

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

In the Matter of the Accusation Against:

LA LOMA 7 AUTO BODY REPAIR
JUAN CARLOS ORTIZ, Owner
3033 San Pablo Avenue
Berkeley, CA 94702

Automotive Repair Dealer Registration
No. ARD 236757

Case No. 77/11-35

OAH No. 2012010209

Respondent.

ORDER CORRECTING CLERICAL ERROR IN
"EFFECTIVE DATE" PORTION OF DECISION

On her own motion, the Director of Consumer Affairs (hereafter "Director") finds that there is a clerical error in the "effective date" portion of the Decision in the above-entitled matter and that such clerical error should be corrected.

IT IS HEREBY ORDERED that the effective date contained in the Decision in the above-entitled be and is hereby is amended and corrected nunc pro tunc as of the date of entry of the decision to read as follows:

"This Decision shall become effective on August 24, 2012."

DATED: August 8, 2012

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

Administrative Law Judge Paul Slavitt, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 12 and June 13, 2012.

Michael B. Franklin, Deputy Attorney General, represented complainant Sherry Mehl, Chief of the Bureau of Automotive Repair.

Respondent Juan Carlos Ortiz represented himself.

The matter was submitted on June 13, 2012.

FACTUAL FINDINGS

1. Juan Carlos Ortiz (respondent), doing business as La Loma 7 Body Repair, was registered as an Automotive Repair Dealer under registration number ARD 236757 in 2004. The license will expire, unless renewed, on December 31, 2012.

Respondent has operated his business as a licensed automotive repair dealer since 2004. Before that, respondent had over 22 years experience as an auto tech and auto painter; however, he did not have specific experience in auto body repair.

He has four employees, one of whom acts as a manager. Respondent supervises the operations of the business and also works on the cars himself, but is not at the shop at all times.

Procedural History

2. The accusation was filed on January 11, 2012. Notice of hearing was served on January 19, 2012.

3. At the opening of the record, respondent requested a continuance, citing other pressing business, personal problems, and the need to consult with an attorney. The personal and

business matters as explained were ongoing financial issues related to respondent's business, and family concerns. However, they were not new matters or emergencies, and did not excuse respondent's failure to request a continuance in advance, with notice, as required. The request for continuance was denied. The hearing proceeded as scheduled.

Background Information

4. Steven Ward Rhodes is a Program Representative II for the bureau, and has served in that position for the past 4 years. In that capacity he investigates complaints against licensee businesses concerning fraud or improper practices. Prior to his tenure at the bureau, he had an extended employment history in the auto repair industry, including master tech with Nissan Motors, and certification by the National Association of Automotive Excellence. Rhodes' primary assignment with the bureau is the investigation of auto body shops.

5. On September 9, 2009, Rhodes conducted an office conference with respondent. In an office conference the bureau discusses with the licensee issues of concern relating to its compliance with the Automotive Repair Act. In respondent's case, the bureau notified respondent of issues including failure to provide a consumer with an initial estimate before starting repairs, poor work performance, and an instance of alleged fraud in which respondent was alleged to have accepted payment for parts and repairs that were not actually installed or performed.

In the course of the office conference, respondent was advised of these issues, provided with information and copies of applicable laws and regulations, given the opportunity to receive training, and admonished that future violations might lead to formal disciplinary action by the bureau.

The Rivas Complaint (1991 Honda Accord)

6. In July 2010, the bureau received a form FD-1 (a notice of suspected fraud submitted by an insurance company) pertaining to respondent's shop. The matter was assigned to Rhodes. He began his investigation by obtaining the insurance company's file and contacting the insured Beatrice Rivas to interview her and take photographs of her vehicle, a 1991 Honda. Subsequently, Rhodes visited respondent's shop and obtained a copy of the shop's file for the repairs done to the Rivas car.

