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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. 7711-35

12 **LA LOMA 7 AUTO BODY REPAIR**
13 **JUAN CARLOS ORTIZ, OWNER**
14 **3033 San Pablo Avenue**
15 **Berkeley, CA 94702**
16 **Automotive Repair Dealer Reg. No. ARD 236757**

ACCUSATION

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. In or about 2004, the Director of Consumer Affairs ("Director") issued Automotive
22 Repair Dealer Registration Number ARD 236757 to Juan Carlos Ortiz ("Respondent"), owner of
23 La Loma 7 Auto Body Repair. Respondent's automotive repair dealer registration was in full
24 force and effect at all times relevant to the charges brought herein and will expire on December
25 31, 2011, unless renewed.

26 **JURISDICTION**

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

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 10. California Code of Regulations, title 16, section ("Regulation") 3303, subdivision (j),
8 states:

9 Authorization" means consent. Authorization shall consist of the
10 customer's signature on the work order, taken before repair work begins.
11 Authorization shall be valid without the customer's signature only when oral or
12 electronic authorization is documented in accordance with applicable sections of
13 these regulations.

14 11. Regulation 3364, subdivision (a), states:

15 An automotive repair dealer shall not remove, paint over, or otherwise
16 deface any label or sticker which has been affixed to the doorpost, dash, underhood,
17 windshield, or other location on a vehicle, and which contains identifying information
18 regarding the vehicle or its emission control system components. An automotive
19 repair dealer shall replace any such label or sticker which would otherwise be
20 destroyed as part of the repair process, unless the replacement label or sticker is not
21 reasonably available.

22 **COST RECOVERY**

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

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1 **VEHICLE INSPECTION #1: 1991 HONDA ACCORD**

2 13. On or about July 29, 2010, the Bureau received a Suspected Fraudulent Claim
3 Referral Form from the California State Automobile Association ("CSAA"). CSAA reported that
4 their insured, Beatriz Rivas ("Rivas"), brought her 1991 Honda Accord to Respondent's facility
5 for repair following an automobile accident. According to the facility's written estimate, the right
6 front door panel was to be repaired and refinished on the vehicle. CSAA stated that they paid the
7 facility \$1,014.91 to repair the vehicle pursuant to the estimate. Later, when CSAA inspected the
8 vehicle, they found that the door panel had not been repaired and that only touch up paint had
9 been applied on the panel. CSAA stated that the facility failed to complete \$815.70 of repairs on
10 the vehicle as estimated.

11 14. In or about August 2010, the Bureau received copies of various documents from
12 CSAA, including Respondent's itemized estimate dated June 22, 2010, in the net amount of
13 \$1,014.91 and a check for \$1,014.91 that CSAA had issued to the facility.

14 15. On September 23, 2010, the Bureau inspected the vehicle using the facility's estimate
15 for comparison, and found that they had not repaired the vehicle as paid for by CSAA, as set forth
16 below. Further, the facility failed to repair the right front window to accepted trade standards.
17 The total estimated value of the repairs the facility failed to perform on the vehicle is
18 approximately \$801.66.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 16. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
22 subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:

23 a. Respondent obtained payment from CSAA for repairing and refinishing the left front
24 outer door on Rivas' 1991 Honda Accord. In fact, that part had not been repaired or refinished on
25 the vehicle.

26 b. Respondent obtained payment from CSAA for repairing and refinishing the right
27 front outer door on Rivas' 1991 Honda Accord. In fact, that part had not been repaired or
28 refinished on the vehicle.

1 c. Respondent obtained payment from CSAA for removing, refinishing, and reinstalling
2 the left front outer door handle on Rivas' 1991 Honda Accord. In fact, none of those repairs had
3 been performed on the vehicle.

4 d. Respondent obtained payment from CSAA for removing, refinishing, and reinstalling
5 the right front outer door handle on Rivas' 1991 Honda Accord. In fact, none of those repairs had
6 been performed on the vehicle.

