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7

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. 77/14-23

13 **FIX AND PAINT AUTO BODY**
14 **SALVADOR E. CHAVEZ, OWNER**
45626 Division Street
Lancaster, CA 93535

A C C U S A T I O N

15 **Automotive Repair Dealer Registration No.**
16 **ARD 238899**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
22 the Acting Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.
23 2. On or about May 11, 2005, the Bureau of Automotive Repair issued Automotive
24 Repair Dealer Registration Number ARD 238899 to Salvador E. Chavez (Respondent), owner of
25 Fix and Paint Auto Body. The Automotive Repair Dealer Registration was in full force and effect
26 at all times relevant to the charges brought herein and is set to expire on April 30, 2014, unless
27 renewed.

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1 JURISDICTION

2 3. Business and Professions Code section 9884.7¹ provides that the Director of
3 Consumer Affairs (Director) may revoke an automotive repair dealer registration.

4 4. Section 9884.13 provides that the expiration of a valid registration shall not deprive
5 the Director or chief of jurisdiction to proceed with a disciplinary proceeding against an
6 automotive repair dealer or to render a decision invalidating a registration temporarily or
7 permanently.

8 STATUTORY PROVISIONS

9 5. Section 22, subdivision (a), states:

10 "Board" as used in any provision of this code, refers to the board in which
11 the administration of the provision is vested, and unless otherwise expressly provided,
12 shall include "bureau," "commission," "committee," "department," "division,"
13 "examining committee," "program," and "agency."

14 6. Section 477, subdivision (b), states, in pertinent part, that a "license" includes
15 "registration" and "certificate."

16 7. Section 9884.7, states, in pertinent part:

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

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

(2) Causing or allowing a customer to sign any work order that does not
state the repairs requested by the customer or the automobile's odometer reading at the
time of repair.

24 ...

(4) Any other conduct that constitutes fraud.

26 ...

27 ¹ All further statutory references are to the Business and Professions Code unless
28 otherwise indicated.

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

2 ...

3 (c) ... the director may suspend, revoke, or place on probation the
4 registration for all places of business operated in this state by any automotive repair
5 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course
of repeated and willful violations of this chapter [The Automotive Repair Act], or
regulations adopted pursuant to it.

6 8. Section 9884.8 states:

7 All work done by an automotive repair dealer, including all warranty
8 work, shall be recorded on an invoice and shall describe all service work done and
9 parts supplied. Service work and parts shall be listed separately on the invoice, which
10 shall also state separately the subtotal prices for service work and for parts, not
11 including sales tax, and shall state separately the sales tax, if any, applicable to each.
12 If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state
13 that fact. If a part of a component system is composed of new and used, rebuilt or
reconditioned parts, that invoice shall clearly state that fact. The invoice shall include
a statement indicating whether any crash parts are original equipment manufacturer
crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy
of the invoice shall be given to the customer and one copy shall be retained by the
automotive repair dealer.

14 9. Section 9884.9 states, in pertinent part:

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

23 10. Section 9884.11 states that "[e]ach automotive repair dealer shall maintain any
24 records that are required by regulations adopted to carry out this chapter [the Automotive Repair
25 Act]. Those records shall be open for reasonable inspection by the chief or other law
26 enforcement officials. All of those records shall be maintained for at least three years."

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1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 3353, states in pertinent part:

3 No work for compensation shall be commenced and no charges shall
4 accrue without specific authorization from the customer in accordance with the
5 following requirements:

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

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

15 (c) Additional Authorization. Except as provided in subsection (f), the
16 dealer shall obtain the customer's authorization before any additional work not
17 estimated is done or parts not estimated are supplied. This authorization shall be in
18 written, oral, or electronic form, and shall describe additional repairs, parts, labor and
19 the total additional cost.

20 (1) If the authorization from the customer for additional repairs, parts, or
21 labor in excess of the written estimated price is obtained orally, the dealer shall also
22 make a notation on the work order and on the invoice of the date, time, name of the
23 person authorizing the additional repairs, and the telephone number called, if any,
24 together with the specification of the additional repairs, parts, labor and the total
25 additional costs.

26 (2) If the authorization from the customer for additional repairs, parts, or
27 labor in excess of the written estimated price is obtained by facsimile transmission
28 (fax), the dealer shall also attach to the work order and the invoice, a faxed document
that is signed and dated by the customer and shows the date and time of transmission
and describes the additional repairs, parts, labor and the total additional cost.

(3) If the authorization from the customer for additional repairs, parts, or
labor in excess of the written estimated price is obtained by electronic mail (e-mail),
the dealer shall print and attach to the work order and invoice, the e-mail
authorization which shows the date and time of transmission and describes the
additional repairs, parts, labor, and the total additional costs.

