose the disciplinary order outlined below in place of the  
20 Decision issued August 27, 2014, and effective October 7, 2014, for Accusation No. 77/12-1.

21 d. Howell admits the truth of each and every charge and allegation in Accusation  
22 No. 77/12-1. However, the admission is withdrawn if the Director of Consumer Affairs does not  
23 issue the disciplinary order outlined herein in place of the original decision.

24 e. The admissions made by Howell herein are only for the purposes of this  
25 proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of  
26 Automotive Repair, or other professional licensing agency is involved, and shall not be  
27 admissible in any other criminal or civil proceeding.  
28

1 f. Howell agrees that Automotive Repair Dealer Registration No. ARD 192102 is  
2 subject to discipline and she agrees to be bound by the Director of Consumer Affairs's imposition  
3 of discipline as outlined in the Disciplinary Order below.

4 g. The parties agree that this stipulation shall be subject to approval by the  
5 Director of Consumer Affairs or his designee. Howell understands and agrees that counsel for the  
6 Director of Consumer Affairs and the staff of the Bureau of Automotive Repair may  
7 communicate directly with the Director of Consumer Affairs regarding this stipulation and the  
8 disciplinary order outlined below, without notice to or participation by Howell or her counsel. By  
9 signing the stipulation, Howell understands and agrees that she may not withdraw her agreement  
10 or seek to rescind the stipulation before the time the Director of Consumer Affairs considers and  
11 acts upon it.

12 h. If the Director of Consumer Affairs does not adopt the disciplinary order  
13 outlined below, then the hearing on this petition for writ of administrative mandamus will be put  
14 back on calendar upon reasonable notice for the Court to consider the merits of the petition  
15 without consideration of this stipulation for remand and order. Further, the Director of Consumer  
16 Affairs shall not be disqualified from further action by having considered this matter.

17 i. The parties understand and agree that Portable Document Format (PDF) and  
18 facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and  
19 facsimile signatures thereto, shall have the same force and effect as the originals.

20 j. In consideration of the foregoing admissions and stipulations, the parties agree  
21 that the Director of Consumer Affairs may, without further notice or formal proceeding, issue and  
22 enter the following Disciplinary Order:

23 DISCIPLINARY ORDER

24 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 192102,  
25 issued to Brenda Kaycee Howell, Owner, doing business as Skeeter's Auto, is revoked.  
26 However, the revocation is stayed and that registration is placed on probation for five (5) years on  
27 the following terms and conditions.

28

1           1.    **Actual Suspension.** Automotive Repair Dealer Registration Number ARD 192102  
2 issued to Howell is suspended for twenty-one (21) consecutive days, beginning on the effective  
3 date of the decision. Howell has already complied with this term and no further suspension is  
4 ordered.

5           2.    **Posting of Notice of Suspension:** During the period of suspension, Howell shall  
6 post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the  
7 suspension and the reason for the suspension. The sign shall be conspicuously displayed in a  
8 location open to and frequented by customers, and the sign shall remain posted during the entire  
9 period of suspension. Howell has already complied with this term and no further posting of  
10 notice is ordered.

11          3.    **Obey All Laws.** Howell shall comply with all statutes, regulations, and rules  
12 governing automotive inspections, estimates, and repairs.

13          4.    **Quarterly Reporting to the Bureau.** Howell or Howell's authorized representative  
14 shall report in person or in writing as prescribed by the Bureau of Automotive Repair, on a  
15 schedule set by the Bureau, but no more frequently than each quarter, regarding the methods used  
16 and success achieved in maintaining compliance with the terms and conditions of probation. The  
17 quarterly reports shall be signed under penalty of perjury.

18          5.    **Report Financial Interest.** Within 30 days of the effective date of this action,  
19 Howell shall report any financial interest which any partners, officers, or owners of her facility  
20 may have in any other business required to be registered pursuant to Section 9884.6 of the  
21 Business and Professions Code.

22          6.    **Unrestricted Access to Vehicles and Records.** Howell shall provide Bureau  
23 representatives with unrestricted access to inspect all vehicles (including parts) undergoing  
24 repairs, up to and including the point of completion, and all business records maintained by  
25 Howell related to licensed activities and the ownership of the licensed facility.