7. This initial investigation revealed that the Rivas' car had been damaged as a result of a break-in attempt. Respondent had prepared an estimate to repair, replace, and refinish damage to the left and right door and door handles, and the right front window of the car. Rhodes' inspection of the Rivas car revealed that the door handles and doors had not been repaired and repainted, but only touched up. He determined this both from visual inspection and by using a "thickness gauge" which measures the thickness of the paint on the auto body. When placed against the door of the Rivas car, the gauge indicated a paint thickness consistent with original factory paint application. Rhodes testified that if respondent had repainted the area, the gauge would have revealed a thicker layer of paint.

In addition, Rhodes saw that even though the car window had been replaced, it was installed improperly, so that when he tried to operate it, the window would not open or close.

8. After complaining to her insurance carrier about respondent's work, Rivas received a \$986.21 refund so that she could have the repairs done properly at another facility.

9. Based on his investigation, Rhodes concluded that respondent had received payment to repair and repaint the left and right doors and door handles, and apply a two-stage paint treatment. However, he did not do that work, which constitutes fraud. In addition, the improper installation of the window violated trade standards. Finally, Rhodes calculated the value of the work that was paid for by the insurer, but not performed by respondent, to be \$801.66.

10. Respondent explained that Rivas and her family had been friends with him and his family for several years. At the time of this auto repair, respondent understood that the Rivas' were unemployed and under some financial stress. His handling of the Rivas car repairs was intended to help a friend.

Respondent prepared an estimate for the Rivas' insurance carrier for repair of the doors, door handles, and a window. The estimated cost of repair was \$1,114.91, subject to Rivas' \$100 deductible, for a net payment of \$1,014.91. Once the estimate was approved, however, Rivas requested, and respondent agreed to repair a faulty window regulator on the car, instead of the work that had been approved by the insurance carrier. Since he was dealing with friends, none of the changes in repairs or instructions from Rivas were written; all of the changes were agreed upon verbally.

Respondent acknowledged that he did not repair the door handles or refinish the doors pursuant to the estimate. However, he stated that this was done at the express direction of Rivas. He did not inform the insurance carrier of this change in the repairs to be performed.

11. Respondent received \$1,014.91 from the insurance carrier for its payment. The value of the work he performed to repair and replace the window regulator was approximately \$300 less. Respondent did not collect the \$100 deductible from Rivas, and in fact paid over to Rivas the \$300 difference between the repairs actually performed and the insurance payment—all to help a friend in need.

Although respondent acknowledged that the repairs he performed were different than those authorized by the insurance carrier, he denied fraud because the repairs were "redirected" at the request of the car owner. He cited Business and Professions Code section 9884.9, subdivision (a), and Code of Regulations section 3353, subdivision (e), for the proposition that the repair shop may not change the repairs from those specified in the estimate without the customer's authorization. Respondent argued that he had the authorization, and specific instructions of the car owner, to perform repairs other than those set forth in the written estimate.

Respondent suggested that any fraud would be the responsibility of Rivas, who submitted her insurance claim, but directed respondent to do other work. In this regard, respondent pointed

out that not only did Rivas have different repairs done, and receive \$300 from respondent, but after her complaint to her insurance company, she ultimately received a substantial refund.

12. Respondent's explanation of his relationship with Rivas, and his well-intentioned reasons for changing the work done on the car is credible. However, his good intentions do not ameliorate the undisputed fact that he was paid for parts and labor he did not perform, and therefore was at variance to the work authorized by the estimate.

The McDonald Complaint (2000 Acura)

13. On January 11, 2011, the bureau received a consumer complaint from David McDonald, in which he expressed concerns about the cost, performance and workmanship, and general handling of repairs to his car at respondent's shop. Both Rhodes and McDonald testified concerning this complaint.

14. Having been referred by his auto mechanic, on December 3, 2010 McDonald took his damaged car to respondent's shop for a repair estimate. Given the age of his car, McDonald did not want extensive repairs performed; rather, he wanted the hood "straightened" and repainting as required. Initially, respondent prepared an estimate for \$2,073.53 for the necessary repairs, which after some discussion, was revised to \$1,700, reflecting a discount offered by respondent. McDonald left his car at respondent's facility.

