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

12 In the Matter of the Accusation Against:

Case No. 77107-45

13 **K & A PAINT & BODY**
1539 East Tulare Avenue
14 Tulare, CA 93274
15 **LARRY R. SAENZ, AKA**
LARRY RAMIREZ, OWNER

ACCUSATION

16 Automotive Repair Dealer Reg. No. AA 214658

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official
22 capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer
23 Affairs.

24 **Automotive Repair Dealer Registration**

25 2. On or about March 19, 2001, the Bureau issued Automotive Repair Dealer
26 Registration Number AA 214658 ("Registration") to Larry R. Saenz, also known as
27 Larry Ramirez ("Respondent"), doing business as K & A Paint & Body. The Registration was

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1 delinquent from January 31, 2004, to October 11, 2005, and from January 31, 2006, to June 16,
2 2006. The Registration expired on January 31, 2008.

3 STATUTORY PROVISIONS

4 3. Business and Professions Code ("Code") section 9884.7 states, in
5 pertinent part:

6 (a) The director, where the automotive repair dealer cannot show there
7 was a bona fide error, may refuse to validate, or may invalidate temporarily or
8 permanently, the registration of an automotive repair dealer for any of the
9 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.

10 (1) Making or authorizing in any manner or by any means whatever
11 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.

12 (4) Any other conduct which constitutes fraud.

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

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

17 (b) Except as provided for in subdivision (c), if an automotive repair
18 dealer operates more than one place of business in this state, the director pursuant
19 to subdivision (a) shall only invalidate temporarily or permanently the registration
20 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.

21 (c) Notwithstanding subdivision (b), the director may invalidate
22 temporarily or permanently, the registration for all places of business operated in
23 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.

24 4. Code section 9884.8 states:

25 All work done by an automotive repair dealer, including all warranty
26 work, shall be recorded on an invoice and shall describe all service work done
27 and parts supplied. Service work and parts shall be listed separately on the
28 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

1 invoice shall clearly state that fact. If a part of a component system is composed
2 of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that
3 fact. The invoice shall include a statement indicating whether any crash parts are
4 original equipment manufacturer crash parts or nonoriginal equipment
5 manufacturer aftermarket crash parts. One copy of the invoice shall be given to
6 the customer and one copy shall be retained by the automotive repair dealer.

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5. Code section 9884.9 states, in pertinent part:

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

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

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

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

(signature or initials)"

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

(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.

6. Code section 9884.13 states, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary

1 COST RECOVERY

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

6 UNDERCOVER OPERATION NO. 1 - 2000 PONTIAC GRAND PRIX

7 12. On or about January 22, 2007, a Tulare County District Attorney Criminal
8 Investigator using the alias Nancy Lee ("Operator #1"), brought a Bureau-documented 2000
9 Pontiac Grand Prix, California License #5MQY671, to Respondent's facility for collision
10 repairs. Operator #1 spoke with a male who was identified as Mario. Operator #1 provided
11 Mario with Insurance Estimate Number 306022, prepared by Western United Insurance
12 Company, dated January 22, 2007, for \$5,750.99 ("Insurance Estimate No. 306022"), and
13 requested that the repairs be made in accordance with the estimate.

14 13. On or about January 23, 2007, Respondent told Operator #1 that he would
15 not charge her the \$500 insurance deductible and that he would perform the vehicle repairs
16 according to Insurance Estimate No. 306022.

17 14. On or about January 25, 2007, Respondent called Western United
18 Insurance Company and agreed to perform the vehicle repairs according to Insurance Estimate
19 No. 306022.

20 15. On or about February 8, 2007, Respondent negotiated a check issued by
21 Western United Insurance Company, payable to K & A Paint & Body, in the amount of
22 \$5,250.97, for the vehicle repairs.

23 16. On or about February 15, 2007, Operator #1 returned to Respondent's
24 facility to retrieve the vehicle. Respondent stated that the vehicle repairs had been made
25 according to Insurance Estimate No. 306022, and that he would not charge the \$500 deductible.
26 As a final invoice, Respondent provided Operator #1 with Estimate Report No. 695, dated
27 February 15, 2007.

