

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA L. SUN
Supervising Deputy Attorney General
3 BORA SONG
Deputy Attorney General
4 State Bar No. 276475
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2674
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

12 In the Matter of the First Amended Accusation
Against:

Case No. 77/14-23

13
14 **FIX AND PAINT AUTO BODY**
SALVADOR E. CHAVEZ, OWNER
15 **45626 Division Street**
Lancaster, CA 93535

FIRST AMENDED ACCUSATION

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

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Patrick Dorais (Complainant) brings this First Amended Accusation solely in his
23 official capacity as the Acting Chief of the Bureau of Automotive Repair (Bureau), Department of
24 Consumer Affairs.

25 2. On or about May 11, 2005, the Bureau issued Automotive Repair Dealer Registration
26 Number ARD 238899 to Salvador E. Chavez (Respondent), owner of Fix and Paint Auto Body.
27 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
28 charges brought herein and is set to expire on April 30, 2014, unless renewed.

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 490 states, in pertinent part:

17 (a) In addition to any other action that a board is permitted to take against
18 a licensee, a board may suspend or revoke a license on the ground that the licensee
19 has been convicted of a crime, if the crime is substantially related to the
20 qualifications, functions, or duties of the business or profession for which the license
21 was issued.

22 (b) Notwithstanding any other provision of law, a board may exercise any
23 authority to discipline a licensee for conviction of a crime that is independent of the
24 authority granted under subdivision (a) only if the crime is substantially related to the
25 qualifications, functions, or duties of the business or profession for which the
26 licensee's license was issued.

27 (c) A conviction within the meaning of this section means a plea or
28 verdict of guilty or a conviction following a plea of nolo contendere. An action that a
board is permitted to take following the establishment of a conviction may be taken
when the time for appeal has elapsed, or the judgment of conviction has been affirmed
on appeal, or when an order granting probation is made suspending the imposition of
sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

///

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. Section 9884.7 states, in pertinent part:

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

...

(4) Any other conduct that constitutes fraud.

...

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

...

(c) . . . the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by any automotive repair 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.

9. Section 9884.8 states:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state 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.

10. Section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the

1 customer. No charge shall be made for work done or parts supplied in excess of the
2 estimated price without the oral or written consent of the customer that shall be
3 obtained at some time after it is determined that the estimated price is insufficient and
4 before the work not estimated is done or the parts not estimated are supplied. Written
5 consent or authorization for an increase in the original estimated price may be
6 provided by electronic mail or facsimile transmission from the customer. The bureau
7 may specify in regulation the procedures to be followed by an automotive repair
8 dealer if an authorization or consent for an increase in the original estimated price is
9 provided by electronic mail or facsimile transmission. If that consent is oral, the
10 dealer shall make a notation on the work order of the date, time, name of person
11 authorizing the additional repairs and telephone number called, if any, together with a
12 specification of the additional parts and labor and the total additional cost

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

17 REGULATORY PROVISIONS

18 12. California Code of Regulations, title 16, section 3353, states in pertinent part:

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

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

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

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

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

(2) If the authorization from the customer for additional repairs, parts, or
labor in excess of the written estimated price is obtained by facsimile transmission
(fax), the dealer shall also attach to the work order and the invoice, a faxed document

1 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.

2 (3) If the authorization from the customer for additional repairs, parts, or
3 labor in excess of the written estimated price is obtained by electronic mail (e-mail),
4 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.

5 (4) The additional repairs, parts, labor, total additional cost, and a
6 statement that the additional repairs were authorized either orally, or by fax, or by e-
7 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.

8 ...

9 (e) Revising an Itemized Work Order. If the customer has authorized
10 repairs according to a work order on which parts and labor are itemized, the dealer
11 shall not change the method of repair or parts supplied without the written, oral,
12 electronic authorization of the customer. The authorization shall be obtained from the
customer as provided in subsection (c) and Section 9884.9 of the Business and
Professions Code.

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

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

18 ...