26          7.    **Direct Supervision - Notification of Subcontracting.** Howell shall not delegate her  
27 supervisory duties to another person during the period of probation as those duties relate to the  
28 business activities of Skeeter's Auto. Any person employed to carry out licensed activities shall

1 be directly supervised by Howell. In the event Howell subcontracts some repair services, she shall  
2 obtain written authorization from the customer for that subcontracted repair work, and the  
3 authorization shall include the nature and extent of the subcontracted repair work and the name  
4 and the address of the subcontractor providing those services. In the event a bona fide medical  
5 condition arises during the period of probation that temporarily prevents Howell from providing  
6 direct supervision, written notice of that medical condition and written substantiation of it shall be  
7 provided to the Bureau within 10 days of the inception of that temporary medical condition.

8 8. **Maintain a Valid License.** During the period of probation, Howell shall maintain a  
9 valid, current, and active registration with the Bureau, including any period in which suspension  
10 or probation is tolled. Should Howell's registration expire during probation, Howell shall renew it  
11 and it shall be subject to all terms and conditions of probation that have not been satisfied. The  
12 failure to maintain a valid, current, and active registration constitutes a violation of probation.

13 9. **Payment of Investigation and Enforcement Costs.** Howell shall pay to the Bureau  
14 the total amount of \$15,000.00 for its investigation and enforcement costs in Case No. 77/12-1.  
15 Howell shall be permitted to make payments on an installment basis for the entire period of  
16 probation. The final payment shall be sent to the Bureau no later than six months before  
17 probation ends. Howell shall make monthly payments by cashier's check or money order payable  
18 to the Bureau of Automotive Repair. Each check or money order shall indicate that payment is  
19 being made for cost recovery in Case No. 77/12-1. Payments shall continue to be made on a  
20 monthly basis even though probation is otherwise tolled. Failure to make a monthly payment as  
21 directed in this order constitutes a violation of probation. The Bureau reserves the right to pursue  
22 any other lawful means of collection of unpaid costs of investigation and enforcement in addition  
23 to taking action based on a violation of probation.

24 10. **Violation of Probation.** Should the Director of Consumer Affairs determine that  
25 Howell has failed to comply with the terms and conditions of probation, the Director of  
26 Consumer Affairs may, after giving notice and opportunity to be heard, seek to revoke or  
27 discipline Howell's registration based upon a violation of probation. The filing of an action  
28

1 related to Howell's alleged violation of probation shall not preclude the Bureau from seeking an  
2 interim suspension order or other legal remedy authorized by law.

3 11. Tolling of Probation. If an accusation or petition to revoke probation is filed  
4 against Howell during the term of probation, the Director of Consumer Affairs shall have  
5 continuing jurisdiction over this matter until the final decision on the accusation or petition to  
6 revoke probation, and the period of probation shall be extended until such decision becomes final.

7 12. License Surrender. Following the effective date of the Decision, if Howell ceases to  
8 engage in licensed activities or is otherwise unable to satisfy the terms and conditions of  
9 probation, Howell may voluntarily request that the stay of the revocation be vacated. The request  
10 shall be made in writing and shall be directed to the Director of the Department of Consumer  
11 Affairs and the Chief of the Bureau of Automotive Repair, who shall evaluate Howell's request  
12 and exercise discretion to grant that request or take other action as is determined necessary.  
13 Within 30 days of formal the acceptance of the request, Howell shall deliver to the Bureau or its  
14 designees all registrations, licenses, or certifications issued by the Bureau. Thereafter, Howell  
15 shall not engage in any activities that require an automotive dealer registration for the period  
16 probation was scheduled to be in effect. Howell shall not be permitted to reinstate the registration  
17 that was voluntarily surrendered, and she shall not be permitted to seek the issuance of a new  
18 registration until the period of probation imposed herein would have run. As a condition  
19 precedent to the issuance of any new registration, Howell shall pay any costs of investigation and  
20 enforcement that have not yet been paid.

21 13. Completion of Probation. Upon respondent's successful completion of probation,  
22 she shall be entitled to the issuance of an unrestricted automotive repair dealer registration.

