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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
355 West 9th Street
Santa Rosa, CA 95401
Automotive Repair Dealer Registration No.
201524**

Respondent.

Case No. 77/13-29

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 15, 2013, Complainant John Wallauch, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 77/13-29 against Cabrera Auto Body; Rogelio S. Cabrera (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. In or about 1998, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer (“ARD”) Registration No. 201524 to Cabrera Auto Body; Rogelio S. Cabrera, owner (Respondent). The automotive Repair Dealer Registration was in full force and effect at

1 all times relevant to the charges brought in Accusation No. 77/13-29. The ARD Registration
2 expired on September 30, 2012, and is currently in "delinquent" status.

3 3. On or about February 13, 2013, Respondent was served by Certified Mail copies of
4 the Accusation No. 77/13-29, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 136, is
7 required to be reported and maintained with the Bureau. Respondent's address of record was and
8 is:

9 355 West 9th Street
10 Santa Rosa, CA 95401.

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 February 14, 2013, the aforementioned documents were delivered to
15 Respondent.

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 77/13-29.

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 February 13, 2013, signed by Ryan Mallard and the

1 Domestic Return Receipt finds Respondent is in default. The Director will take action without
2 further hearing and, based on Accusation, No. 77/13-29, proof of service and on the Investigation
3 Report of Bureau Representative Steven W. Rhodes, finds that the allegations in Accusation are
4 true.

5 **DETERMINATION OF ISSUES**

6 1. Based on the foregoing findings of fact, Respondent Cabrera Auto Body; Rogelio S.
7 Cabrera, owner, has subjected his Automotive Repair Dealer Registration No. 201524 to
8 discipline.

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

10 3. The Director of Consumer Affairs is authorized to revoke Respondent's Automotive
11 Repair Dealer Registration based upon the following violations alleged in the Accusation which
12 are supported by the evidence contained in the Investigation Report of Bureau Representative
13 Steven W. Rhodes in this case.

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

19 b. Respondent's automotive repair dealer registration is subject to disciplinary action
20 under Code section 9884.7, subdivision (a)(4), in that Respondent accepted payment for repair of
21 the 2003 Nissan Frontier, but did not perform the labor or install the parts as set for the in
22 paragraph 14, of Accusation No. 77/13-29.

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

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

28 b. **Section 3373:** Respondent maintained false or misleading records as set forth in

1 paragraph 14, of Accusation No. 77/13-29.

2 d. Respondent's automotive repair dealer registration is subject to disciplinary action
3 under Code section 9884.7, subdivision (a)(6), in that Respondent violated section 3351 of title
4 16, California Code of Regulations, in that Respondent failed to have all equipment and current
5 reference manuals necessary to paint and repair structural and non-structural damage, as
6 described in paragraph 18, of Accusation No. 77/13-29.

7 e. Respondent's automotive repair dealer registration is subject to disciplinary action
8 under Code section 9884.11, in that Respondent failed to maintain records for the 2003 Nissan
9 Frontier, as described in paragraphs 19 and 20, of Accusation No. 77/13-29.

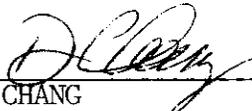
10 **ORDER**

11 IT IS SO ORDERED that Automotive Repair Dealer Registration No. 201524, heretofore
12 issued to Respondent Cabrera Auto Body; Rogelio S. Cabrera, owner, is revoked.

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

19 This Decision shall become effective on 6/25/13.

20 It is so ORDERED May 24, 2013.

21 
22 _____
23 DONALD CHANG
24 Assistant Chief Counsel
25 Department of Consumer Affairs

26 default decision_LIC.rtf
27 DOJ Matter ID:SF2012900769
28 Attachment:
Exhibit A: Accusation

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Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 KIM M. SETTLES
Deputy Attorney General
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. **77/13-29**

12 **CABRERA AUTO BODY; ROGELIO S.**
13 **CABRERA, Owner**
14 **355 West 9th Street**
Santa Rosa, CA 95401

ACCUSATION

15 **Automotive Repair Dealer Registration No.**
16 **201524**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. In or about 1998, the Bureau of Automotive Repair issued Automotive Repair Dealer
23 Registration ("ARD") Number 201524 to Cabrera Auto Body; Rogelio S. Cabrera, owner
24 (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all
25 times relevant to the charges brought in this Accusation. The ARD expired on September 30,
26 2012, and is currently in "delinquent" status.

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

6 8. Section 9884.11 of the Code states that “[e]ach automotive repair dealer shall
7 maintain any records that are required by regulations adopted to carry out this chapter [the
8 Automotive Repair Act]. Those records shall be open for reasonable inspection by the chief or
9 other law enforcement officials. All of those records shall be maintained for at least three years.”

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

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

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

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

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

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

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

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

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

4 **COST RECOVERY**

5 13. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
10 included in a stipulated settlement.

11 **2003 NISSAN FRONTIER**

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

21 <u>ESTIMATE LINE ITEM # & PART</u>	<u>PARTS PRICE</u>	<u>LABOR (hours)</u>
22 #10 remove/install L lock cylinder		\$17.20 (.2)
23 #11 remove/install L quarter glass		\$232.20 (2.7)
24 #13 remove/replace L outer pickup bed side panel	\$1,049.05	\$817.00 (9.5)
25 SUBTOTALS:	PARTS PRICE	LABOR
26	\$1,049.05	\$1,066.40

27 _____
28 ¹ Consumer's name will be provided pursuant to a request for discovery.

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

2 **FIRST CAUSE FOR DISCIPLINE**

3 (False/Misleading Records)

4 15. Respondent's automotive repair dealer registration is subject to disciplinary action
5 under Code section 9884.7, subdivision (a)(1), as defined in California Code of Regulations, title
6 16, section 3373, in that Respondent provided an estimate for parts and labor, and represented
7 that the parts were purchased and that the labor was performed, when in fact the parts were not
8 purchased and the labor was not performed.

9 **SECOND CAUSE FOR DISCIPLINE**

10 (Fraud)

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

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Failure to Comply with Provisions of the Act)

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

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

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

24 **FACILITY INSPECTIONS**

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

- 1 a. Current auto body reference manuals.
- 2 b. Corrosion protection equipment for enclosed areas (wand, 200 amp MIG welder).
- 3 c. Proper measuring equipment to accurately and properly perform body and structural
- 4 frame and unibody pulls.

5 In addition, numerous repair estimates were not properly authorized.

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

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

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply Provisions of the Act)**

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

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Failure to Maintain Records)**

22 22. Respondent's automotive repair dealer registration is subject to disciplinary action
23 under Code section 9884.11, in that Respondent failed to maintain records for the 2003 Nissan
24 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 [Signature]

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

Doug BAUATTI

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