(4) The additional repairs, parts, labor, total additional cost, and a
statement that the additional repairs were authorized either orally, or by fax, or by e-
mail shall be recorded on the final invoice pursuant to Section 9884.9 of the Business
and Professions Code. All documentation must be retained pursuant to Section
9884.11 of the Business and Professions Code.

26 ...

27 (e) Revising an Itemized Work Order. If the customer has authorized
28 repairs according to a work order on which parts and labor are itemized, the dealer
shall not change the method of repair or parts supplied without the written, oral,

1 electronic authorization of the customer. The authorization shall be obtained from the
2 customer as provided in subsection (c) and Section 9884.9 of the Business and
3 Professions Code.

4 (f) Designation of Person to Authorize Additional Work or Parts. When
5 a customer, pursuant to subdivision (d) of Section 9884.9 of the Business and
6 Professions Code, designates another person to authorize work not estimated or parts
7 not included in the written estimated price given to the customer, all of the following
8 shall apply:

9 (1) The designation may be a separate form by itself or may be
10 incorporated into the dealer's work order form described in subsection (b) of Section
11 3352.

12 ...

13 (h) Definitions. As used in this section, "written " shall mean the
14 communication of information in writing, other than by electronic means; "oral" shall
15 mean the oral communication of information either in person or telephonically;
16 "electronic" shall mean the communication of information by facsimile transmission
17 (fax) or electronic mail (e-mail)."

18 12. California Code of Regulations, title 16, section 3371, states in pertinent part:

19 No dealer shall publish, utter, or make or cause to be published, uttered,
20 or made any false or misleading statement or advertisement which is known to be
21 false or misleading, or which by the exercise of reasonable care should be known to
22 be false or misleading

23 13. California Code of Regulations, title 16, section 3373, states:

24 No automotive repair dealer or individual in charge shall, in filling out an
25 estimate, invoice, or work order, or record required to be maintained by section
26 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
27 information which will cause any such document to be false or misleading, or where
28 the tendency or effect thereby would be to mislead or deceive customers, prospective
customers, or the public.

14. California Code of Regulations, title 16, section 3356, states in pertinent part:

(a) All invoices for service and repair work performed, and parts supplied,
as provided for in Section 9884.8 of the Business and Professions Code, shall comply
with the following:

(1) The invoice shall show the automotive repair dealer's registration
number and the corresponding business name and address as shown in the Bureau's
records. If the automotive repair dealer's telephone number is shown, it shall comply
with the requirements of subsection (b) of Section 3371 of this chapter.

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

(A) All service and repair work performed, including all diagnostic and

warranty work, and the price for each described service and repair.

(B) Each part supplied, in such a manner that the customer can understand what was purchased, and the price for each described part. The description of each part shall state whether the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

(C) The subtotal price for all service and repair work performed.

(D) The subtotal price for all parts supplied, not including sales tax.

(E) The applicable sales tax, if any.

(b) If a customer is to be charged for a part, that part shall be specifically listed as an item in the invoice, as provided in subparagraph (B) of paragraph (2) of subsection (a) above. If that-item is not listed in the invoice, it shall not be regarded as a part, and a separate charge may not be made for it.

(c) Separate billing in an invoice for items generically noted as shop supplies, miscellaneous parts, or the like, is prohibited.

(d) The automotive repair dealer shall give the customer a legible copy of the invoice and shall retain a legible copy as part of the automotive repair dealer's records pursuant to Section 9884.11 of the Business and Professions Code and Section 3358 of this article.

15. California Code of Regulations, title 16, section 3358, states:

Each automotive repair dealer shall maintain legible copies of the following records for not less than three years:

(a) All invoices relating to automotive repair including invoices received from other sources for parts and/or labor.

(b) All written estimates pertaining to work performed.

(c) All work orders and/or contracts for repairs, parts and labor. All such records shall be open for reasonable inspection and/or reproduction by the bureau or other law enforcement officials during normal business hours.

COST RECOVERY

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

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1 23. On March 25, 2010, Respondent contacted S.D. and stated that the repairs were
2 completed. S.D. visited Fix and Paint, at which time Respondent released the vehicle to S.D. and
3 provided S.D. with a document which was similar to the document he provided on December 15,
4 2009. Respondent told S.D. that he guaranteed the repairs from the vehicle's doors up, for as long
5 as Respondent owned the vehicle. Later that day, while driving, S.D. noticed wind noises at the
6 top of both passenger and driver's side doors. S.D. also noticed that the vehicle's hood appeared
7 to be loose, that both door glasses would not close completely, and that the driver's side seat belt
8 was loose. Additionally, the vehicle's battery discharged, requiring S.D. to jump start her vehicle.
9 On March 28, 2010, after a repeated no start condition of the vehicle due to a discharged battery,
10 S.D.'s husband installed a new battery on the vehicle. After driving the vehicle for several days,
11 S.D. noticed the body malfunction indicator light illuminated on the instrument cluster.
12 Moreover, the vehicle's alarm system was malfunctioning and the battery continued to discharge.