15. On December 13, 2010, McDonald returned to respondent's shop, and informed respondent that he intended to file a claim with his insurance carrier (GEICO) to cover the damage. McDonald testified that respondent stated that he knew the GEICO claims adjuster—whom McDonald recalled as "Manuel"—and offered to take McDonald's car to GEICO for its inspection and repair estimate. The car was taken to GEICO, which prepared an estimate for \$3,337.83, subject to McDonald's \$1,000 deductible, resulting in a net insurance payment of \$2,337.83. The GEICO estimate included replacement of the front bumper cover and related trim, hood, grille, and license plate mount.

16. When McDonald returned to respondent's shop a few days later, he discovered that work already had begun on his car. On inquiry, he learned for the first time that planned repairs were more extensive than he wanted, and would include replacement of the bumper, hood, grille and other repairs. McDonald had not been notified of the full extent of the repairs in the GEICO estimate, and neither signed the GEICO estimate nor authorized repairs to begin.

McDonald testified that he told respondent that he did not want the bumper or hood replaced, and preferred that the hood be repaired instead. According to McDonald, respondent told him that because GEICO had authorized the specified work to begin, respondent now was obligated to perform work as set forth in the GEICO estimate, and parts already had been ordered in furtherance of that estimate.

McDonald later learned that a supplemental repair estimate had been written on December 21, 2010, to replace radiator mounts on his car. This additional work and the supplemental estimate also were undertaken without his knowledge or authorization.

17. McDonald did not sign any of the various repair estimates—whether prepared by respondent or GEICO—before work was undertaken. When he did sign a document entitled “repair estimate” on December 13, 2010, the document was blank, except for McDonald’s identifying information, the GEICO claims number, and a few handwritten notes. The document did not detail the repairs and cost information, nor did it reference or attach any of the written estimates prepared by respondent or GEICO.

18. Respondent received from McDonald the \$2,337.83 that GEICO had paid on the insurance claim, plus a supplemental payment of \$352.42 directly from GEICO. GEICO intended, and McDonald anticipated that these payments would cover GEICO’s portion of the work specified in its original and supplemental estimates (i.e., reduced by the amount of McDonald’s \$1,000 deductible). The final invoice from respondent states that the car’s bumper was not replaced in exchange for waiver of respondent’s deductible payment; however, McDonald denies any such arrangement or agreement.

19. On inspection of the car by McDonald, and later by Rhodes, it was determined that respondent had neither repaired nor replaced the bumper cover; nor had he replaced the license plate mount, bumper molding, or grille. Rhodes noted that while respondent replaced the hood, he failed to attach an emission control sticker to it. Rhodes testified that a replacement emission control sticker is required when a hood is replaced, and the failure to do so falls below acceptable trade standards.

Although respondent’s file includes an invoice confirming purchase of a replacement grille, Rhodes determined that the new grille had not been installed. He reached this conclusion by inspecting the grille on the car, noticing that it was cracked, and that the finish was generally scratched and worn, indicating that it had been on the car for an extended time--as distinct from a recently installed grille which would not show such damage or wear.

20. Based on his investigation, Rhodes concluded that respondent was paid to repair or replace the bumper cover, and replace the license mount, bumper moldings and grille assembly on the McDonald car, but that respondent did none of those things, constituting fraud. In addition, Rhodes determined that respondent’s failure to replace the emissions control sticker is a violation of trade standards; the failure to obtain McDonald’s signature or authorization for repairs is a code violation; and respondent’s representation to Rhodes that he had replaced the grille on the car was a misleading statement which is also grounds for discipline. Finally, Rhodes calculated the value of the work that was paid for, but not performed by respondent, to be \$1,281.74.