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

22 13. California Code of Regulations, title 16, section 3371, states in pertinent part:

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

26 14. California Code of Regulations, title 16, section 3373, states:

27 No automotive repair dealer or individual in charge shall, in filling out an
28 estimate, invoice, or work order, or record required to be maintained by section
3340.15(f) of this chapter, withhold therefrom or insert therein any statement or

1 information which will cause any such document to be false or misleading, or where
2 the tendency or effect thereby would be to mislead or deceive customers, prospective
customers, or the public.

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

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

6 (1) The invoice shall show the automotive repair dealer's registration
7 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
8 with the requirements of subsection (b) of Section 3371 of this chapter.

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

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

12 (B) Each part supplied, in such a manner that the customer can
13 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.

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

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

16 (E) The applicable sales tax, if any.

17 (b) If a customer is to be charged for a part, that part shall be specifically
18 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
19 as a part, and a separate charge may not be made for it.

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

21 (d) The automotive repair dealer shall give the customer a legible copy of
22 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
23 Section 3358 of this article.

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

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

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

28 (b) All written estimates pertaining to work performed.

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

4 17. California Code of Regulations, title 16, section 3395.2, states:

5 A crime or act shall be considered to be substantially related to the
6 qualifications, functions, or duties of a registrant if to a substantial degree it shows
7 that the registrant is presently or potentially unfit to perform the functions authorized
8 by the registration in a manner consistent with the public health, safety, or welfare.
9 Such crimes or acts shall include, but not be limited to, any violation of the provisions
10 of Article 3 of Chapter 20.3 of Division 3 of the Business and Professions Code.

11 COST RECOVERY

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

16 FIRST CAUSE FOR DISCIPLINE

17 (Conviction of a Substantially-Related Crime)

18 19. Respondent is subject to disciplinary action under sections 490 and 9884.7,
19 subdivision (a)(4), in conjunction with California Code of Regulations, title 16, section 3395.2, in
20 that on January 8, 2015 in *People v. Salvador Elias Chavez* (Super. Ct., Crim. J. Center, L.A.
21 County, 2015, No. BA423209), Respondent was convicted of one count of insurance fraud (Pen.
22 Code, § 550, subd. (b)(1)), a misdemeanor. The Court placed Respondent on two years summary
23 probation with standard terms and conditions of probation and 247 hours of community service.
24 The Court ordered Respondent to pay \$1,586 to the Bureau and \$3,000 to consumer complainant
25 S.D. The allegations that were the bases of the conviction are alleged and incorporated by
26 reference herein, in the following factual summaries.

27 CONSUMER (S.D.) COMPLAINT: 2001 Mercedes Benz SLK 320

28 20. On or about December 12, 2009, S.D. was involved in a traffic collision while driving
her 2001 Mercedes Benz SLK 320, which resulted in damage to the front of S.D.'s vehicle.
S.D.'s vehicle was towed to Respondent's facility, Fix and Paint Auto Body (Fix and Paint), for

1 an estimate for the corrective collision damage repairs. Later that day, S.D. notified her insurance
2 provider, Mercury Insurance, of the accident and the location of the vehicle.

3 21. On or about December 15, 2009, S.D. met with Respondent at Fix and Paint.
4 Respondent told S.D. that the vehicle could be repaired and provided S.D. with a document which
5 he asked S.D. to sign for authorization to repair the vehicle. S.D. signed the document and
6 received a copy. Respondent told S.D. that he would wait until Mercury Insurance inspected the
7 vehicle and generated an estimate before commencing any repairs.

8 22. On or about December 28, 2009, a representative from USAA Insurance Company,
9 the insurance provider of the other party involved in the collision, contacted S.D. and informed
10 her that USAA would take responsibility for the vehicle's collision repairs.

11 23. On or about December 29, 2009, S.D. received an estimate from USAA's appraiser, R
12 and C Appraisal Services, which reflected a claim #13. Later that day, Respondent telephoned
13 S.D. and stated that USAA's appraiser inspected the vehicle, generated an estimate, and
14 authorized the necessary repairs. Respondent requested S.D.'s authorization to perform the
15 corrective collision repairs, which S.D. authorized. Respondent did not specify the repair
16 procedure, the cost of the repair, or the time it would take to repair the vehicle.