7 e. Respondent obtained payment from CSAA for applying corrosion protection and
8 color tint to, and covering the exterior of, Rivas' 1991 Honda Accord. In fact, none of those labor
9 operations were performed on the vehicle.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Departure from Trade Standards)**

12 17. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
13 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
14 standards for good and workmanlike repair without the consent of the owner or the owner's duly
15 authorized representative in a material respect, as follows: Respondent failed to seat the right
16 front window on Rivas' 1991 Honda Accord in the rubber window channel, preventing the
17 window from being rolled up or down.

18 **VEHICLE INSPECTION #2: 2000 ACURA RL**

19 18. On or about December 3, 2010, David McDonald ("McDonald") took his 2000 Acura
20 RL to Respondent's facility for repair following an automobile accident. McDonald was given a
21 written estimate totaling \$2,073.53. After discussing the proposed repairs, the facility reduced the
22 estimate price to \$1,700. McDonald did not sign the estimate or a work order authorizing the
23 repairs on the vehicle.

24 19. On or about December 13, 2010, McDonald returned the vehicle to the facility and
25 informed them that he was going to file a claim for the collision damage with his insurance
26 company, Geico. Respondent offered to take the vehicle to Geico and obtain an insurance
27 estimate for the repairs. That same day, Geico inspected the vehicle and prepared an itemized
28 estimate in the gross amount of \$3,337.83. According to the estimate, McDonald was responsible

1 to pay a \$1,000 insurance deductible, for a net estimate price of \$2,337.82. Later, Respondent
2 contacted McDonald and informed him of the Geico estimate. McDonald told Respondent that he
3 did not want the bumper or hood replaced on the vehicle as estimated by Geico, but wanted the
4 parts repaired instead as provided on the facility's estimate. Respondent told McDonald that since
5 Geico was involved, Respondent was obligated to repair the vehicle per the insurance estimate;
6 otherwise, he would be guilty of insurance fraud. Later, McDonald received an email from
7 Geico, informing him that Respondent's facility had submitted a supplement of \$352.42 in
8 additional collision repairs.¹ The facility had not contacted McDonald to obtain his authorization
9 for the additional repairs on the vehicle.

10 20. On or about December 23, 2010, McDonald returned to the facility to retrieve the
11 vehicle, paid the facility \$2,337.83, and received a copy of an invoice.

12 21. In or about January 2011, McDonald filed a complaint with the Bureau, alleging that
13 the facility had failed to repair the vehicle as estimated.

14 22. On or about January 18, 2011, McDonald provided the Bureau with copies of the
15 original Geico estimate and a Geico supplemental estimate, Supplement of Record 1 with
16 Summary, in the net amount of \$2,690.25 ("supplemental estimate").

17 23. On January 24, 2011, a representative of the Bureau inspected the vehicle using the
18 supplemental estimate for comparison and found that Respondent's facility had failed to repair the
19 vehicle as estimated. The total estimated value of the repairs the facility failed to perform on the
20 vehicle is approximately \$1,281.74.

21 24. On February 1, 2011, the Bureau representative went to the facility and met with
22 Respondent. Respondent admitted that he had failed to repair or replace the front bumper on the
23 vehicle, but claimed that he had done so intentionally at McDonald's request so that the insurance
24 deductible could be waived. Respondent also stated that he had replaced the grill.

25 25. On February 8, 2011, the Bureau representative re-inspected the vehicle and found
26 that the grill had not been replaced.

27 _____
28 ¹ On December 21, 2010, Geico paid the facility \$352.42 for the supplemental repairs.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 26. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the
5 exercise of reasonable care should have known to be untrue or misleading, as follows:
6 Respondent represented to the Bureau representative that he had replaced the grill assembly on
7 McDonald's 2000 Acura RL. In fact, that part had not been replaced on the vehicle.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 27. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
11 subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:

12 a. Respondent obtained payment from McDonald and/or Geico for replacing the front
13 bumper cover on McDonald's 2000 Acura RL with a reconditioned part and for refinishing the
14 reconditioned bumper cover. In fact, the existing front bumper cover had not been repaired,
15 replaced, or refinished on the vehicle.