13 24. On or about April 10, 2010, S.D. contacted the Bureau and requested an inspection of
14 her vehicle for substandard repairs.

15 25. On or about April 17, 2010, Bureau Representative Curtis McClenny inspected S.D.'s
16 vehicle for substandard repairs. McClenny recommended S.D. obtain an estimate for the
17 corrective repairs from a different repair facility and contact him. S.D. did not want to cause harm
18 to Respondent's business so she decided to give Respondent another opportunity to repair the
19 vehicle correctly.

20 26. On or about April 20, 2010, S.D. drove her vehicle to Fix and Paint and asked
21 Respondent to repair the wind noises, loose seat belt, malfunctioning alarm system, illuminated
22 body malfunction indicator light, and battery discharge condition. Respondent agreed to perform
23 the warranty repairs but did not provide S.D. with an estimate for the repairs.

24 27. On or about May 1, 2010, S.D. met with Respondent to check on the status of the
25 repairs. Respondent told S.D. that he had contracted with Ted, a German vehicle mechanic, to
26 repair the vehicle's electrical system and that all of her concerns with the vehicle were repaired.
27 Respondent released the vehicle to S.D. but did not provide her with an invoice for the warranty
28

1 repairs. After retrieving the vehicle, S.D. noticed that the wind noises, alarm system, and
2 illuminated body malfunction indicator light issues were not repaired.

3 28. On or about May 15, 2010, S.D. drove her vehicle to Fix and Paint and asked
4 Respondent to repair the wind noises, malfunctioning alarm system, illuminated body malfunction
5 indicator light, and battery discharge condition. Per Respondent's request, S.D. left the vehicle at
6 his facility for the corrective repairs. Respondent did not provide S.D. with an estimate for the
7 warranty repairs.

8 29. On or about May 25, 2010, S.D. met with Respondent at Fix and Paint. Respondent
9 told S.D. that Ted performed additional repairs and assured S.D. that the vehicle was repaired
10 correctly. Respondent released the vehicle to S.D. but did not provide her with an invoice for the
11 repairs.

12 30. After driving her vehicle with wind noises, a malfunctioning alarm system, an
13 illuminated body malfunction indicator light, and having to jump start the battery, on or about
14 March 9, 2011, S.D. drove the vehicle to Antelope Valley Mercedes for a diagnosis of the
15 vehicle's condition. Antelope Valley Mercedes diagnosed the vehicle and provided S.D. with a
16 diagnostic printout.

17 31. On or about March 17, 2011, S.D. drove the vehicle to Fix and Paint and provided
18 Respondent with the diagnostic printout from Antelope Valley Mercedes. Respondent asked S.D.
19 to leave the vehicle at the facility, which she agreed to do, but Respondent did not provide S.D.
20 with an estimate for the repairs. Before leaving, S.D. requested that Respondent provide her with
21 an invoice after completing the repairs, and Respondent agreed to provide it.

22 32. On or about March 24, 2011, S.D. received a telephone call from Sammy, the
23 manager of AV Auto Electric, who informed her that her vehicle's multiple electrical system
24 malfunctions were caused by water damage to the vehicle's alarm system module located near the
25 trunk of the vehicle. Sammy estimated the repair would cost \$1,700.00, which S.D. declined to
26 authorize.

27 33. On or about March 27, 2011, S.D. visited AV Auto Electric to retrieve her vehicle.
28 Sammy did not provide her with a final invoice.

1 34. On or about March 29, 2011, S.D. drove her vehicle to Fix and Paint and spoke with
2 Respondent. S.D. notified Respondent of AV Auto Electric's findings and requested that
3 Respondent take responsibility for the corrective repairs, which he agreed to do. S.D. left the
4 vehicle with Respondent and Respondent did not provide S.D. with an estimate for the repairs.

5 35. On or about April 30, 2011, S.D. visited Fix and Paint and spoke with Respondent.
6 Respondent told S.D. that the repairs were completed. Respondent released the vehicle to S.D.
7 but did not provide S.D. with an invoice for the repairs.

8 36. After retrieving the vehicle on April 30, 2011, S.D. noticed that the vehicle's wind
9 noises, malfunctioning alarm system, illuminated body malfunction indicator light condition, and
10 battery discharge condition persisted.

11 37. On or about May 5, 2011, the Bureau received a consumer complaint from S.D.
12 alleging that Respondent failed to properly complete corrective collision repairs to her 2001
13 Mercedes Benz SLK 320 as estimated and paid.