17 24. On or about February 3, 2010, R and C Appraisal Service generated a corrected
18 supplement S1 on behalf of USAA Insurance for repairs to S.D.'s vehicle. The gross total on the
19 estimate was \$10,668.83.

20 25. Between December 29, 2009 and March 25, 2010, S.D. visited Respondent at Fix and
21 Paint approximately five times to check on the progression of the repairs and noticed minimal
22 progress. Respondent repeatedly stated that he placed special orders for parts and could not
23 continue with the repairs until the parts arrived.

24 26. On March 25, 2010, Respondent contacted S.D. and stated that the repairs were
25 completed. S.D. visited Fix and Paint, at which time Respondent released the vehicle to S.D. and
26 provided S.D. with a document which was similar to the document he provided on December 15,
27 2009. Respondent told S.D. that he guaranteed the repairs from the vehicle's doors up, for as long
28 as Respondent owned the vehicle. Later that day, while driving, S.D. noticed wind noises at the

1 top of both passenger and driver's side doors. S.D. also noticed that the vehicle's hood appeared
2 to be loose, that both door glasses would not close completely, and that the driver's side seat belt
3 was loose. Additionally, the vehicle's battery discharged, requiring S.D. to jump start her vehicle.

4 On March 28, 2010, after a repeated no start condition of the vehicle due to a discharged battery,
5 S.D.'s husband installed a new battery on the vehicle. After driving the vehicle for several days,
6 S.D. noticed the body malfunction indicator light illuminated on the instrument cluster.

7 Moreover, the vehicle's alarm system was malfunctioning and the battery continued to discharge.

8 27. On or about April 10, 2010, S.D. contacted the Bureau and requested an inspection of
9 her vehicle for substandard repairs.

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

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

19 30. On or about May 1, 2010, S.D. met with Respondent to check on the status of the
20 repairs. Respondent told S.D. that he had contracted with Ted, a German vehicle mechanic, to
21 repair the vehicle's electrical system and that all of her concerns with the vehicle were repaired.
22 Respondent released the vehicle to S.D. but did not provide her with an invoice for the warranty
23 repairs. After retrieving the vehicle, S.D. noticed that the wind noises, alarm system, and
24 illuminated body malfunction indicator light issues were not repaired.

25 31. On or about May 15, 2010, S.D. drove her vehicle to Fix and Paint and asked
26 Respondent to repair the wind noises, malfunctioning alarm system, illuminated body malfunction
27 indicator light, and battery discharge condition. Per Respondent's request, S.D. left the vehicle at
28

1 his facility for the corrective repairs. Respondent did not provide S.D. with an estimate for the
2 warranty repairs.

3 32. On or about May 25, 2010, S.D. met with Respondent at Fix and Paint. Respondent
4 told S.D. that Ted performed additional repairs and assured S.D. that the vehicle was repaired
5 correctly. Respondent released the vehicle to S.D. but did not provide her with an invoice for the
6 repairs.

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

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

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

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

24 37. On or about March 29, 2011, S.D. drove her vehicle to Fix and Paint and spoke with
25 Respondent. S.D. notified Respondent of AV Auto Electric's findings and requested that
26 Respondent take responsibility for the corrective repairs, which he agreed to do. S.D. left the
27 vehicle with Respondent and Respondent did not provide S.D. with an estimate for the repairs.
28

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

4 39. After retrieving the vehicle on April 30, 2011, S.D. noticed that the vehicle's wind
5 noises, malfunctioning alarm system, illuminated body malfunction indicator light condition, and
6 battery discharge condition persisted.

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

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

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

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

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

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

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

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

27 43. On June 27, 2011, Torres interviewed Respondent and obtained documents pertinent
28 to S.D.'s vehicle repairs. Respondent provided Torres with copies of parts purchase receipts

1 purported to be receipts from Five Star Auto Parts, the estimate and supplemental estimate for the
 2 repairs, and Fix and Paint Auto Body repair order for the vehicle. Respondent agreed that the
 3 method of repair was the USAA Insurance appraisers' estimate and supplement S1. On July 6,
 4 2011, upon meeting with the owner of Five Star Auto Parts, Torres determined that the parts
 5 purchase receipts provided by Respondent were not in fact from Five Star Auto Parts and may
 6 have been fabricated.

