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

In the Matter of the Accusation Against: **ACE BODY SHOP & TOWING INC.** **dba ACE BODY SHOP & TOWING** **PEDRO ALCALA, PR.** **MONICA ALCAL, SEC./TR.** **JASON JANOWIAK, VP** 333 Lincoln Blvd. Lincoln, CA 95648 Automotive Repair Dealer Registration No. 229996 Respondents.	Case No. 77/15-36 OAH No. 2015021019

DECISION

The attached Stipulated Settlement and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter; except that the following typographical error is corrected as follows:

1. Page 2, line 10: The expiration date of "October 31, 2015" is corrected to "October 31, 2016".

This Decision shall become effective April 12, 2016.

DATED: March 14, 2016

TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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KENT D. HARRIS
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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: **ACE BODY SHOP & TOWING INC.** **dba ACE BODY SHOP & TOWING** **PEDRO ALCALA, PR.** **MONICA ALCALA, SEC./TR.** **JASON JANOWIAK, VP** **333 Lincoln Blvd.** **Lincoln, CA 95648** **Automotive Repair Dealer Registration No. 229996** Respondents.	Case No. 77/15-36 OAH No. 2015021019 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Phillip L. Arthur, Deputy Attorney General.

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2. Respondent Ace Body Shop & Towing Inc., Pedro Alcala, Pr. ("Respondent") is represented in this proceeding by attorney Leonard C. Hart Nibbrig, whose address is: Law Office of Leonard C. Hart Nibbrig, 455 Capitol Mall, Suite 330-D, Sacramento, California 95814-4422.

3. On or about August 5, 2004, the Bureau issued Automotive Repair Dealer Registration Number 229996 to Ace Body Shop & Towing, Inc., doing business as Ace Body Shop & Towing ("Respondent") with Pedro Alcala as the President, Monica Alcala as the Secretary/Treasurer, and Jason Janowiak as the Vice President. The registration was in full force and effect at all times relevant to the charges brought in Accusation No. 77/15-36 and will expire on October 31, 2015, unless renewed.

JURISDICTION

4. Accusation No. 77/15-36 was filed before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 10, 2015. Respondent timely filed its Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 77/15-36 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 77/15-36. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at its own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and

court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 77/15-36.

10. Respondent agrees that its Automotive Repair Dealer Registration is subject to discipline and agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

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

CONTINGENCY

12. This stipulation shall be subject to approval by the Director of Consumer Affairs or the Director's designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that it may not withdraw its agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

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

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. 229996 issued to Ace Body Shop & Towing, Inc., doing business as Ace Body Shop & Towing (Respondent) with Pedro Alcala as the President, Monica Alcala as the Secretary/Treasurer, and Jason Janowiak as the Vice President, is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. **Actual Suspension.** Automotive Repair Dealer Registration No. 229996 issued to Respondent Ace Body Shop & Towing, Inc., doing business as Ace Body Shop & Towing, with Pedro Alcala as the President, Monica Alcala as the Secretary/Treasurer, and Jason Janowiak as the Vice President, is suspended for two (2) consecutive days, to begin on the effective date of the decision.

2. **Obey All Laws.** Comply with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.

3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be

conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

4. **Reporting.** Respondent or Respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

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

6. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

7. **Jurisdiction.** If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

8. **Violation of Probation.** Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, revoke Respondent's Automotive Repair Dealer Registration.