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1 Insurance Company that Operator #1's vehicle had been repaired pursuant to Insurance Estimate
2 No. 306022; however, Respondent failed to perform services or repairs, as more particularly set
3 forth in paragraph 17 subparagraphs a through m, above.

4 **SECOND CAUSE OF DISCIPLINE**

5 **(Fraudulent Acts)**

6 19. Respondent is subject to disciplinary action pursuant to Code section
7 9884.7, subdivision (a)(4), in that in or around February 2007, Respondent committed acts which
8 constitute fraud by receiving payment from Western United Insurance Company for repairs that
9 Respondent had not performed, for parts that he had not replaced with new parts, and his failure
10 to replace some parts at all, as more fully set forth in paragraph 17, subparagraphs a through m,
11 above.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Provisions of the Automotive Repair Act)**

14 20. Respondent is subject to disciplinary action pursuant to Code section
15 9884.7, subdivision (a)(6), in that in or around February 2007, Respondent violated the
16 provisions of the Code, as follows:

17 a. **Section 9884.8:** Regarding Report No. 695, Respondent failed to
18 separately list all service work performed and parts supplied regarding the repairs to Operator
19 #1's vehicle.

20 b. **Section 9884.9, subdivision (c):** Respondent failed to give Operator #1
21 an itemized written estimate for the auto body repairs, including a list or description of all labor,
22 and parts and whether the crash part was an original equipment manufacturer crash part, a non-
23 original equipment manufacturer aftermarket crash part, or a used part.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Regulations Pursuant to the Automotive Repair Act)**

26 21. Respondent is subject to disciplinary action pursuant to Code section
27 9884.7, subdivision (a)(6), in that in or around February 2007, Respondent failed to comply with

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1 Regulation 3353, subdivision (e), by changing the method of repairs or parts supplied, as set
2 forth in paragraph 17, subparagraphs a through m, above, without Operator #1's authorization.

3 **UNDERCOVER OPERATION NO. 2 - 1988 TOYOTA CAMRY**

4 22. On or about June 7, 2007, Cynthia Jessup, a Bureau undercover operator
5 ("Operator #2"), accompanied by an undercover Tulare County District Attorney Criminal
6 Investigator, brought a Bureau-documented 1998 Toyota Camry, California License # 4ARE088,
7 to Respondent's facility for collision repairs. Operator #2 gave Respondent Insurance Estimate
8 Number 01-AM97664, prepared by California State Automobile Association ("CSAA"), dated
9 June 4, 2007, totaling \$3,525.24, and told Respondent to repair the vehicle in accordance with
10 that estimate.

11 23. Respondent provided Operator #2 with his Estimate Report Number 823,
12 dated June 7, 2007, that stated, "Repair as per Est ID #01-AM97664", in the amount of
13 \$3,025.24.

14 24. On or about June 7, 2007, Respondent contacted Mr. Sullivan at CSAA.
15 Respondent deemed that Items 1 and 2 on the estimate were unnecessary and Mr. Sullivan
16 agreed to remove them. CSAA Estimate ID Number 01-AM97664, dated June 7, 2007, in the
17 amount of \$2,925.13 was generated ("Revised Insurance Estimate No. 01-AM97664"), and
18 Respondent agreed to perform the vehicle repairs accordingly.

19 25. On or about June 18, 2007, Respondent negotiated a check issued by
20 CSAA, payable to K & A Paint & Body and Cynthia Jessup in the amount of \$2,925.13, for the
21 vehicle repairs, which Respondent negotiated without Cynthia Jessup's signature. Cynthia
22 Jessup neither executed the check nor gave anyone permission to sign it on her behalf.

23 26. On or about June 26, 2007, Operator #2, accompanied by another
24 undercover Bureau operator, returned to Respondent's facility to retrieve the vehicle.
25 Respondent told Operator #2 that the vehicle repairs had been completed. Respondent charged
26 Operator #2 \$300 of the \$500 insurance deductible, which Operator #2 paid in cash. Operator #2
27 was provided with a copy of Report Number 823, dated June 26, 2007.