7 44. Based on Respondent's statements and the inspection that Torres and Bradfield
 8 performed on S.D.'s vehicle, Torres determined that Respondent failed to replace the following
 9 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

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

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 45. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(1),
 23 in conjunction with California Code of Regulations, title 16, section 3373, in that Respondent
 24 made statements which he knew or which by exercise of reasonable care he should have known to
 25 be untrue or misleading by falsely representing that he repaired S.D.'s vehicle according to the
 26 corrected supplement S1 estimate by R and C Appraisal Service when in fact he failed to perform
 27 the repairs and services. Respondent also provided the Bureau with copies of some parts purchase
 28

1 receipts, which the Bureau determined to be false documents. Complainant refers to, and by this
2 reference incorporates, the allegations in paragraphs 20–44, above.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 46. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(2),
6 in that on or about December 15, 2009, Respondent allowed S.D. to sign a “estimate/repair” order
7 dated December 12, 2009 that did not state the repairs or the automobile’s odometer reading at the
8 time of the repair. Complainant refers to, and by this reference incorporates, the allegations in
9 paragraphs 20–44, above.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 47. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(4),
13 in conjunction with California Code of Regulations, title 16, section 3373 in that Respondent
14 defrauded S.D. and USAA Insurance when he negotiated, accepted, and adopted R and C
15 Appraisal Service’s corrected supplement S1 estimate dated February 3, 2010 and accepted
16 payment for the repairs and then deviated from the estimate of record by failing to replace the
17 front section of the vehicle including the inner structure as estimated and paid. Complainant
18 refers to, and by this reference incorporates, the allegations in paragraphs 20–44, above.

19 **FIFTH CAUSE FOR DISCIPLINE**

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

21 48. 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.

28

1 Complainant refers to, and by this reference incorporates, the allegations in paragraphs 20–
2 44, above.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 49. 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 Title 16 of the California
7 Code of Regulations in a material respect:

- 8 a. **Section 3353, subdivision (a):** Respondent failed to provide S.D. a written
9 estimated price for labor and parts for the repair of S.D.'s vehicle.
- 10 b. **Section 3358, subdivision (c):** Respondent failed to provide copies of all parts
11 purchase receipts to the Bureau.
- 12 c. **Section 3373:** Respondent made untrue or misleading statements to S.D. and to
13 the Bureau regarding the repairs to S.D.'s vehicle.

14 Complainant refers to, and by this reference incorporates, the allegations in paragraphs 20–
15 44, above.

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

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

1 51. On November 18, 2011, the operator received a telephone call from Respondent, who
2 stated that the corrective collision repairs were completed.

3 52. On November 21, 2011, the operator met with Respondent at Fix and Paint.
4 Respondent told the operator that the only thing left to complete was to reset the illuminated Air
5 Bag system warning light and that his friend, who owned a motorcycle shop, had the equipment to
6 reset the illuminated light. The operator accompanied Respondent to the motorcycle shop, which
7 was closed. Respondent stated that he would take the vehicle to the motorcycle shop later and
8 that if his friend was not there he would drive the vehicle to a local Honda dealership for the
9 necessary Air Bag system repairs and that he would take responsibility for the bill. Respondent
10 later called the operator and told him that he was at the Honda dealership. Respondent stated that
11 he obtained a free diagnosis of the vehicle's illuminated Air Bag system warning light and that he
12 would have to replace the vehicle's bent right front Air Bag sensor to correct the issue.
13 Respondent told the operator that there would be an additional charge of \$99.70 for the Air Bag
14 sensor. When the operator stated that he was under the impression that the estimate included the
15 Air Bag system repairs, Respondent informed him that the estimate only included resetting the Air
16 Bag system warning light. Respondent stated that the total cost would be the total reflected on
17 estimate [REDACTED] plus an additional \$100.00.

