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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: **CABRERA AUTO BODY; ROGELIO S. CABRERA, Owner** **355 West 9th Street** **Santa Rosa, CA 95401** **Automotive Repair Dealer Registration No. 201524** Respondent.	Case No. 77/13-29 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. In or about 1998, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration ("ARD") Number 201524 to Cabrera Auto Body; Rogelio S. Cabrera, owner (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in this Accusation. The ARD expired on September 30, 2012, and is currently in "delinquent" status.

JURISDICTION

3. This Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Business and Professions Code ("Code") section 9887 provides that the Director may revoke an automotive repair dealer registration.

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

STATUTORY/REGULATORY PROVISIONS

6. 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.

. . . .

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

7. Section 9884.9, subdivision (c) of the Code states:

"(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto body or collision repairs, shall provide an itemized written estimate for all parts and labor to the

customer. The estimate shall describe labor and parts separately and shall identify each part, indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part shall be identified on the written estimate and the written estimate shall indicate whether the crash part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer aftermarket crash part."

8. 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 Automotive Repair Act]. 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."

9. California Code of Regulations, title 16, section 3353, subdivision (b) states:

"(b) Estimate for Auto Body or Collision Repairs. Every dealer, when doing auto body or collision repairs, shall give to each customer a written estimated price for parts and labor for a specific job. Parts and labor shall be described separately and each part shall be identified, indicating whether the replacement part is new, used, rebuilt or reconditioned. The estimate shall also describe replacement crash parts as original equipment manufacturer (OEM) crash parts or non-OEM aftermarket crash parts."

10. California Code of Regulations, title 16, section 3358, subdivision (a) states:

"Each automotive repair dealer shall maintain legible copies of the following records for not less than three years:

"(a) All invoices relating to automotive repair including invoices received from other sources for parts and/or labor."

11. California Code of Regulations, title 16, section 3351.5 provides, in pertinent part, that an auto boy repair shop that is performing automotive painting structural, and non-structural repairs shall have all equipment and current refernce manuals necessary to paint and repair non-structural damage, auto frame, and structural damage.

12. California Code of Regulations, title 16, section 3373 states:

"No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,

withold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the Bureau 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

2003 NISSAN FRONTIER

14. On or about January 11, 2011, Suki D. [1]took her 2003 Nissan Frontier to Respondent's auto repair facility, located at 355 West 9th Street, Santa Rosa, California, for repair. On or about June 2, 2011, Steven W. Rhodes, a Program Representative II for the Bureau, reviewed a copy of the California State Automobile Association ("CSAA") claim #A031H0513201 related to parts purchased and repairs performed on the 2003 Nissan Frontier. On or about July 12, 2011, Mr. Rhodes inspected the vehicle and compared the actual repairs performed according to the estimate prepared by Respondent. The inspection revealed that Respondent did not purchase the part and/or perform the repairs according to the estimate presented to CSAA, as follows:

ESTIMATE LINE ITEM # & PART	PARTS PRICE	LABOR (hours)
#10 remove/install L lock cylinder		$17.20 (.2)
#11 remove/install L quarter glass		$232.20 (2.7)
#13 remove/replace L outer pickup bed side panel	$1,049.05	$817.00 (9.5)
SUBTOTALS:	PARTS PRICE	LABOR
	$1,049.05	$1,066.40

[1] Consumer's name will be provided pursuant to a request for discovery.

SALES TAX @ 9.25% $97.04 **TOTAL FRAUDULENT REPAIR: $2,212.49**

FIRST CAUSE FOR DISCIPLINE

(False/Misleading Records)

15. Respondent's automotive repair dealer registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(1), as defined in California Code of Regulations, title 16, section 3373, in that Respondent provided an estimate for parts and labor, and represented that the parts were purchased and that the labor was performed, when in fact the parts were not purchased and the labor was not performed.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

16. Respondent's automotive repair dealer registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(4), in that Respondent accepted payment for repair of the 2003 Nissan Frontier, but did not perform the labor or install the parts as set forth in paragraph 14, above.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Provisions of the Act)

17. Respondent's automotive repair dealer registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(6) in that Respondent violated the following sections of title 16, California Code of Regulations:

a. **Section 3353:** Respondent failed to provide Suki D. with a written estimate for parts and labor.

b. **Section 3373:** Respondent maintained false or misleading records as set forth in paragraph 14, above.

FACILITY INSPECTIONS

18. On December 13, 2011, Mr. Rhodes and Glen Sneller, a Program Representative I for the Bureau, visited Respondent's facility, reviewed approximately three months of repair records and performed a facility inspection. The inspection revealed that Respondent's facility did not have the following items:

a. Current auto body reference manuals.

b. Corrosion protection equipment for enclosed areas (wand, 200 amp MIG welder).

c. Proper measuring equipment to accurately and properly perform body and structural frame and unibody pulls.

In addition, numerous repair estimates were not properly authorized.

19. On December 23, 2011, Mr. Sneller visited Respondent's facility and provided Respondent with a written request for all estimates, invoices, and parts receipts related to the repairs performed on the 2003 Nissan Frontier. Respondent failed to provide any documents to Mr. Sneller.

20. On January 9, 2011, Mr. Rhodes visited Respondent's facility and requested the documents described in paragraph 19, above. Respondent failed to provide a properly authorized initial estimate or any parts receipts related to the repair of the 2003 Nissan Frontier.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply Provisions of the Act)

21. Respondent's automotive repair dealer registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(6) in that Respondent violated section 3351 of title 16, California Code of Regulations, in that Respondent failed to have all equipment and current reference manuals necessary to paint and repair structural and non-structural damage, as described in paragraph 18, above.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Records)

22. Respondent's automotive repair dealer registration is subject to disciplinary action under Code section 9884.11, in that Respondent failed to maintain records for the 2003 Nissan Frontier, as described in paragraphs 19 and 20, above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number 201524, issued to Cabrera Auto Body; Rogelio S. Cabrera, owner;

2. Ordering Rogelio S. Cabrera to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: January 15, 2013 John Wallauch by Doug Balatti

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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