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

11 In the Matter of the Accusation Against:
12 **JESUS B. OCHOA, Member**
13 **QUALITY MOTORS LLC**
14 **2620 Santa Rosa Avenue**
Santa Rosa, CA 95407
15 **Automotive Repair Dealer Registration No.**
16 **ARD 230342**
17 Respondent.

Case No. 77/13-23
A C C U S A T I O N

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 2003, the Bureau of Automotive Repair issued Automotive Repair Dealer
23 Registration Number ARD 230342 to Jesus B. Ochoa, Member, Quality Motors LLC
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 and will expire on October 31, 2012,
26 unless renewed.

1 **JURISDICTION**

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

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

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

11 **STATUTORY/REGULATORY PROVISIONS**

12 6. Section 9884.9, subdivision (a) states:

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

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

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

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

5 _____
6 (signature or initials)

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

9 . . .

10 "(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto
11 body or collision repairs, shall provide an itemized written estimate for all parts and labor to the
12 customer. The estimate shall describe labor and parts separately and shall identify each part,
13 indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part
14 shall be identified on the written estimate and the written estimate shall indicate whether the crash
15 part is an original equipment manufacturer crash part or a non-original equipment manufacturer
16 aftermarket crash part."

17 7. Section 9884.8 of the Code states, in pertinent part:

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

1 8. Section 9884.7 of the Code states, in pertinent part:

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

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

10 ...

11 (4) Any other conduct that constitutes fraud.

12 ...

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

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

18 9. California Code of Regulations, title 16, section 3353, states:

19 "No work for compensation shall be commenced and no charges shall accrue without
20 specific authorization from the customer in accordance with the following requirements:

21 "(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
22 estimated price for labor and parts for a specific job.

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

1 10. California Code of Regulations, title 16, section 3371, states:

2 "No dealer shall publish, utter, or make or cause to be published, uttered, or made any false
3 or misleading statement or advertisement which is known to be false or misleading, or which by
4 the exercise of reasonable care should be known to be false or misleading. Advertisements and
5 advertising signs shall clearly show the following:

6 "(a) Firm Name and Address. The dealer's firm name and address as they appear on the
7 State registration certificate as an automotive repair dealer; and

8 "(b) Telephone Number. If a telephone number appears in an advertisement or on an
9 advertising sign, this number shall be the same number as that listed for the dealer's firm name
10 and address in the telephone directory, or in the telephone company records if such number is
11 assigned to the dealer subsequent to the publication of such telephone directory."

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

13 "No automotive repair dealer or individual in charge shall, in filling out an estimate,
14 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
15 withhold therefrom or insert therein any statement or information which will cause any such
16 document to be false or misleading, or where the tendency or effect thereby would be to mislead
17 or deceive customers, prospective customers, or the public."

18 12. California Code of Regulations, title 16, section 3365, subdivision (a), states:

19 "The accepted trade standards for good and workmanlike auto body and frame repairs
20 shall include, but not be limited to, the following:

21 (a) Repair procedures including but not limited to the sectioning of component parts,
22 shall be performed in accordance with OEM service specifications or nationally distributed and
23 periodically updated service specifications that are generally accepted by the autobody repair
24 industry.

25 ...

26 (2) The invoice shall separately list, describe and identify all of the following:

27 (A) All service and repair work performed, including all diagnostic and warranty
28 work, and the price for each described service and repair."

1 **COST RECOVERY**

2 13. Business and Professions Code section 125.3 provides that the Bureau 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 **2005 SAAB**

7 14. On or about January 27, 2010, Wilhelmine G.'s¹ 2005 Saab was involved in a front
8 end collision. On or about February 11, 2010, the Saab was taken to Respondent's facility,
9 located at 2620 Santa Rosa Avenue, in Santa Rosa, California. A representative from State Farm
10 Insurance inspected the vehicle at Respondent's facility and estimated the repair cost at
11 \$6,007.02. A check was issued by State Farm Insurance to Wilhelmine G. for the repair cost less
12 the \$500.00 deductible. Respondent offered to perform the repairs and Wilhelmine G.'s daughter,
13 Chantel G. agreed to Respondent's offer. Respondent did not provide Chantel G. with a written
14 estimate. Wilhelmine G. paid Respondent a total of \$5,507.02 to repair the Saab. Respondent did
15 not provide Chantel G. with an invoice when she picked up the Saab from Respondent's facility.