21. Respondent argued that McDonald’s recollection of the events and testimony were inconsistent. For example, McDonald testified that the car accident occurred in December 2010, when the true date of loss was November 18, 2010. Similarly, McDonald stated that respondent told him he knew the GEICO adjuster named Manuel, when there was no such person—the adjusters in this matter were named Rodrigo and Miguel. McDonald also denied taking medication at the time of the body repair transactions, but acknowledged in his testimony

that he takes a medication for his heart, and aspirin. As such, respondent asserted that McDonald's testimony was to be treated with caution.

22. Independent of this accusation, McDonald sued respondent in small claims court for unauthorized repairs, and work not performed on his car. Respondent ultimately prevailed in that case. As such, respondent argued that the small claims judgment should preclude any issue in this proceeding pertaining to the McDonald matter.

23. Respondent stated that he knows many claims adjusters for the insurance companies he deals with in his business, including the adjusters for GEICO. However, he does not know, or know of a GEICO adjuster named Manuel; and in any event, the fact that he may have told McDonald that he knew the claims adjuster handling McDonald's claim was of no particular import, and would not have affected the GEICO estimate or scope of work.

24. Respondent acknowledged that neither of the GEICO estimates were signed before work began on McDonald's car, and that the estimate itself is not an authorization to begin repairs. However, respondent stated that he obtained authorization when McDonald signed the "repair estimate," and that he believes that this is sufficient under applicable rules and regulations. Respondent stated that when McDonald signed that repair estimate, it was filled in with McDonald's personal information and the 12/13 note pertaining to dropping off the car "for GEICO inspection." Respondent stated that he gave McDonald a copy of the first GEICO estimate at that time; but McDonald denied this in his testimony. Finally, respondent noted that when work was complete, and McDonald picked up his car, he signed the final invoice, indicating his authorization and approval of the work performed. (McDonald had testified that he signed the invoice reluctantly, and only because he wanted to retrieve his car and be done with the transaction).

25. Respondent acknowledged that he did not replace the front bumper cover, the chrome moldings for the bumper, or the license plate mount as delineated in the repair estimate. However, he testified that this was done in agreement with McDonald in order to save money on costs of repair. In support, respondent offered a one-page itemization of work and its value which respondent prepared for McDonald as a break down of savings that would help McDonald avoid the cost of his deductible. McDonald denied the agreement and testified that he had never seen the itemization before the hearing.

Respondent testified that he did, in fact, install a new grille on the car, and offered a receipt for purchase of the grille in support. Respondent testified that McDonald requested the old body parts when the repair was done, so that the old grille was given to McDonald. To explain Rhodes testimony that the grille was not replaced, respondent suggested that McDonald might have re-installed the old grille on the car, or that any damage to the new grille was recent. In addition, respondent elicited testimony from Rhodes confirming that the new grille had not been returned to the dealer for refund.

Finally, respondent stated that he was not aware of a requirement that a new emissions control sticker be installed on the replaced hood. He noted that the GEICO estimate did not mention replacement of the sticker, and therefore, was not required work.

26. Respondent's testimony concerning the repairs performed on McDonald's car, and the purported agreement to forgo certain repairs in exchange for waiver of the deductible was not credible, and even if true would not justify the failure to perform all work set forth in the initial and supplemental estimates. His testimony that he was not aware of the need to replace the emissions control sticker is not consistent with the presumed knowledge of an operator who has been licensed since 2004 and repairs numerous cars each month.

The Nelson Complaint (2007 Toyota)

27. Rhodes testified that when issues arise concerning a particular licensed facility, the bureau sometimes will further its investigation by contacting other vehicle owners who recently had work performed at that facility. The bureau obtains copies of the repair estimate from the insurer, and then inspects the vehicle to determine whether the shop performed all specified repairs, and that the repairs were done correctly.

28. Based on the circumstances leading to the earlier office conference with respondent, and the Rivas and McDonald complaints, Rhodes contacted Mid-Century Insurance to see if any of its insureds recently had work performed by respondent. The insurer provided contact information for approximately eight insureds. Of those contacted, none responded immediately. Rhodes followed up, and one person responded Carl Nelson, whose 2007 Toyota Highlander had been repaired at respondent's shop in January 2011.