14 38. On June 10, 2011, Bureau Representative Hector Torres performed a post collision
15 repair inspection of S.D.'s vehicle. Torres also met with Respondent and requested documents
16 pertaining to S.D.'s vehicle repairs. Respondent told Torres that he performed the repairs
17 according to S.D.'s insurance estimate.

18 39. On June 21, 2011, Torres and Bureau Representative Matthew Bradfield inspected
19 S.D.'s vehicle, using the corrected supplement S1 generated by R and C Appraisal Service on
20 behalf of USAA Insurance as a reference. The inspection revealed the following:

21 a. Damaged electrical wiring and loose parts on the vehicle's front grill and
22 radiator support.

23 b. Spliced electrical wiring pertinent to the vehicle's headlight system which had
24 electrical tape covering the spliced connections.

25 c. The vehicle's hood latch switch and the electrical wiring was broken and
26 hanging on the left side inner fender.

27 d. the right side frame rail and inner fender apron still exhibited unrepaired
28 collision damage.

1 e. The front grill, radiator support, front bumper and fenders were not secured
2 properly and several screws, bolts, and clips were missing.

3 40. On June 27, 2011, Torres interviewed Respondent and obtained documents pertinent
4 to S.D.'s vehicle repairs. Respondent provided Torres with copies of parts purchase receipts
5 purported to be receipts from Five Star Auto Parts, the estimate and supplemental estimate for the
6 repairs, and Fix and Paint Auto Body repair order for the vehicle. Respondent agreed that the
7 method of repair was the USAA Insurance appraisers' estimate and supplement S1. On July 6,
8 2011, upon meeting with the owner of Five Star Auto Parts, Torres determined that the parts
9 purchase receipts provided by Respondent were not in fact from Five Star Auto Parts and may
10 have been fabricated.

11 41. Based on Respondent's statements and the inspection that Torres and Bradfield
12 performed on S.D.'s vehicle, Torres determined that Respondent failed to replace the following
13 parts and perform the following labor as estimated and paid as follows:

LINE ITEM	DESCRIPTION	MECHANICAL LABOR	SUBLET	PRICE	BODY LABOR
1	Section Front Body 1/ Recycled Part			\$3,800.00	33.5
	SUBTOTALS			\$3,800.00	33.5
TOTAL PARTS					\$3,800.00
TAX ON PARTS			\$3,800.00 X 9.75%	\$370.50	
TAX ON MECHANICAL LABOR HOURS			0.0 X	\$0.00	
SUBLET			33.5 X \$48.00	\$1,608.00	
GRAND TOTAL					\$5,778.50

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22 The total theft/fraud amount was \$5,778.50 but the total cost to return the vehicle to its pre-loss
23 condition could exceed this amount.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Untrue or Misleading Statements)**

26 42. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(1),
27 in conjunction with California Code of Regulations, title 16, section 3373 in that Respondent
28 made statements which he knew or which by exercise of reasonable care he should have known to

1 be untrue or misleading by falsely representing that he repaired S.D.'s vehicle according to the
2 corrected supplement S1 estimate by R and C Appraisal Service when in fact he failed to perform
3 the repairs and services. Respondent also provided the Bureau with copies of some parts purchase
4 receipts, which the Bureau determined to be false documents.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Failure to State Repairs Requested and Odometer Reading on Work Order)**

7 43. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(2),
8 in that on or about December 15, 2009, Respondent allowed S.D. to sign a "estimate/repair" order
9 dated December 12, 2009 that did not state the repairs or the automobile's odometer reading at the
10 time of the repair.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 44. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(4),
14 in conjunction with California Code of Regulations, title 16, section 3373 in that Respondent
15 defrauded S.D. and USAA Insurance when he negotiated, accepted, and adopted R and C
16 Appraisal Service's corrected supplement S1 estimate dated February 3, 2010 and accepted
17 payment for the repairs and then deviated from the estimate of record by failing to replace the
18 front section of the vehicle including the inner structure as estimated and paid.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violations of the Business and Professions Code)**

21 45. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(6),
22 in that Respondent failed to comply with the following provisions of the Business and Professions
23 Code in a material respect:

24 a. **Section 9884.9, subdivision (a):** Respondent failed to provide estimates for the
25 repair of S.D.'s vehicle and for warranty repairs to the vehicle.

26 b. **Section 9884.11:** Respondent failed to maintain records pertaining to the repair
27 of S.D.'s vehicle.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violations of the California Code of Regulations)**

3 46. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(6),
4 in that Respondent failed to comply with the following provisions of Title 16 of the California
5 Code of Regulations in a material respect:

6 a. **Section 3353, subdivision (a):** Respondent failed to provide S.D. a written
7 estimated price for labor and parts for the repair of S.D.'s vehicle.

8 b. **Section 3358, subdivision (c):** Respondent failed to provide copies of all parts
9 purchase receipts to the Bureau.