23 k. In exchange for this Stipulation for Remand, Howell shall dismiss the Superior Court  
24 administrative mandamus action without prejudice within ten days of receipt of the Stipulation for  
25 Remand signed by the parties and the Order signed by the Court. Howell shall dismiss the  
26 Superior Court administrative mandamus action with prejudice within ten days of receipt of the  
27 Director of Consumer Affairs' revised Decision and Order consistent with this Stipulation, and  
28

1 furnish the Director of Consumer Affairs with conformed copies of the documents showing the  
2 entry of the dismissal.

3 m. This Stipulation for Remand will be null, void, and unenforceable if the  
4 Superior Court does not adopt the Stipulation for Remand by signing it as an Order.

5 n. With the exception of paragraph j-9 above, the parties shall bear their own  
6 costs, including attorney fees.

7 o. The parties further agree that by entering into this Stipulation for Remand, each  
8 is waiving any other cause of action or avenue of appeal that may have arisen from the issuance  
9 of the Director of Consumer Affairs Decision Number 77/12-1, ordered on August 27, 2014, and  
10 effective on October 7, 2014.

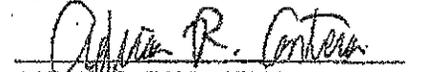
11 IT IS SO STIPULATED.

12 DATED: 2-3-16



DREW S. LEVINE, ESQ.  
Attorney for Petitioner Brenda Kaycee  
Howell

14 DATED: 2/4/16



ADRIAN R. CONTRERAS  
Deputy Attorney General  
Attorney for Respondent Department of  
Consumer Affairs, Bureau of Automotive  
Repair

16  
17  
18  
19 GOOD CAUSE APPEARING, the Stipulation for Remand is hereby approved. The matter  
20 is hereby remanded to the Director of Consumer Affairs for action in conformity with this  
21 Stipulation.

22 IT IS SO ORDERED.

23  
24 DATED: FEB 10 2016, 2016.



JUDGE OF THE SUPERIOR COURT  
STATE OF CALIFORNIA  
ORANGE COUNTY **DAVID R. CHAFFEE**

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**EXHIBIT**  
**A**

Exhibit A

Accusation No. 77/12-1

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 ADRIAN R. CONTRERAS  
Deputy Attorney General  
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8 Attorneys for Complainant

JUL 30 2012

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

12 In the Matter of the Accusation Against:

13 SKEETERS AUTO;  
BRENDAY KAYCEE HOWELL,  
14 AKA BRENDA KAY NIMOTA, OWNER  
1943 Deere Avenue  
15 Santa Ana, CA 92705-5715

Case No. 77/12-1

ACCUSATION

16 Automotive Repair Dealer Registration No.  
ARD 192102

17  
18 Respondent.

19 Complainant alleges:

20 PARTIES

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

23 Automotive Repair Dealer Registration

24 2. On a date uncertain in 1996, the Bureau issued Automotive Repair Dealer  
25 Registration Number ARD 192102 ("Registration") to Brenda Kaycee Howell, also known as  
26 Brenda Kay Nimota, owner of Skeeters Auto ("Respondent"). The Registration was in full force  
27 and effect at all times relevant to the charges brought herein and will expire on November 30,  
28 2012, unless renewed.

1 JURISDICTION

2 3. This Accusation is brought before the Director for the Bureau under the authority of  
3 the following laws. All section references are to the Business and Professions Code unless  
4 otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
6 surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a  
7 disciplinary action during the period within which the license may be renewed, restored, reissued  
8 or reinstated.

9 5. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid  
10 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding  
11 against an automotive repair dealer or to render a decision invalidating a registration temporarily  
12 or permanently.

13 6. Section 9884.20 of the Code states:

14 "All accusations against automotive repair dealers shall be filed within three years after the  
15 performance of the act or omission alleged as the ground for disciplinary action, except that with  
16 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action,  
17 the accusation may be filed within two years after the discovery, by the bureau, of the alleged  
18 facts constituting the fraud or misrepresentation."