29. The Nelson vehicle had been damaged at the rear bumper and left side, with needed repairs totaling \$5,085.87. Among the repairs specified in the written estimate, and for which respondent was paid, was replacement of the impact bar beneath the rear bumper. The impact bar holds the bumper to the car, and functions to absorb some of the impact of a collision; and as such, is a safety feature on the car. It is concealed behind the bumper, and not visible on exterior inspection of the vehicle. The bar can be damaged as a result of impact and become bent or cracked, but also may suffer damage that is not apparent on visual inspection.

When Rhodes inspected the Nelson vehicle, he discovered that the impact bar had not been replaced as specified. He made this determination by comparing the serial number on the impact bar with the VIN number of the vehicle. The two serial numbers matched, indicating that the impact bar was original to the car when manufactured; a replacement part would have a different serial number. The failure to replace the impact bar is a potential safety issue because it may have been weakened in the collision. The impact bar issue was the only problem noted with the Nelson repairs.

30. Because respondent was paid to replace the impact bar on the Nelson vehicle, but did not do so, Rhodes concluded that this was fraud. In addition, he determined that the value of the work that was paid for, but not performed by respondent, was 409.96.

31. Respondent acknowledged the bureau's evidence that the impact bar was to be replaced pursuant to the repair estimate, and that in fact, it had not been replaced during the repairs. Respondent characterized this as an error by his shop. Respondent's stated policy is to

order all parts required by the repair estimate as soon as the estimate comes in. However, no evidence was submitted by either party to indicate whether the part was ordered but not installed, or never ordered at all.

Respondent stated that he would have remedied his error; but he was not notified of the failure to install the impact bar, and therefore, never had the opportunity to rectify the situation by installing the replacement impact bar.

Other Pertinent Information

32. Respondent offered no specific evidence in mitigation. However, he noted that when Rhodes attempted to contact the Mid-Century Insurance clients to investigate repairs performed by respondent, none responded initially, and only Nelson responded after further efforts. Respondent intimated that this lack of response shows that there was no dissatisfaction with the repairs he completed. In addition, respondent stated that the failure to install the impact bar was an oversight, rather than intentional, and that he would have corrected the problem, if he had been given the opportunity.

In aggravation, it is noted that the initial office conference in 2009 addressed issues substantially similar to those raised by this accusation; however, respondent apparently did not change his business operations in response.

33. It is the policy of the bureau to attempt mediation of disputes between consumers and licensees. Rhodes testified that with regard to the Rivas complaint, Rivas already had received a refund from her insurance carrier to have corrective work done on her car, so that it was too late to attempt mediation.

In the McDonald case, Rhodes undertook to mediate a resolution; however, the parties were unable to reach agreement.

As to the Nelson vehicle, Rhodes did not notify respondent of the problem he discovered with the impact bar, or provide him with an opportunity to ameliorate the problem. Rhodes testified that by this time, he was well into his investigation of possible fraud by respondent, and was pursuing the Nelson matter for that purpose.

Costs

34. In connection with the investigation and prosecution of this accusation, the bureau submitted a certification of costs showing costs for investigative services in the sum of \$5,845.92, representing 76 hours of bureau staff time. Correspondingly, Deputy Attorney General Franklin submitted a declaration showing billable professional time for Department of Justice staff in the sum of 4,715 a total of 10,560.92.

The case of *Zuckerman v. Board of Chiropractic Engineers* (200) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the respondent has been successful at the hearing in getting charges reduced or

dismissed; respondent's subjective good faith belief in the merits of his position; whether the respondent has raised a colorable challenge to the proposed discipline; the financial ability to pay the cost award; and whether the scope of the investigation was appropriate to the alleged conduct of the respondent. In this case, the only factor potentially favorable to respondent is his financial ability to pay. During the course of the hearing, respondent explained that his business is in default of the mortgage on the shop premises, and that a trustee sale is imminent. This, taken with the fact that the proposed discipline would terminate respondent's ability to conduct his business in the future, leads to the determination that costs should be reduced to \$8,500.