9. **Cost Recovery.** Respondent shall reimburse the amount of $20,523.97, representing the Bureau's costs for investigation and prosecution of this action. Payment to the Bureau of the full amount of cost recovery shall be made in thirty-six (36) consecutive equal monthly installments with the first payment due no later than 30 days after the effective date of the decision and the last payment due no later than 12 months before probation terminates. Failure to complete payment of cost recovery within this time frame shall constitute a violation of probation which may subject Respondent's Automotive Repair Dealer Registration to outright revocation; however, the Director or the Director's Bureau of Automotive Repair designee may elect to

continue probation until such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Leonard C. Hart Nibbrig. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 10-23-15

ACE BODY SHOP & TOWING INC., dba ACE BODY SHOP & TOWING; PEDRO ALCALA, PRESIDENT
Respondent

I have read and fully discussed with Respondent Ace Body Shop & Towing Inc., dba Ace Body Shop & Towing, the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 10/20/15

Leonard C. Hart Nibbrig
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 11/2/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General

PHILLIP L. ARTHUR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 77/15-36

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In the Matter of the Accusation Against: **ACE BODY SHOP & TOWING, INC.** **dba ACE BODY SHOP & TOWING** **PEDRO ALCALA, PR.** **MONICA ALCALA, SEC./TR.** **JASON JANOWIAK, VP** **333 Lincoln Blvd.** **Lincoln, CA 95648** **Automotive Repair Dealer Registration No. 229996** Respondents.	Case No. 77/15-36 **ACCUSATION**

Patrick Dorais ("Complainant") alleges:

PARTIES

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

2. On or about August 5, 2004, the Bureau issued Automotive Repair Dealer Registration Number 229996 ("registration") to Ace Body Shop & Towing, Inc., doing business as Ace Body Shop & Towing ("Respondent") with Pedro Alcala as the President, Monica Alcala

as the Secretary/Treasurer, and Jason Janowiak as the Vice President. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.

STATUTORY PROVISIONS

3. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent part:

> (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.
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> (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.
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> . . .
>
> (4) Any other conduct which constitutes fraud.
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> . . .
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> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
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> . . .
>
> (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.

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COST RECOVERY

4. 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.

CONSUMER COMPLAINT – 2010 FORD FUSION

5. On or about September 4, 2013, the Bureau received a consumer complaint from Nick Lopez ("Lopez") regarding repairs to his 2010 Ford Fusion performed by Respondent's facility on or about November 25, 2012, following a collision. On or about November 28, 2012, the consumer's insurance company, United Financial Casualty Company ("Progressive"), inspected the vehicle and prepared Estimate ID No. 12-3954339-01 in the amount of $4,297.28 (less a $500 deductible).

6. On or about December 7, 2012, Respondent received and cashed a check from Progressive in the amount of $4,297.28 for the repairs to Lopez's vehicle.

7. On or about October 15 and November 4, 2013, a Bureau representative inspected the consumer's vehicle using Progressive's Estimate ID No. 12-3954339-01, as a reference. The inspection revealed that Respondent failed to do the following:

a. Replace the front bumper energy absorber, as invoiced.

b. Replace the front driver's side wheel with a new OEM wheel, as invoiced.

c. Replace the steering gear assembly with a new OEM part, as invoiced.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

8. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or between November 28 through December 7, 2012, Respondent made statements which it knew, or which by exercise of reasonable care it should have known, to be untrue or misleading when it falsely represented to Progressive and Lopez that the vehicle had been repaired pursuant to Progressive's estimate number 12-3954339-01, when in fact, it was not, as more particularly set forth above in paragraph 7, and its subparts.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

9. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that in or about December 7, 2012, Respondent committed fraud when it accepted payment from Progressive to perform repairs or services pursuant to estimate number 12-3954339-01, when in fact, those repairs and/or services had not been performed, as more particularly set forth above in paragraph 7, and its subparts.

VEHICLE INSPECTION – 2011 CHEVROLET HHR LT

10. On or about October 11, 2013, Lawrence Lal ("Lal") had his 2011 Chevrolet HHR LT repaired at Respondent's facility. Respondent prepared an estimate in the amount of $1,737.53, dated October 15, 2013. Respondent submitted the estimate to the consumer's insurance company, California State Automobile Association ("CSAA"). CSAA paid Respondent $1,737.35 for the repairs.

11. On or about December 5, 2013, a Bureau representative inspected Lal's vehicle using Respondent's estimate dated October 15, 2013, as a reference. The inspection revealed that Respondent failed to replace the vehicle's windshield with a new OEM factory windshield.