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

26 54. On November 28, 2011, the operator telephoned Respondent to inquire about the
27 completion of the repairs, at which time Respondent stated that all of the repairs had been
28 completed. Respondent stated that the total cost was \$2,126.90. Later that day, the operator met

1 with Respondent at Fix and Paint to pick up the vehicle. When the operator inquired about the
2 final invoice, Respondent provided him with a copy of Lancaster Honda invoice [REDACTED] dated
3 November 23, 2011, which Respondent represented was a copy of the invoice for the Honda's
4 replacement Air Bag sensor. The operator asked Respondent if he repaired the vehicle utilizing
5 new OEM Honda parts, specifically the front bumper, right headlamp, and right fender.
6 Respondent answered, "Yes, of course."

7 55. Respondent requested the operator's signature on estimate [REDACTED] dated November
8 16, 2011, which the operator signed. The operator asked Respondent for the total amount owed,
9 and Respondent stated that the total amount was \$2,126.90. The operator gave Respondent
10 \$2,140.00 cash. Respondent said he did not have change and returned \$20.00 to the operator,
11 stating that the balance of \$6.90 was a courtesy discount. Respondent gave the operator the
12 vehicle's bent/damaged Air Bag sensor.

13 ///
14 ///
15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

56. The Bureau's re-inspection of the undercover vehicle found that Respondent failed to 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

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

SEVENTH CAUSE FOR DISCIPLINE

(Untrue and Misleading Statements)

57. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(1), in conjunction with California Code of Regulations, title 16, sections 3371 and 3373, in that Respondent made untrue and misleading statements and provided false or misleading records. Respondent reached an agreement with the operator to perform the corrective collision repairs to the Honda utilizing new OEM Honda parts. Respondent then deviated from the agreed upon

1 method of repair and repaired the Honda utilizing aftermarket parts instead of new OEM parts as
2 recorded on the estimate and invoice. During an interview with a Bureau representative,
3 Respondent falsely stated that he did not perform repairs to the Honda's Air Bag system. In fact,
4 Respondent performed repairs to the Air Bag system and provided the operator with a receipt for
5 the purchase of an Air Bag sensor along with the faulty Air Bag sensor. Respondent provided the
6 operator with estimate [REDACTED] dated November 16, 2011, as an invoice which described the
7 corrective collision repairs Fix and Paint Auto Body had completed to the Bureau's undercover
8 vehicle, but failed to complete the repairs in accordance with the document. Complainant refers
9 to, and by this reference incorporates, the allegations in paragraphs 50-56, above.

10 **EIGHTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 58. 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 defrauded the
14 Bureau by negotiating, accepting, and adopting Fix and Paint Auto Body estimate of record [REDACTED]
15 [REDACTED] dated November 16, 2011, as the method of repair, and accepting payment for the repairs, when
16 in fact Respondent deviated from the estimate. Respondent failed to replace the vehicle's right
17 headlamp and right fender with OEM parts, failed to remove and install the hood lock vertical
18 support, right front door belt molding (also called the belt weatherstrip), right remote control
19 mirror, and right front outside door handle. Respondent charged to remove and install the
20 vehicle's mud guard; however, the vehicle did not have mud guards. Additionally, Respondent
21 failed to refinish the entire radiator panel support assembly. Complainant refers to, and by this
22 reference incorporates, the allegations in paragraphs 50-56, above.

23 **NINTH CAUSE FOR DISCIPLINE**

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

25 59. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(6),
26 in that Respondent failed to comply with the following provisions of the Business and Professions
27 Code in a material respect:
28

- 1 a. **Section 9884.8:** Respondent failed to show the dealer's business name and
2 corresponding ARD registration number on invoice [REDACTED] dated November 16, 2011.
- 3 b. **Section 9884.9, subdivision (a):** Respondent failed to secure the operator's
4 signed authorization on estimate [REDACTED] dated November 16, 2011.
- 5 c. **Section 9884.11:** Respondent failed to provide copies of the estimate/invoice
6 and all parts purchase receipts pertinent to the corrective collision repairs that Fix and Paint
7 performed to the Honda.