10 c. **Section 3373:** Respondent made untrue or misleading statements to S.D. and to
11 the Bureau regarding the repairs to S.D.'s vehicle.

12 **UNDERCOVER OPERATION #1: 2003 HONDA**

13 47. On November 16, 2011, an undercover Bureau operator (operator) transported the
14 Bureau's undercover 2003 Honda to Fix and Paint to inspect and assess the vehicle's front
15 collision damage. The operator met with Respondent and informed him that the vehicle had been
16 involved in a collision and that the "SRS" light came illuminated a few days after the accident.
17 After Respondent inspected the vehicle's collision damage, he presented the operator with a
18 multiple page document stating the estimate to repair the vehicle utilizing new original equipment
19 manufacturer (OEM) Honda parts. Respondent told the operator that if he repaired the vehicle
20 utilizing new aftermarket parts rather than new OEM parts, the cost of repair would be lower.
21 The operator indicated to Respondent that he wanted Respondent to utilize new OEM parts only,
22 and Respondent agreed to utilize new OEM Honda parts to repair the vehicle. Respondent
23 provided the operator with a Fix and Paint Auto Body estimate # [REDACTED] dated November 16, 2011,
24 which reflected a net total of \$2,026.90. The operator did not sign an estimate/work order.

25 48. On November 18, 2011, the operator received a telephone call from Respondent, who
26 stated that the corrective collision repairs were completed.

27 49. On November 21, 2011, the operator met with Respondent at Fix and Paint.
28 Respondent told the operator that the only thing left to complete was to reset the illuminated Air

1 Bag system warning light and that his friend, who owned a motorcycle shop, had the equipment to
2 reset the illuminated light. The operator accompanied Respondent to the motorcycle shop, which
3 was closed. Respondent stated that he would take the vehicle to the motorcycle shop later and
4 that if his friend was not there he would drive the vehicle to a local Honda dealership for the
5 necessary Air Bag system repairs and that he would take responsibility for the bill. Respondent
6 later called the operator and told him that he was at the Honda dealership. Respondent stated that
7 he obtained a free diagnosis of the vehicle's illuminated Air Bag system warning light and that he
8 would have to replace the vehicle's bent right front Air Bag sensor to correct the issue.
9 Respondent told the operator that there would be an additional charge of \$99.70 for the Air Bag
10 sensor. When the operator stated that he was under the impression that the estimate included the
11 Air Bag system repairs, Respondent informed him that the estimate only included resetting the Air
12 Bag system warning light. Respondent stated that the total cost would be the total reflected on
13 estimate # [REDACTED] plus an additional \$100.00.

14 50. On November 22, 2011, the operator telephoned Respondent to inquire about the
15 status of the vehicle's repairs and the total cost of the corrective collision repairs and the Air Bag
16 system repairs. Respondent told the operator that the repairs would be completed by the
17 following day and that he was in the process of replacing the vehicle's Air Bag sensor and still
18 had to drive the vehicle to the Honda dealership for the purpose of resetting the Air Bag system
19 light. Respondent stated that the total cost was approximately \$2,170.00. The operator requested
20 that Respondent provide him with the damaged Air Bag sensor and that the would need a final
21 invoice. Respondent agreed to provide these items.

22 51. On November 28, 2011, the operator telephoned Respondent to inquire about the
23 completion of the repairs, at which time Respondent stated that all of the repairs had been
24 completed. Respondent stated that the total cost was \$2,126.90. Later that day, the operator met
25 with Respondent at Fix and Paint to pick up the vehicle. When the operator inquired about the
26 final invoice, Respondent provided him with a copy of Lancaster Honda invoice [REDACTED] dated
27 November 23, 2011, which Respondent represented was a copy of the invoice for the Honda's
28 replacement Air Bag sensor. The operator asked Respondent if he repaired the vehicle utilizing

1 new OEM Honda parts, specifically the front bumper, right headlamp, and right fender.

2 Respondent answered, "Yes, of course."

3 52. Respondent requested the operator's signature on estimate [REDACTED] dated November
4 16, 2011, which the operator signed. The operator asked Respondent for the total amount owed,
5 and Respondent stated that the total amount was \$2,126.90. The operator gave Respondent
6 \$2,140.00 cash. Respondent said he did not have change and returned \$20.00 to the operator,
7 stating that the balance of \$6.90 was a courtesy discount. Respondent gave the operator the
8 vehicle's bent/damaged Air Bag sensor.