19 STATUTORY PROVISIONS

20 7. Section 22 of the Code states:

21 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the  
22 administration of the provision is vested, and unless otherwise expressly provided, shall include  
23 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and  
24 'agency.'

25 "(b) Whenever the regulatory program of a board that is subject to review by the Joint  
26 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2  
27 (commencing with Section 473), is taken over by the department, that program shall be  
28 designated as a 'bureau.'"

1 8. Section 477 of the Code states:

2 As used in this division:

3 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'  
4 'examining committee,' 'program,' and 'agency.'

5 "(b) 'License' includes certificate, registration or other means to engage in a  
6 business or profession regulated by this code."

7 9. Section 9884.7 of the Code states:

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

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

16 "(2) Causing or allowing a customer to sign any work order that does not state the repairs  
17 requested by the customer or the automobile's odometer reading at the time of repair.

18 "...

19 "(4) Any other conduct that constitutes fraud.

20 "...

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

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

26 "(8) Making false promises of a character likely to influence, persuade, or induce a  
27 customer to authorize the repair, service, or maintenance of automobiles.

28 "...

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

6           "(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on  
7 probation the registration for all places of business operated in this state by an automotive repair  
8 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated  
9 and willful violations of this chapter, or regulations adopted pursuant to it."

10          10. Section 9884.8 of the Code states:

11           "All work done by an automotive repair dealer, including all warranty work, shall be  
12 recorded on an invoice and shall describe all service work done and parts supplied. Service work  
13 and parts shall be listed separately on the invoice, which shall also state separately the subtotal  
14 prices for service work and for parts, not including sales tax, and shall state separately the sales  
15 tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice  
16 shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt  
17 or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a  
18 statement indicating whether any crash parts are original equipment manufacturer crash parts or  
19 nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be  
20 given to the customer and one copy shall be retained by the automotive repair dealer."

21          11. Section 9884.9 of the Code states:

22           "(a) The automotive repair dealer shall give to the customer a written estimated price for  
23 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue  
24 before authorization to proceed is obtained from the customer. No charge shall be made for work  
25 done or parts supplied in excess of the estimated price without the oral or written consent of the  
26 customer that shall be obtained at some time after it is determined that the estimated price is  
27 insufficient and before the work not estimated is done or the parts not estimated are supplied.  
28 Written consent or authorization for an increase in the original estimated price may be provided

1 by electronic mail or facsimile transmission from the customer. The bureau may specify in  
2 regulation the procedures to be followed by an automotive repair dealer if an authorization or  
3 consent for an increase in the original estimated price is provided by electronic mail or facsimile  
4 transmission. If that consent is oral, the dealer shall make a notation on the work order of the date,  
5 time, name of person authorizing the additional repairs and telephone number called, if any,  
6 together with a specification of the additional parts and labor and the total additional cost, and  
7 shall do either of the following:

8       "(1) Make a notation on the invoice of the same facts set forth in the notation on the work  
9 order.

10       "(2) Upon completion of the repairs, obtain the customer's signature or initials to an  
11 acknowledgment of notice and consent, if there is an oral consent of the customer to additional  
12 repairs, in the following language:

13       "I acknowledge notice and oral approval of an increase in the original estimated price.

14  
15       \_\_\_\_\_  
16       "(signature or initials)"

17       "Nothing in this section shall be construed as requiring an automotive repair dealer to give a  
18 written estimated price if the dealer does not agree to perform the requested repair.

19       "...

20       "(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto  
21 body or collision repairs, shall provide an itemized written estimate for all parts and labor to the  
22 customer. The estimate shall describe labor and parts separately and shall identify each part,  
23 indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part  
24 shall be identified on the written estimate and the written estimate shall indicate whether the crash  
25 part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer  
26 aftermarket crash part.

27       "...."

28       12. Section 9884.11 of the Code states that "[e]ach automotive repair dealer shall  
maintain any records that are required by regulations adopted to carry out this chapter [the

1 Automotive Repair Act]. Those records shall be open for reasonable inspection by the chief or  
2 other law enforcement officials. All of those records shall be maintained for at least three years."