8 Complainant refers to, and by this reference incorporates, the allegations in paragraphs 50-
9 56, above.

10 **TENTH CAUSE FOR DISCIPLINE**

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

12 60. 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 prior to commencing repairs on the Honda.
- 17 b. **Section 3356, subdivision (a)(1):** Respondent failed to show the dealer's
18 business name and corresponding ARD registration on invoice [REDACTED], dated November 16, 2011.
- 19 c. **Section 3358, subdivision (c):** Respondent failed to provide copies of the
20 estimate/invoice and all parts purchase receipts pertinent to the corrective collision repairs
21 performed to the Honda to the Bureau.
- 22 d. **Section 3371:** Respondent made false or misleading statements to the operator
23 and to the Bureau regarding the repairs to the Honda.
- 24 e. **Section 3373:** Respondent provided false or misleading records in that he failed
25 to complete the repairs to the Honda in accordance with the invoice.

26 Complainant refers to, and by this reference incorporates, the allegations in paragraphs 50-
27 56, above.

28 ///

UNDERCOVER OPERATION #2: 2001 Chevrolet

1
2 61. On March 29, 2012, an undercover Bureau operator (operator) drove the Bureau's
3 undercover 2001 Chevrolet to Respondent's facility, Fix and Paint Auto Body. The operator met
4 with Respondent and asked him to coordinate with Mercury Insurance and provide her with an
5 estimate for the vehicle's corrective collision repairs. Respondent provided the operator with Fix
6 and Paint Auto Body preliminary estimate [REDACTED] dated March 29, 2012. Respondent did not
7 request the operator's signature on the preliminary estimate.

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

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

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

25 65. On April 18, 2012, the adjuster was at Fix and Paint for a different assignment when
26 he noticed the Chevrolet's corrective collision repairs had been completed. The adjuster noted
27 that the right front door molding and nameplate, which he had estimated to be replaced with OEM
28 parts, did not appear to be new parts. Respondent informed the adjuster that he cleaned and

1 transferred/reinstalled the vehicle's original right front door molding and nameplate.
2 Consequently, the adjuster generated a negative supplemental estimate [REDACTED]
3 dated April 19, 2012, which reflected a net supplement amount of negative \$158.51, and a net
4 total of \$2,483.99.

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

19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

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

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
SUBLET					\$0.00
GRAND TOTAL					\$931.11

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

3 **ELEVENTH CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 68. 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 and misleading records
8 regarding the repairs made to the Chevrolet. Respondent provided the operator with Mercury
9 Insurance's estimate [REDACTED] dated April 3, 2012 in representation of the
10 corrective repairs Fix and Paint had completed to the Bureau's Chevrolet, but failed to complete
11 the repairs in accordance with this document. Complainant refers to, and by this reference
12 incorporates, the allegations in paragraphs 61-67, above.

13 **TWELFTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

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

1 door assembly, right front door outer handle, and the right front door glass run channel, failing to
2 replace the right fender panel and the right fender wheel opening molding with new aftermarket
3 parts, and charging for flex additive that was not used. Complainant refers to, and by this
4 reference incorporates, the allegations in paragraphs 61–67, above.

5 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

14 Complainant refers to, and by this reference incorporates, the allegations in paragraphs 61–
15 67, above.

16 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

26 c. **Section 3371:** Respondent provided Mercury Insurance’s estimate
27 [REDACTED] dated April 3, 2012 in representation of the corrective repairs
28

1 Respondent had completed to the Chevrolet, but failed to complete the repairs in accordance with
2 the document.

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

7 Complainant refers to, and by this reference incorporates, the allegations in paragraphs 61-
8 67, above.

9 **OTHER MATTERS**

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

14 **PRAAYER**

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

17 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
18 Registration Number ARD 238899, issued to Salvador E. Chavez doing business as Fix and Paint
19 Auto Body;

20 2. Revoking, suspending, or placing on probation any other automotive repair dealer
21 registration issued to Salvador E. Chavez;

22 3. Ordering Salvador E. Chavez to pay the Bureau of Automotive Repair the reasonable
23 costs of the investigation and enforcement of this case, pursuant to section 125.3;

24 ///

25 ///

26 ///

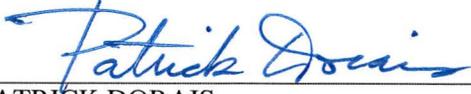
27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Taking such other and further action as deemed necessary and proper.

DATED: May 27, 2015



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

LA2013509819
51785129.doc