16 b. Respondent obtained payment from McDonald and/or Geico for replacing the license
17 plate mount on McDonald's 2000 Acura RL. In fact, that part had not been replaced on the
18 vehicle.

19 c. Respondent obtained payment from McDonald and/or Geico for replacing the left and
20 right chrome moldings on McDonald's 2000 Acura RL. In fact, those parts had not been replaced
21 on the vehicle.

22 d. Respondent obtained payment from McDonald and/or Geico for replacing the grill
23 assembly on McDonald's 2000 Acura RL. In fact, that part had not been replaced on the vehicle.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Departure from Trade Standards)**

26 28. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
27 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
28 standards for good and workmanlike repair without the consent of the owner or the owner's duly

1 authorized representative in a material respect, as follows: Respondent failed to install the
2 emission control system sticker after replacing the hood on McDonald's 2000 Acura RL, in
3 violation of Regulation 3364, subdivision (a).

4 **SIXTH CAUSE FOR DISCIPLINE**

5 **(Violations of the Code)**

6 29. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
7 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
8 that Code in a material respect, as follows: Respondent failed to obtain McDonald's authorization
9 for the initial or supplemental repairs on his 2000 Acura RL.

10 **VEHICLE INSPECTION #3: 2007 TOYOTA HIGHLANDER**

11 30. Karl Nelson ("Nelson") is the owner of a 2007 Toyota Highlander. On or about
12 January 7, 2011, Nelson took the vehicle to Respondent's facility for repair following an
13 automobile accident. Nelson's insurance company, Mid-Century, paid the facility a total of
14 \$5,085.07 for the collision repairs.

15 31. On April 5, 2011, the Bureau inspected the vehicle using as a reference Mid-
16 Century's estimate, Supplement of Record 2 with Summary, dated January 7, 2011, in the net
17 amount of \$5,085.07. The Bureau found that Respondent's facility failed to repair the vehicle as
18 estimated, as set forth below. The estimated value of the repair the facility failed to perform on
19 the vehicle is approximately \$409.96.

20 **SEVENTH CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 32. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
23 subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows:
24 Respondent obtained payment from Mid-Century for replacing the impact bar on Nelson's 2007
25 Toyota Highlander. In fact, that part was not replaced on the vehicle.

26 **OTHER MATTERS**

27 33. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
28 or place on probation the registration for all places of business operated in this state by

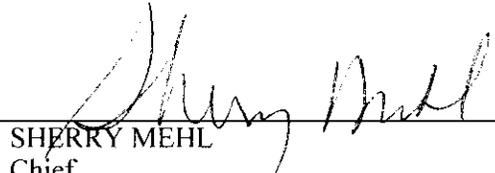
1 Respondent Juan Carlos Ortiz, owner of La Loma 7 Auto Body Repair, upon a finding that
2 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
3 regulations pertaining to an automotive repair dealer.

4 **PRAYER**

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

- 7 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
8 236757, issued to Juan Carlos Ortiz, owner of La Loma 7 Auto Body Repair;
- 9 2. Revoking or suspending any other automotive repair dealer registration issued to Juan
10 Carlos Ortiz;
- 11 3. Ordering Juan Carlos Ortiz, owner of La Loma 7 Auto Body Repair, to pay the
12 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
13 case, pursuant to Business and Professions Code section 125.3;
- 14 4. Taking such other and further action as deemed necessary and proper.

15
16 DATED: 12/9/11


17 SHERRY MEHL
18 Chief
19 Bureau of Automotive Repair
20 Department of Consumer Affairs
21 State of California
22 Complainant