THIRD CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

12. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about October 16, 2013, Respondent made statements which it knew, or which by exercise of reasonable care should have been known, to be untrue or misleading when it falsely represented to CSAA and Lal that the vehicle had been repaired pursuant to Respondent's estimate dated October 15, 2013, when in fact, it was not, as more particularly set forth above in paragraph 11.

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FOURTH CAUSE FOR DISCIPLINE

(Fraud)

13. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about October 16, 2013, Respondent committed fraud when it accepted payment from CSAA to perform repairs or services pursuant to Respondent's estimate dated October 15, 2013, when in fact, those repairs and/or services had not been performed as stated, as more particularly set forth above in paragraph 11.

VEHICLE INSPECTION – 2006 MAZDA 6

14. On or about July 11, 2013, Kristopher Williams ("Williams") had his 2006 Mazda 6 repaired at Respondent's facility following a collision. The consumer's insurance company, Mercury Insurance ("Mercury"), prepared estimate number 130015003208-2100102, dated June 18, 2013, in the amount of $3,054.48. On or about July 12, 2013, Mercury paid Respondent $2,554.40 (less a $500 deductible) for the repairs.

15. On or about December 13, 2013, a Bureau representative inspected Williams's vehicle using Mercury's estimate number 130015003208-2100102, dated June 18, 2013, and Respondent's invoice number 007124, dated July 11, 2013, as a reference. The inspection revealed the following:

a. Respondent failed to overhaul the front bumper assembly, as invoiced.

b. Respondent failed to replace the front bumper cover, as invoiced. The front bumper cover had been repaired.

c. Respondent failed to replace the right front bumper grille, as invoiced.

d. Respondent failed to replace the center bumper grille with a new-OEM part, as invoiced.

e. Respondent failed to replace the front bumper impact absorber with a new-OEM part, as invoiced.

f. Respondent failed to replace the front bumper reinforcement bar with a new-OEM part, as invoiced.

g. Respondent failed to blend the hood paint, as invoiced.

h. Respondent failed to remove and install the left and right hood washer nozzles, as invoiced.

i. Respondent failed to repair the right front fender, as invoiced.

j. Respondent failed to refinish (paint) the right fender, including the clear coat, as invoiced.

k. Respondent failed to remove and install the right fender mudguard, as invoiced.

l. Respondent failed to remove and install the right fender liner and right rocker molding to refinish the right fender, as invoiced.

FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

16. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about July 11, 2013, Respondent made statements which it knew, or which by exercise of reasonable care should have been known, to be untrue or misleading when it falsely represented to Mercury and Williams that the vehicle had been repaired pursuant to Mercury's estimate number 130015003208-2100102, dated June 18, 2013, and Respondent's invoice number 007124, dated July 11, 2013, when in fact, it was not, as more particularly set forth above in paragraph 15, and its subparts.

SIXTH CAUSE FOR DISCIPLINE

(Fraud)

17. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that in or about July 11, 2013, Respondent committed fraud when it accepted payment from Mercury to perform repairs or services pursuant to Mercury's estimate number 130015003208-2100102, dated June 18, 2013, and Respondent's invoice number 007124, dated July 11, 2013, when in fact, those repairs and/or services had not been performed as stated, as more particularly set forth above in paragraph 15, and its subparts.

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OTHER MATTERS

18. Under Code section 9884.7(c), the director may suspend or revoke the registrations for all places of business operated in this state by Ace Body Shop & Towing, Inc., doing business as Ace Body Shop & Towing, upon a finding that it 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, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 229996, issued to Ace Body Shop & Towing, Inc., doing business as Ace Body Shop & Towing;

2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Ace Body Shop & Towing, Inc., doing business as Ace Body Shop & Towing;

3. Ordering Ace Body Shop & Towing, Inc., doing business as Ace Body Shop & Towing 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: February 6, 2015

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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