LEGAL CONCLUSIONS

1. *The Rivas Complaint (1991 Honda Accord).*

a. As set forth in factual findings 4 through 9, cause exists for discipline against respondent's license, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that respondent committed acts constituting fraud by obtaining payment for repairs and parts that were not performed.

b. As set forth in factual findings 4 through 9, cause exists for discipline against respondent's license, pursuant to Business and Professions Code section 9884.7, subdivision (a)(7), in that respondent willfully departed from accepted trade standards by failing to properly install the window on the subject car.

2. *The McDonald Complaint (2000 Acura).*

a. The allegations pertaining to McDonald are not precluded from this disciplinary proceeding by the judgment in the small claims case. Small claims judgments generally are not deemed to determine the issues raised in other proceedings. [See, *Rosse v. DeSoto Cab Co.* (1995) 34 CalApp4th 1047, 1052].

b. As set forth in factual findings 4, 5, and 10 through 17, cause exists for discipline against respondent's license, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that respondent made untrue or misleading statements to the bureau's representative concerning installation of the grille on the subject car.

c. As set forth in factual findings 4, 5, and 10 through 17, cause exists for discipline against respondent's license, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that respondent committed acts constituting fraud by obtaining payment for repairs and parts that were not performed.

d. As set forth in factual findings 4, 5, and 10 through 17, cause exists for discipline against respondent's license, pursuant to Business and Professions Code section 9884.7, subdivision (a)(7), and Code of Regulations title 16, section 3364, in that respondent willfully departed from accepted trade standards by failing to affix an emissions control sticker to the replacement hood of the subject car.

e. As set forth in factual findings 4, 5, and 10 through 17, cause exists for discipline against respondent's license, pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6), and 9884.9, subdivision (a), in that respondent violated the Business and Professions Code by failing to obtain appropriate written authorization for repairs on the subject car.

3. *The Nelson Complaint (2007 Toyota).*

As set forth in factual findings 4, 5, 18 through 21, and 26, cause exists for discipline against respondent's license, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that respondent committed acts constituting fraud by obtaining payment for repairs and parts that were not performed.

4. *Costs.*

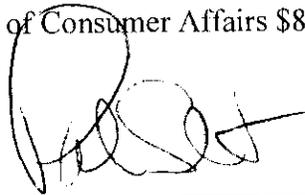
Business and Professions Code section 125.3 provides that a licensing agency may order a licensee who has committed a violation of the law to pay a sum not to exceed the reasonable costs of investigation and enforcement. Subdivision (c) of that section provides that the certified copy of the costs shall serve as prima facie evidence of reasonable costs. However, as set forth in finding 34, cause exists to reduce the claimed costs, and require respondent to pay investigative costs in the sum of \$8,500.

ORDER

1. Automotive Repair Dealer license number ARD 236757 issued to Juan Carlos Ortiz, dba La Loma 7 Body Repair, is revoked.

2. Juan Carlos Ortiz, individually and as owner of La Loma 7 Body Repair, is ordered to pay the Director of the Department of Consumer Affairs \$8,500 as reimbursement of the costs of investigation and enforcement.

DATED: June 28, 2012



PAUL SLAVIT
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 77111-35

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

ACCUSATION

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
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 **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

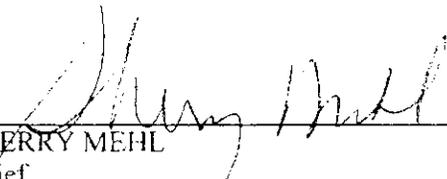
1 Respondent Juan Carlos Ortiz, owner of La Loma 7 Auto Body Repair, upon a finding that
2 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
3 regulations pertaining to an automotive repair dealer.

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

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