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1 a. Respondent received payment for repairs that had not been performed,
2 parts that had not been replaced with new parts or failing to replace parts at all, as more fully set
3 forth in paragraph 27, subparagraphs a through g, above.

4 b. Respondent negotiated a check requiring Operator #2's signature, which
5 Operator #2 had not signed, as more fully set forth in paragraph 26, above.

6 **SEVENTH CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with Provisions of the Automotive Repair Act)**

8 30. Respondent is subject to disciplinary action pursuant to Code section
9 9884.7, subdivision (a)(6), in that in or around June 2007, Respondent violated the provisions of
10 the Code, as follows:

11 a. **Section 9884.8:** Regarding Estimate Report Number 823, Respondent
12 failed to separately list all service work performed and parts supplied.

13 b. **Section 9884.9, subdivision (a):** Respondent failed to obtain customer
14 authorization to repair the vehicle in accordance with Revised Insurance Estimate No. 01-
15 AM97664, dated June 7, 2007.

16 c. **Section 9884.9, subdivision (c):** Respondent failed to provide an
17 itemized written estimate for the auto body repairs, including a list or description of all labor and
18 parts and whether the crash part was an original equipment manufacturer crash part, a non-
19 original equipment manufacturer aftermarket crash part, or a used part.

20 **EIGHTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations Pursuant to the Automotive Repair Act)**

22 31. Respondent is subject to disciplinary action pursuant to Code section
23 9884.7, subdivision (a)(6), in that in or around June 2007, Respondent failed to comply with
24 Regulation 3353, subdivision (e), by changing the method of repairs or parts supplied, as set
25 forth in paragraph 27, subparagraphs a through g, above, without Operator #2's authorization.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Departure From Trade Standards Pursuant to Regulations)**

3 32. Respondent is subject to disciplinary action pursuant to Code section
4 9884.7, subdivision (a)(7), in that in or around June 2007, Respondent wilfully departed from or
5 disregarded accepted trade standards for good and workmanlike repair, by failing to perform
6 auto body repairs that meet minimum requirements, as defined in the Regulations, as follows:

7 a. **Regulation 3364, subdivision (a)**: Respondent defaced the vehicle
8 identification number by painting over it.

9 b. **Regulation 3365, subdivision (b)**: Respondent failed to follow
10 procedures for corrosion protection by failing to refinish the lower edge of the replacement right
11 rear quarter panel, around the wheel opening, and inside the trunk; and, failed to paint the right
12 quarter panel and rear body panel.

13 **CONSUMER COMPLAINT (SCHNABEL) - 1971 CHEVROLET CHEVELLE**

14 33. On or about May 15, 2007, the Bureau received a Consumer Complaint
15 from Mr. Schnabel ("Consumer") regarding Respondent's failure to complete repairs to
16 Consumer's vehicle between in or around December 2006 and June 2007.

17 34. On or about December 6, 2006, Consumer agreed to pay Respondent
18 \$9,000 total for auto body repairs on his 1971 Chevrolet Chevelle, including the removal of the
19 body from the frame, replacement of the right quarter panel and trunk floor pan, sanding and
20 painting the body and frame, replacement of the steering and suspension bushings on the frame,
21 and reassembly. The Consumer paid Respondent a \$4,000 down payment. Respondent issued
22 Estimate Report No. 630, dated December 6, 2006 ("Estimate Report No. 630"), reflecting that
23 he had received a \$4,000 down payment and that the remaining balance was \$5,000. Respondent
24 gave the Consumer a copy of Estimate Report No. 630. The description of work on Estimate
25 Report No. 630 stated, "complete tear down install outers pull body sand and paint frame install
26 busing trunk floor complete body work put back together paintcomplete".

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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. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number AA 214658 issued to Larry R. Saenz, also known as Larry Ramirez, doing business as K & A Paint & Body;

2. Temporarily or permanently invalidating any other automotive repair dealer Registration issued to Larry R. Saenz, also known as Larry Ramirez, doing business as K & A Paint & Body;

3. Ordering Larry R. Saenz, also known as Larry Ramirez, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 4-15-08


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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