

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

In the Matter of the Accusation Against:

AUTO PERFECT BODY SHOP
LY THAY NHIAYI, PARTNER
LY PAO NHIAYI, PARTNER
6020 Freeport Blvd.
Sacramento, CA 95822

Automotive Repair Dealer Reg. No.
ARD 235286

Respondent.

Case No. 77/14-48

OAH No. 2014040503

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

The suspension of Automotive Repair Dealer Reg. No. ARD 235286, issued to Ly Thay Nhiayi and Ly Pao Nhiayi, shall commence on the effective date of this Decision.

This Decision shall become effective March 27, 2015.

DATED: March 6, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVIR
Deputy Attorney General
4 State Bar No. 197268
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7 *Attorneys for Complainant*

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

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16 **Automotive Repair Dealer Reg. No. ARD**
235286

17 Respondent.

Case No. 77/14-48

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STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
23 brought this action solely in his official capacity and is represented in this matter by Kamala D.
24 Harris, Attorney General of the State of California, by Karen R. Denvir, Deputy Attorney
25 General.

26 2. Respondent Auto Perfect Body Shop; Ly Thay Nhiayi, Partner; Ly Pao Nhiayi,
27 Partner ("Respondent") is represented in this proceeding by attorney Kresta Nora Daly, whose
28 address is: REA Building, 431 I Street, Suite 201, Sacramento CA 95814.

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CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 77/14-48.

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

CONTINGENCY

11. 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 they 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.

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

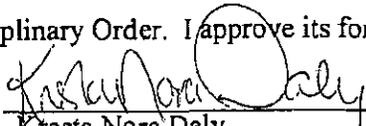
13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (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.

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I have read and fully discussed with Respondent Auto Perfect Body Shop; Ly Thay Nhiayi, Partner; Ly Pao Nhiayi, Partner, the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

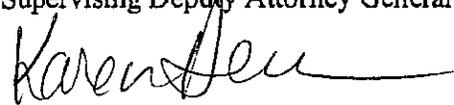
DATED: 9 January 2015


Kresta Nora Daly
Attorney for Respondent

ENDORSEMENT

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

Dated: Jan. 13, 2015

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General

KAREN R. DENVIR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 77/14-48

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15 **Sacramento, CA 95822**
16 **Automotive Repair Dealer Reg. No. ARD 235286**
17 **Respondent.**

Case No. **77/14-48**

ACCUSATION

18 Complainant alleges:

19 **PARTIES**

- 20 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity
21 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
22 2. On or about September 1, 2004, the Director of Consumer Affairs ("Director") issued
23 Automotive Repair Dealer Registration Number ARD 235286 ("registration") to Auto Perfect
24 Body Shop ("Respondent"), with Ly Thay Nhiayi and Ly Pao Nhiayi as partners. Respondent's
25 registration expired on August 31, 2012, but was renewed on November 29, 2012. Respondent's
26 registration will expire on August 31, 2014, unless renewed.

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1 JURISDICTION

2 3. Business and Professions Code ("Code") section 9884.7 provides that the Director
3 may revoke an automotive repair dealer registration.

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

8 STATUTORY PROVISIONS

9 5. Code section 9884.7 states, in pertinent part:

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

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

19

20 (3) Failing or refusing to give to a customer a copy of any document
21 requiring his or her signature, as soon as the customer signs the document.

22 (4) Any other conduct that constitutes fraud.

23

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

26 6. Code section 9884.6, subdivision (a), states that it is unlawful for any person to be an
27 automotive repair dealer unless that person has registered in accordance with this chapter and
28 unless that registration is currently valid.

7. Code section 9884.8 states, in pertinent part, that "[a]ll work done by an automotive
repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all
service work done and parts supplied . . . "

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1 8. Code section 22, subdivision (a), states:

2 "Board" as used in any provision of this Code, refers to the board in
3 which the administration of the provision is vested, and unless otherwise expressly
4 provided, shall include "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

5 9. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes
6 "registration" and "certificate."

7 **COST RECOVERY**

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

12 **CONSUMER COMPLAINT (LEE): 2012 HONDA PILOT**

13 11. On or about September 11, 2012, Jack Lee's ("Lee") 2012 Honda Pilot sustained
14 body damage to the left rear door and fender area in a collision. Lee made a claim for the damage
15 with Wawanesa Insurance ("Wawanesa").