9 53. The Bureau's re-inspection of the undercover vehicle found that Respondent failed to
10 replace the following parts and perform the following labor per estimate [REDACTED] as follows:

LINE ITEM	DESCRIPTION	MECHANICAL LABOR	SUBLET	PRICE	BODY LABOR
10	Replace Headlamp Assy, Halog RT			\$243.22	Inc
14	Remove & Install Supt, Hood Lock Vert				0.5
16	Refinish Panel Assembly, Rad Sup				1.8
18	Fender, Front RT Replace			\$179.23	1.4
20	Remove & Install Guard, Fender Mud LT				0.2
21	Remove & Install Guard, Fender Mud RT				Inc
24	Remove & Install Mldg, Front Door Bel LT				0.3
25	Remove & Install Mirror, Outer R/C LT				0.3
26	Remove & Install Handle, Front Door O LT				0.7
	SUBTOTALS			\$422.45	5.2
	TOTAL PARTS				\$422.45
	TAX ON PARTS		\$422.45 X 8.25%		\$34.85
	TOTAL MECHANICAL LABOR HOURS	0.0 X \$55.00			\$0.00
	TOTAL BODY LABOR HOURS	5.2 X \$38.00			\$197.60
	SUBLET				\$0.00
	GRAND TOTAL				\$654.90

1 The total theft/fraud amount was \$654.90; however, the actual cost to return the vehicle to its pre-
2 loss condition could exceed this amount.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Untrue and Misleading Statements)**

5 54. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(1),
6 in conjunction with California Code of Regulations, title 16, sections 3371 and 3373, in that
7 Respondent made untrue and misleading statements and provided false or misleading records.
8 Respondent reached an agreement with the operator to perform the corrective collision repairs to
9 the Honda utilizing new OEM Honda parts. Respondent then deviated from the agreed upon
10 method of repair and repaired the Honda utilizing aftermarket parts instead of new OEM parts as
11 recorded on the estimate and invoice. During an interview with a Bureau representative,
12 Respondent falsely stated that he did not perform repairs to the Honda's Air Bag system. In fact,
13 Respondent performed repairs to the Air Bag system and provided the operator with a receipt for
14 the purchase of an Air Bag sensor along with the faulty Air Bag sensor. Respondent provided the
15 operator with estimate [REDACTED] dated November 16, 2011, as an invoice which described the
16 corrective collision repairs Fix and Paint Auto Body had completed to the Bureau's undercover
17 vehicle, but failed to complete the repairs in accordance with the document.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 55. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(4),
21 in that Respondent committed an act constituting fraud as follows: Respondent defrauded the
22 Bureau by negotiating, accepting, and adopting Fix and Paint Auto Body estimate of record # [REDACTED]
23 [REDACTED] dated November 16, 2011, as the method of repair, and accepting payment for the repairs, when
24 in fact Respondent deviated from the estimate. Respondent failed to replace the vehicle's right
25 headlamp and right fender with OEM parts, failed to remove and install the hood lock vertical
26 support, right front door belt molding (also called the belt weatherstrip), right remote control
27 mirror, and right front outside door handle. Respondent charged to remove and install the
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1 vehicle's mud guard; however, the vehicle did not have mud guards. Additionally, Respondent
2 failed to refinish the entire radiator panel support assembly.

3 **EIGHTH CAUSE FOR DISCIPLINE**

4 **(Violations of the Business and Professions Code)**

5 56. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(6),
6 in that Respondent failed to comply with the following provisions of the Business and Professions
7 Code in a material respect:

8 a. **Section 9884.8:** Respondent failed to show the dealer's business name and
9 corresponding ARD registration number on invoice [REDACTED], dated November 16, 2011.

10 b. **Section 9884.9, subdivision (a):** Respondent failed to secure the operator's
11 signed authorization on estimate [REDACTED] dated November 16, 2011.

12 c. **Section 9884.11:** Respondent failed to provide copies of the estimate/invoice
13 and all parts purchase receipts pertinent to the corrective collision repairs that Fix and Paint
14 performed to the Honda.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Violations of the California Code of Regulations)**

17 57. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(6),
18 in that Respondent failed to comply with the following provisions of Title 16 of the California
19 Code of Regulations in a material respect:

20 a. **Section 3353:** Respondent failed to obtain signed authorization from the
21 operator prior to commencing repairs on the Honda.

22 b. **Section 3356, subdivision (a)(1):** Respondent failed to show the dealer's
23 business name and corresponding ARD registration on invoice [REDACTED], dated November 16, 2011.

24 c. **Section 3358, subdivision (c):** Respondent failed to provide copies of the
25 estimate/invoice and all parts purchase receipts pertinent to the corrective collision repairs
26 performed to the Honda to the Bureau.

27 d. **Section 3371:** Respondent made false or misleading statements to the operator
28 and to the Bureau regarding the repairs to the Honda.

1 e. **Section 3373:** Respondent provided false or misleading records in that he failed
2 to complete the repairs to the Honda in accordance with the invoice.