16 On December 24, 2010, the Saab was involved in a second collision. The Saab was towed
17 to Zappellis Body Shop, located at 4914 Sonoma Highway, Santa Rosa, California. Upon
18 inspection of the new collision damage, Zappellis discovered issues related to the repairs
19 performed by Respondent from the January 27, 2010 collision. A representative from State Farm
20 Insurance re-inspected the Saab and determined that Respondent did not repair the Saab pursuant
21 to the written estimate prepared by the State Farm Insurance representative.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Failure to Obtain Authorization)**

24 15. Respondent's automotive repair dealer registration is subject to disciplinary action
25 under Code section 9884.9, subdivision (a), as defined in California Code of Regulations, title 16,
26

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

1 section 3353, subdivision (a), in that Respondent failed to provide a written estimate and obtain
2 authorization from a customer prior to commencing repairs.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Provide Invoice)**

5 16. Respondent's automotive repair dealer registration is subject to disciplinary action
6 under Code section 9884.8, in that Respondent failed to provide an invoice to a customer.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Willful Departure from Trade Standards)**

9 17. Respondent's automotive repair dealer registration is subject to disciplinary action
10 under Code section 9884.7, in that Respondent willfully departed from accepted trade standards
11 for good and workmanlike repair of the 2005 Saab, as defined in California Code of Regulations,
12 title 16, section 3365, subdivision (a), as follows:

- 13 a. Failed to properly refinish the front bumper cover.
- 14 b. Failed to insert proper front bumper rivets.
- 15 c. Failed to properly replace right front bumper reinforcement.
- 16 d. Failed to properly replace left bumper reinforcement.
- 17 e. Failed to replace front bumper impact absorber.
- 18 f. Failed to replace front bumper license plate bracket.
- 19 g. Failed to properly replace center grille.
- 20 h. Failed to properly replace right grille.
- 21 i. Failed to properly replace left grille.
- 22 j. Failed to properly replace right front combination lamp assembly.
- 23 k. Failed to replace left front side marker assembly.
- 24 l. Failed to properly repair hood panel and refinish hood outside.
- 25 m. Failed to replace right fender panel and refinish right fender outside.
- 26 n. Failed to replace lower front body member.
- 27 o. Failed to properly blend paint color used on right front outside door.
- 28

1 p. Failure to remove and install the right front door frame molding, right front outer belt
2 molding, right front door mirror, right front adhesive molding, and right front outer door handle
3 so that the paint color could be properly blended.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(False/Misleading Records)**

6 18. Respondent's automotive repair dealer registration is subject to disciplinary action
7 under Code section 9884.7, subdivision (a)(1), as defined in California Code of Regulations, title
8 16, section 3373, in that Respondent provided documents that were price quotes for parts, and
9 represented that the documents were receipts for parts as if the parts were purchased, when in fact
10 the parts were not purchased.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 19. Respondent's automotive repair dealer registration is subject to disciplinary action
14 under Code section 9884.7, subdivision (a)(4), in that Respondent accepted payment for repair of
15 the 2005 SAAB, but did not perform the labor or install parts as set forth in paragraph 17, above.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Provisions of the Act)**

18 20. Respondent's automotive repair dealer registration is subject to disciplinary action
19 under Code section 9884.7, subdivision (a)(6) in that Respondent failed to comply with
20 provisions of the Automotive Repair Act, as set forth in paragraphs 15, 16, 17, 18, and 19, above.