3 13. Section 9889.9 of the Code states that "[w]hen any license has been revoked or  
4 suspended following a hearing under the provisions of [Article 7 of the Automotive Repair Act],  
5 any additional license issued under Articles 5 and 6 . . . in the name of the licensee may be  
6 likewise revoked or suspended by the director."

7 COSTS

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

12 CONSUMER COMPLAINT -- 2002 NISSAN ALTIMA (MURRAY)

13 15. On or about February 18, 2011, Janet Murray ("Consumer") took her 2002 Nissan  
14 Altima to Respondent's facility, Skeeter's Auto, to repair the damage to her car sustained in a  
15 collision. When the Consumer left her car at Respondent's facility, the Consumer also asked to  
16 have the engine oil and filter replaced and to replace the rear shock absorbers. Respondent had  
17 the Consumer sign a document, but did not provide the Consumer with a copy of the signed  
18 document. On or about March 1, 2011, the Consumer received from State Farm Insurance  
19 Company a check for \$5,113.07 and a repair estimate, ID: 75-7170-86802. The Consumer got a  
20 cashier's check from her credit union in the amount of \$4,513.00 made payable to Respondent.

21 16. On or about March 4, 2011, the Consumer gave Respondent this cashier's check.  
22 Respondent told the Consumer she would repair the collision damage per the State Farm repair  
23 estimate. The Consumer planned to pay Respondent the remaining \$600.00 when the repairs  
24 were completed.

25 17. In late March 2011, when the Consumer spoke with Respondent about the status of  
26 the repairs, Respondent told her they were not yet completed. On or about March 31, 2011, the  
27 Consumer returned to Respondent's facility and demanded that Respondent return the car to her.  
28

1 The Consumer saw that the trunk lid would not close properly. Respondent told the Consumer  
2 she would have a separate auto body shop repair the trunk lid.

3 18. On or about April 6, 2011, Respondent informed the Consumer that the car was ready  
4 to be picked up. The Consumer went to Respondent's facility and Respondent gave the  
5 Consumer a repair order, number 09308. This repair order did not have a detailed description of  
6 the repairs Respondent performed. After the Consumer got her car from Respondent's facility,  
7 she noticed the rear spoiler on the trunk lid was loose and the top rear taillight lenses were red  
8 instead of yellow.

9 19. On or about April 11, 2011, the Consumer filed a complaint with the Bureau. On or  
10 about June 2, 2011, Bureau representatives inspected and photographed the Consumer's car,  
11 referencing State Farm's estimate and related documents from State Farm. The Consumer told  
12 the Bureau representatives that the trunk lid was not water-tight, the trunk opened spontaneously  
13 while driving on the freeway, the rear spoiler was loose, and the top rear taillight lenses were red  
14 instead of yellow. The Bureau representatives' inspection revealed that the following parts were  
15 not provided and labor not done by Respondent, totaling \$1,190.86 of the State Farm estimate:

- 16 a. The luggage lid was not replaced or the underside refinished;
- 17 b. Both luggage lid hinges were not replaced or refinished;
- 18 c. The upper rear body trim panel insert was not replaced;
- 19 d. The right rear frame rail was not repaired;
- 20 e. The rear window was not roped; and
- 21 f. The rear floor pan was not repair and refinished;

22 20. The representatives' inspection identified willful departure from accepted trade  
23 standards for good and workmanlike repair for the installation of the following, totaling \$697.20  
24 for labor:

- 25 a. Both rear quarter corner panels;
- 26 b. The rear body panel;
- 27 c. The rear bumper;
- 28 d. The spoiler; and

1 e: The left rear taillight assembly.

2 21. On or about July 8, 2011, the Bureau representatives spoke with Respondent. She  
3 told them she sublet some of the repairs to an individual named Patrick Shane, and also an  
4 automobile repair dealer called Lauto Body. Later, the representatives spoke with Patrick Shane  
5 and employees at Lauto Body, and they learned that Respondent had instructed both Patrick  
6 Shane and Lauto Body to do less work and fewer repairs on the Consumer's car than those called  
7 for in the State Farm estimate.