3 **UNDERCOVER OPERATION #2: 2001 Chevrolet**

4 58. On March 29, 2012, an undercover Bureau operator (operator) drove the Bureau's
5 undercover 2001 Chevrolet to Respondent's facility, Fix and Paint Auto Body. The operator met
6 with Respondent and asked him to coordinate with Mercury Insurance and provide her with an
7 estimate for the vehicle's corrective collision repairs. Respondent provided the operator with Fix
8 and Paint Auto Body preliminary estimate [REDACTED] dated March 29, 2012. Respondent did not
9 request the operator's signature on the preliminary estimate.

10 59. On April 3, 2012, a Mercury Insurance adjuster (adjuster) inspected the Chevrolet at
11 Fix and Paint. The adjuster generated estimate of record [REDACTED] dated April 3,
12 2012, for a net total amount of \$2,642.50.

13 60. On April 10, 2012, the operator spoke to Respondent on the telephone, at which time
14 the operator inquired about the inspection of the Chevrolet. Respondent stated that he was in the
15 process of replacing the vehicle's grille and fender. When the operator made Respondent aware
16 that she was surprised that he began the repairs without her authorization, Respondent informed
17 her that Mercury Insurance gave him the "go ahead." The operator asked if the Chevrolet's
18 replacement parts were Chevrolet brand parts, and Respondent answered that the replacement
19 parts were original GM parts. When the operator asked for the total cost of the repairs,
20 Respondent stated that he would provide her with an invoice upon delivery of the vehicle.

21 61. On April 16, 2012, the operator spoke with Respondent on the telephone regarding
22 the status of the repairs. Respondent stated that he was waiting for a part to enable completion of
23 the repairs. The operator asked whether the replacement part was a Chevrolet brand part and
24 Respondent assured her that all of the replacement parts were original GM parts. The operator
25 asked Respondent for the total amount of the bill, to which Respondent responded that Mercury
26 Insurance had already paid him the total amount of the bill.

27 62. On April 18, 2012, the adjuster was at Fix and Paint for a different assignment when
28 he noticed the Chevrolet's corrective collision repairs had been completed. The adjuster noted

1 that the right front door moulding and nameplate, which he had estimated to be replaced with
2 OEM parts, did not appear to be new parts. Respondent informed the adjuster that he cleaned and
3 transferred/reinstalled the vehicle's original right front door moulding and nameplate.
4 Consequently, the adjuster generated a negative supplemental estimate [REDACTED]
5 dated April 19, 2012, which reflected a net supplement amount of negative \$158.51, and a net
6 total of \$2,483.99.

7 63. Later on April 18, 2012, the operator went to Respondent's facility to retrieve the
8 Chevrolet. Respondent drove the vehicle to the front of the facility and informed the operator that
9 the corrective collision repairs had been completed. When the operator asked Respondent for a
10 receipt/invoice for her records, Respondent began searching his office and stated that he could not
11 find the Chevrolet's file. Respondent later presented the operator with a Fix and Paint Auto Body
12 estimate/repair order and requested the operator sign and date the document. Respondent
13 provided the operator with Mercury Insurance estimate [REDACTED] dated April 3,
14 2012, which Respondent represented was the detailed description of the completed repairs that he
15 performed to the Chevrolet. The operator inquired about the Chevrolet's corrective collision
16 repair warranty. Respondent wrote "5 year warranty" on the Fix and Paint Auto Body
17 estimate/repair order that the operator had signed and provided the operator with a copy. Prior to
18 releasing the vehicle to the operator, Respondent pointed out the Chevrolet's right front door strip
19 and informed the operator that he had temporarily utilized the old door strip and that he ordered a
20 new part.

21 64. On April 25, 2012, a Bureau representative inspected the Chevrolet and compared its
22 condition with the repairs specified on Mercury Insurance estimate [REDACTED]
23 dated April 3, 2012. The Bureau's re-inspection of the vehicle found that Respondent failed to
24 replace the following parts and/or perform the following labor operations as estimated and paid as
25 follows:

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LINE ITEM	DESCRIPTION	MECHANICAL LABOR	SUBLET	PRICE	BODY LABOR
1	Overhaul Frt Bumper Cover Assy				1.6
4	Remove/Replace Frt Bumper Impact Strip			\$36.31	Inc
5	Repair Frt Bumper Air Deflector				1.0
6	Refinish Frt Air Deflector				1.6
7	Remove/Replace Grille			\$179.55	0.2
15	Blend Hood Outside				1.0
16	Remove/Install R Hood Washer Nozzle				0.1
17	Remove/Install L Hood Washer Nozzle				0.1
18	Remove/Replace R Fender Panel			\$158.00	1.8
21	Remove/Replace R Fender Wheel Opening Mldg			\$47.00	0.3
23	Remove/Install R Frt Door Assembly				1.2
30	Remove/Replace R Frt Door Adhesive Nameplate			\$8.02	0.2
32	Remove/Install R Frt Otr Door Handle				0.2
33	Remove/Install R Frt Door Glass Run Channel				0.2
35	Remove/Replace Flex Additive			\$8.00	
	SUBTOTALS			\$436.88	9.5
TOTAL PARTS					\$436.88
TAX ON PARTS			\$436.88 X 8.75%		\$38.23
TOTAL MECHANICAL LABOR HOURS		0.0	X		\$0.00
TOTAL BODY LABOR HOURS		9.5	X	\$48.00	\$456.00
SUBLET					\$0.00
GRAND TOTAL					\$931.11

The total theft/fraud amount was \$931.11 but the actual cost to return the vehicle to its pre-loss condition could exceed this amount.