16 12. On or about September 17, 2012, Outside Claim Support, Inc. ("OCS") inspected the
17 vehicle on behalf of Wawanesa.

18 13. On or about September 21, 2012, Lee received a copy of an estimate from OCS,
19 which called for, among other things, the replacement of the left rear quarter panel and wheel.

20 14. On or about September 27, 2012, Lee took the vehicle to Auto Perfect Body Shop and
21 met with a male individual, who identified himself as "Ly", the owner. Lee told Ly that he
22 wanted the vehicle repaired per the OCS estimate and handed him a copy. Ly stated that he
23 would begin the repairs immediately.

24 15. On or about September 28, 2012, Wawanesa issued a check for \$5,742.99 made
25 payable to Lee and Auto Perfect Body Shop.

26 16. On or about October 2, 2012, an OCS representative called Lee and told him that
27 Auto Perfect Body Shop had submitted a supplemental repair request for the vehicle and that
28 Wawanesa had agreed to pay the supplement amount of \$197.43.

1 17. On or about October 3, 2012, Lee stopped by the facility and inspected the repairs.
2 Lee found that the door had been replaced, but the quarter panel appeared to have been repaired
3 rather than replaced. Further, there appeared to be a large amount of body filler in the area of
4 impact. Ly told Lee that he was not replacing the quarter panel on the vehicle, but was repairing
5 the part instead as it was a "less intrusive" method of repair. Lee reminded Ly that he wanted the
6 vehicle repaired per the insurance estimate.

7 18. On or about October 8, 2012, Lee went to the facility to pick up the vehicle. Ly had
8 Lee sign a supplemental repair estimate, but did not provide him with a copy or a final invoice.

9 19. On or about October 9, 2012, Lee filed a complaint with the Bureau, alleging that
10 Auto Perfect Body Shop committed insurance fraud by failing to repair the vehicle as estimated.

11 20. On or about October 10, 2012, Wawanesa issued a check for \$197.43 made payable
12 to Auto Perfect Body Shop, for total payments on the repairs of \$5,940.42.

13 21. On or about January 3, 2013, the Bureau inspected the vehicle using, for comparison,
14 an estimate dated September 21, 2012, in the gross amount of \$6,242.99, that had been prepared
15 by OCS. The Bureau found that the left quarter panel had not been replaced per the estimate.

16 22. On or about January 4, 2013, a representative of the Bureau went to the facility and
17 met with Ly Pao Nhiayi ("Pao"), Ly Thay Nhiayi ("Thay") and Thay's daughter, Bao Nhiayi
18 ("Bao"). Bao stated that the vehicle was repaired per the insurance estimate and that the repairs
19 had been performed by Pao. Bao provided the representative with the parts purchase receipts for
20 the vehicle, including parts receipts for a left quarter panel and wheel from Elk Grove Honda.
21 Later, the representative went to Elk Grove Honda and obtained documentation from the parts
22 manager showing that Auto Perfect Body Shop had returned the left quarter panel and wheel to
23 Elk Grove Honda for credit. The representative went back to Auto Perfect Body Shop and met
24 with Thay, Pao and Bao. Pao admitted that he had not replaced the above parts on the vehicle,
25 but claimed that it was because he had waived Lee's \$500 insurance deductible. Later, Pao
26 claimed that he and Lee had agreed that the facility would pay for his rental vehicle rather than
27 replace the quarter panel and wheel.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Code)**

3 27. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply with provisions of that Code, as follows:

5 a. **9884.6, subdivision (a)**: On and between September 27, 2012 and October 8, 2012,
6 Respondent performed automotive repairs on Lee's 2012 Honda Pilot when its automotive repair
7 dealer registration was expired or invalid.

8 b. **9884.8**: Respondent's automotive technicians, partners, employees and/or members
9 failed to provide Lee with an invoice for the collision repairs on his 2012 Honda Pilot.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Director of Consumer Affairs issue a decision:

13 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
14 235286, issued to Auto Perfect Body Shop;

15 2. Ordering Auto Perfect Body Shop to pay the Director of Consumer Affairs the
16 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
17 Professions Code section 125.3;

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

19
20 DATED: March 5, 2014



21 PATRICK DORAIS
22 Chief
23 Bureau of Automotive Repair
24 Department of Consumer Affairs
25 State of California
26 Complainant

27 SA2013113972