8 FIRST CAUSE FOR DISCIPLINE

9 (Misleading Statements)

10 22. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(1),  
11 in that between February and April 2011, Respondent made statements which Respondent knew  
12 or which by exercise of reasonable care should have known were untrue or misleading, by  
13 representing to the Consumer that the Consumer's car had been repaired consistent with the repair  
14 estimate. In fact, Respondent failed to repair the vehicle pursuant to the repair estimate, as more  
15 particularly set forth in paragraph 19, subparagraphs a through f, above.

16 SECOND CAUSE FOR DISCIPLINE

17 (Fraud)

18 23. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(4),  
19 in that between February and April 2011, Respondent committed acts which constitute fraud by  
20 accepting payment of \$4,513.00 from the Consumer for replacement of parts and the performance  
21 of labor when, in fact, Respondent failed to perform repairs including labor in the amount of  
22 \$1,190.86, as more particularly set forth in paragraph 19, subparagraphs a through f, above.

23 THIRD CAUSE FOR DISCIPLINE

24 (Departure from Accepted Trade Standards)

25 24. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(7),  
26 in that between February and April 2011, Respondent willfully departed from or disregarded  
27 accepted trade standards for good and workmanlike repair in a material respect when Respondent  
28 performed substandard installation of both rear quarter corner panels, rear body panel, rear

1 bumper, spoiler, and rear taillight assembly as more particularly described above in paragraph 20,  
2 subparagraph a through e, totaling \$697.20 in labor.

3 FOURTH CAUSE FOR DISCIPLINE

4 (Failure to Comply with Code)

5 25. Respondent is subject to disciplinary action under Code section 9884.7, subdivision  
6 (a)(6), in that between February and April 2011, Respondent failed to comply with the Code  
7 sections 9884.8 and 9884.9, subdivisions (a) and (c), in that Respondent's repair order 09308  
8 includes the statements "oil change," "rear shocks," and "rear trunk lights-light Bumper Body  
9 Work," but does not include a description of the parts to be provided or the work to be performed;  
10 a separate itemization of all parts and labor; identification of each part indicating whether the  
11 replacement part is new, used, rebuilt, or reconditioned; indication of whether the crash parts  
12 were original equipment manufacturer crash parts or non-original equipment manufacturer  
13 aftermarket crash parts; identification of the oil filter, synthetic blend oil, or rear shock absorbers  
14 as new, used, rebuilt, or reconditioned; identification of parts supplied for the collision damage  
15 repairs; and the subtotal prices for parts supplied.

16 26. Respondent failed to comply with Code section 9884.11 in that Respondent failed to  
17 provide parts purchase invoices for the right and left rear quarter corner panels, the luggage lid,  
18 both luggage lid hinges, luggage lid adhesive name plates, rear body panel, and the upper rear  
19 body trim panel insert.

20 UNDERCOVER OPERATION – NOVEMBER 7, 2011

21 27. On or about November 7, 2011, a Bureau undercover operator drove a Bureau  
22 documented 2001 Toyota Corolla to Respondent's facility for repairs. The only repairs necessary  
23 were replacement of the front brake pads and an engine oil and filter change. The operator spoke  
24 with Respondent and asked her to check the brakes and replace the engine oil and filter. The  
25 operator left the car at Respondent's facility and left. Later, Respondent called the operator and  
26 told her that the brake pads need to be replaced, the car needed a fuel injection cleaning, and that  
27 the brake rotors needed to be resurfaced. Respondent told the operator the fuel injection cleaning  
28 would give the car better gas mileage. Respondent told the operator these repairs would cost

1 \$267.00 for labor and \$124.00 for parts, for a total bill of \$402.61. The operator authorized the  
2 repairs.

3 28. About two hours later, Respondent called the operator and told her the car was ready  
4 to be picked up and the operator returned to Respondent's facility. After paying for the repairs,  
5 the operator asked Respondent why the brake rotors needed to be resurfaced. Respondent replied  
6 that they "machine 1/8th of an inch off of the rotor and make them smooth." She asked  
7 Respondent why the car needed a fuel injection cleaning and Respondent answered it would "get  
8 better gas mileage." The operator then drove the car out of Respondent's facility and gave  
9 custody of it to a Bureau representative.