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1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 65. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(1),
4 in conjunction with California Code of Regulations, title 16, sections 3371 and 3373, in that
5 Respondent made untrue and misleading statements and provided false and misleading records
6 regarding the repairs made to the Chevrolet. Respondent provided the operator with Mercury
7 Insurance's estimate [REDACTED] dated April 3, 2012 in representation of the
8 corrective repairs Fix and Paint had completed to the Bureau's Chevrolet, but failed to complete
9 the repairs in accordance with this document.

10 **ELEVENTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 66. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(4),
13 in that Respondent committed an act constituting fraud as follows: Respondent adopted Mercury
14 Insurance appraiser estimate [REDACTED] dated April 3, 2012 as the agreed-upon
15 method of repair. Respondent later falsely stated that he performed the Chevrolet's corrective
16 collision repairs according to Mercury Insurance estimate [REDACTED] dated April
17 19, 2012, without deviations. When the operator retrieved the vehicle from Respondent's facility
18 on April 18, 2012, the Mercury Insurance supplemental estimate [REDACTED] dated
19 April 19, 2012 had not yet been generated. Respondent negotiated, accepted, and adopted
20 Mercury Insurance estimate of record [REDACTED] dated April 3, 2012 as the
21 method of repair, and accepted payment for the repairs, but deviated from the estimate by failing
22 to overhaul the front bumper assembly, failing to replace the front bumper impact strip, right front
23 door adhesive molding, and a right front door nameplate, failing to repair the front bumper air
24 deflector, failing to refinish the front bumper air deflector and hood, failing to replace the grille
25 with an OEM part, failing to remove/install the right and left hood washer nozzles, right front
26 door assembly, right front door outer handle, and the right front door glass run channel, failing to
27 replace the right fender panel and the right fender wheel opening moulding with new aftermarket
28 parts, and charging for flex additive that was not used.

1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Business and Professions Code)**

3 67. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(6),
4 in that Respondent failed to comply with the following provisions of the Business and Professions
5 Code in a material respect:

6 a. **Section 9884.9, subdivision (a):** Respondent failed to secure the operator's
7 signed authorization on Fix and Paint Auto Body's estimate [REDACTED] dated March 29, 2012.

8 b. **Section 9884.11:** Respondent failed to provide copies of the initial estimate and
9 later estimate/repair order as well as copies of the parts purchase receipts to the Bureau.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

11 **(Violations of the California Code of Regulations)**

12 68. Respondent is subject to disciplinary action under Section 9884.7, subdivision (a)(6),
13 in that Respondent failed to comply with the following provisions of Title 16 of the California
14 Code of Regulations in a material respect:

15 a. **Section 3353:** Respondent failed to obtain signed authorization from the
16 operator on Fix and Paint Auto Body's estimate [REDACTED] dated March 29, 2012.

17 b. **Section 3358, subdivision (c):** Respondent failed to provide copies of the
18 initial estimate and later estimate/repair order as well as copies of the parts purchase receipts to
19 the Bureau.

20 c. **Section 3371:** Respondent provided Mercury Insurance's estimate
21 [REDACTED] dated April 3, 2012 in representation of the corrective repairs
22 Respondent had completed to the Chevrolet, but failed to complete the repairs in accordance with
23 the document.

24 d. **Section 3373:** Respondent provided Mercury Insurance's estimate
25 [REDACTED] dated April 3, 2012 in representation of the corrective repairs
26 Respondent had completed to the Chevrolet, but failed to complete the repairs in accordance with
27 the document.

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OTHER MATTERS

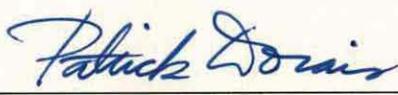
69. Under Section 9884.7, subdivision (c), the Director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by Respondent, upon a finding that it has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

PRAYER

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

1. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 238899, issued to Salvador E. Chavez doing business as Fix and Paint Auto Body;
2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Salvador E. Chavez;
3. Ordering Salvador E. Chavez 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;
4. Taking such other and further action as deemed necessary and proper.

DATED: October 24, 2013


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

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