21 **2004 MAZDA**

22 21. On or about April, 2011, Kyle M. brought his 2004 Mazda to Respondent's facility so
23 that it could be sold on consignment at Respondent's used car lot at the same location. Kyle M.
24 authorized Respondent to inspect his vehicle as part of the consignment sale because the check
25 engine light was on, and to perform a smog inspection. Approximately three weeks later,
26 Respondent advised Kyle M. that his 2004 Mazda had sold for \$11,400.00, and Kyle M. received
27 a check for that amount. Respondent provided Kyle M. with documents listing repairs to the
28

1 2004 Mazda in the amount of \$1,479.49. Respondent replaced the front and rear oxygen sensors,
2 air flow meter, and clutch switch without Kyle M's authorization.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Obtain Authorization)**

5 22. Respondent's automotive repair dealer registration is subject to disciplinary action
6 under Code section 9884.9, subdivision (a), as defined in California Code of Regulations, title 16,
7 section 3353, subdivision (a), in that Respondent failed to provide a written estimate and obtain
8 authorization from a customer prior to commencing repairs.

9 **EIGHTH CAUSE FOR DISCIPLINE**

10 **(False/Misleading Records)**

11 23. Respondent's automotive repair dealer registration is subject to disciplinary action
12 under Code section 9884.7, subdivision (a)(1), as defined in California Code of Regulations, title
13 16, section 3373, in that Respondent provided an invoice that the air flow meter, front and rear
14 oxygen sensors had been replaced, when in fact the parts were not replaced.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 24. Respondent's automotive repair dealer registration is subject to disciplinary action
18 under Code section 9884.7, subdivision (a)(4), in that Respondent accepted payment for new
19 parts for the 2004 Mazda, but did not install the parts as set forth in paragraph 23, above.

20 **TENTH CAUSE FOR DISCIPLINE**

21 **(Failure to Record all Work Performed)**

22 25. Respondent's automotive repair dealer registration is subject to disciplinary action
23 under Code section 9884.8, as defined in California Code of Regulations, title 16, section 3356,
24 subdivision (a)(2)(A), in that Respondent failed to record and describe all diagnostic and repair
25 work performed on the 2004 Mazda.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 26. Respondent's automotive repair dealer registration is subject to disciplinary action
4 under Code section 9884.7, subdivision (a)(1), as defined in California Code of Regulations, title
5 16, section 3371, in that Respondent informed the Bureau's representative that a recent smog
6 inspection had been performed on the 2004 Mazda, when in fact Bureau records indicated that the
7 vehicle had not been recently tested.

8 **Post-Repair Inspection 2004 Volvo**

9 27. On or around August 4, 2011, a Bureau representative conducted a post-repair
10 inspection of Julie C's 2004 Volvo. The vehicle had been involved in a collision and was
11 repaired at Respondent's facility. A representative from Farmer's Insurance inspected the vehicle
12 and estimated the repair cost at \$2,767.79. A check was issued by State Farm Insurance to Julie
13 C. and Respondent for \$2,767.79. A second estimate for the same claim was performed and an
14 additional check in the amount of \$1,201.38 was made payable to Lou Saare Body Shop for that
15 amount. The work related to the rear body damage to the 2004 Volvo was sublet to Lou Saare
16 Body Shop, after initial work was performed by Respondent.

17 **TWELVETH CAUSE FOR DISCIPLINE**

18 **(Failure to Obtain Authorization)**

19 28. Respondent's automotive repair dealer registration is subject to disciplinary action
20 under Code section 9884.9, subdivision (a), as defined in California Code of Regulations, title 16,
21 section 3353, subdivision (a), in that Respondent failed to provide a written estimate and obtain
22 authorization from a customer prior to commencing repairs.

23 **THIRTEENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Provide Invoice)**

25 29. Respondent's automotive repair dealer registration is subject to disciplinary action
26 under Code section 9884.8, in that Respondent failed to provide an invoice to a customer.
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FORTEENTH CAUSE FOR DISCIPLINE

(Failure to Provide Estimate)

30. Respondent's automotive repair dealer registration is subject to disciplinary action under Code section 9884.7, subdivision (a)(6), as defined in California Code of Regulations, title 16, section 3353, subdivision (a), in that Respondent failed to provide an estimate to a customer.

FIFTEENTH CAUSE FOR DISCIPLINE

(Fraud)

31. 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 a replacement of the center panel and a four wheel alignment for the 2004 Volvo, but did not install the panel or perform the work.

PRAAYER

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 or suspending Automotive Repair Dealer Registration Number ARD 230342, issued to Jesus B. Ochoa
2. Ordering Jesus B. Ochoa 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: ~~December~~ 5, 2012


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

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