10 29. Afterwards, the Bureau reinspected the vehicle. That inspection revealed that the two  
11 front brake rotors were machined unnecessarily and that the fuel injection cleaning was  
12 unnecessary. These vehicle components were in good serviceable condition and not in need of  
13 service or repair.

14 FIFTH CAUSE FOR DISCIPLINE

15 (Misleading Statements)

16 30. Respondent is subject to disciplinary action under Code section 9884.7, subdivision  
17 (a)(1), in that on November 7, 2011, Respondent made statements which Respondent knew or by  
18 exercise of reasonable care should have known to be untrue or misleading, as follows:

19 a. Respondent told the operator that the brake rotors needed to be resurfaced. In fact,  
20 the brake rotor repair was unnecessary because the rotors were in good serviceable condition and  
21 not in need of service or repair; and

22 b. Respondent told the operator that the car needed a fuel injection cleaning. In fact, the  
23 fuel injection cleaning was unnecessary because the fuel injection system was in good serviceable  
24 condition and not in need of service or repair.

25 SIXTH CAUSE FOR DISCIPLINE

26 (Fraud)

27 31. Respondent is subject to disciplinary action under Code section 9884.7, subdivision  
28 (a)(4), in that on November 7, 2011, Respondent committed acts which constitute fraud by

1 accepting payment from the operator for repairs and/or services she performed needlessly. In  
2 fact, the only repairs necessary were replacement of the front brake pads and an engine oil and  
3 filter change.

4 SEVENTH CAUSE FOR DISCIPLINE

5 (False Promise)

6 32. Respondent is subject to disciplinary action under Code section 9884.7; subdivision  
7 (a)(8), in that on November 7, 2011, Respondent made a false promise of a character likely to  
8 influence, persuade, or induce a customer to authorize the repair, service, or maintenance of an  
9 automobile in that Respondent told the operator that the brake rotors needed to be resurfaced and  
10 that Respondent would machine 1/8th of an inch off of the rotor and make them smooth, when in  
11 fact, the brake rotor repair was unnecessary because the rotors were in good serviceable condition  
12 and not in need of service or repair. Respondent also told the operator that the car needed a fuel  
13 injection cleaning and that it would give the car better gas mileage, when in fact, the fuel injection  
14 cleaning was unnecessary because the fuel injection system was in good serviceable condition  
15 and not in need of service or repair.

16 EIGHTH CAUSE FOR DISCIPLINE

17 (Failure to Comply with Code)

18 33. Respondent is subject to disciplinary action under Code section 9884.7, subdivision  
19 (a)(6), in that on November 7, 2011, Respondent failed to comply with Code sections 9884.7,  
20 subdivision (a)(2), 9884.8, and 9884.9, subdivision (a), in that the estimate listed an "oil change,"  
21 a check mark next to an illegible word, and a check mark next to the word, "brakes," but did not  
22 include a description of a specific job to be performed; an estimate price for the \$2.00 disposal  
23 fee charge; or the odometer reading.

24 34. Additionally, the invoice did not include Respondent's Environmental Protection  
25 Agency number while charging a \$2.00 waste fee; the date, time, and repairs to be performed for  
26 the additional authorization for the \$402.61 charge; a description of diagnostic and service work  
27 performed for the brake work and fuel injection service; or a description of the parts supplied and  
28 the price for each described part.

1 OTHER MATTERS

2 35. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily  
3 or permanently or refuse to validate, the registrations for all places of business operated in this  
4 state by Respondent upon a finding that Respondent has engaged in a course of repeated and  
5 willful violations of the laws and regulations pertaining to an automotive repair dealer.

6 PRAYER

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

- 9 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
10 192102, issued to Brenda Kaycee Howell, also known as Brenda Kay Nimota, owner of Skeeters  
11 Auto;
- 12 2. Ordering Brenda Kaycee Howell, also known as Brenda Kay Nimota, owner of  
13 Skeeters Auto, to pay the Bureau of Automotive Repair the reasonable costs of the investigation  
14 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: July 3, 2012

17   
18 JOHN WALLAUCH  
19 Chief  
20 Bureau of Automotive Repair  
21 Department of Consumer Affairs  
22 State of California  
23 Complainant

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