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**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 77/14-34

**KERN VALLEY AUTO BODY &
TOWING, INC.; DELIA FARRELL
RASELLA
7421 Wofford Blvd.
Wofford Heights, CA 93285
Automotive Repair Dealer Registration No.
ARD 247625**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about December 20, 2013, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 77/14-34 against Kern Valley Auto Body & Towing, Inc.; Delia Farrell Rasella (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about November 14, 2006, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration No. ARD 247625 to Respondent. The Automotive

1 Repair Dealer Registration expired on October 31, 2013, and has not been renewed. The Director
2 of the Department of Consumer Affairs ("Director") retains jurisdiction of this matter despite the
3 expiration of Respondent's Automotive Repair Dealer Registration pursuant to section 118,
4 subdivision (b), of the Business and Professions Code.

5 3. On or about January 6, 2014, Respondent was served by Certified Mail copies of the
6 Accusation No. 77/14-34, Statement to Respondent, Notice of Defense, Request for Discovery,
7 and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
8 Respondent's address of record which, pursuant to Business and Professions Code section 136, is
9 required to be reported and maintained with the Bureau. Respondent's address of record was and
10 is 7421 Wofford Blvd., Wofford Heights, CA 93285.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 5. Government Code section 11506 states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts
17 of the accusation not expressly admitted. Failure to file a notice of defense shall
18 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
19 may nevertheless grant a hearing.

20 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
21 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No.
22 77/14-34.

23 7. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
27 respondent.

28 8. Pursuant to its authority under Government Code section 11520, the Director after
having reviewed the proof of service dated January 6, 2014, signed by Corinia Talaro, finds
that Respondent is in default. The Director will take action without further hearing and, based on

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1 Accusation, No. 77/14-34, the aforementioned proof of service and on the Affidavit of Bureau
2 Representative Erasmo Lopez, finds that the allegations in Accusation are true.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent Kern Valley Auto Body &
5 Towing, Inc.; Delia Farrell Rasella has subjected her Automotive Repair Dealer Registration No.
6 ARD 247625 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Director of Consumer Affairs is authorized to revoke Respondent's Automotive
9 Repair Dealer Registration based upon the following violations alleged in the Accusation which
10 are supported by the evidence contained in the affidavit of Bureau Representative Erasmo Lopez
11 in this case.:

12 a. Business and Professions Code § 9884.7(a)(4) [Fraud];

13 b. Business and Professions Code § 9884.7(a)(1) [Untrue Misleading Statements];

14 c. Business and Professions Code § 9884.7(a)(2) [Unlawful Work Order];

15 d. Business and Professions Code § 9884.7(a)(2) [Failure to Provide Customer Copy of
16 Signed Document];

17 e. Business and Professions Code § 9884.7(a)(7) [Willful Departure from Trade
18 Standards];

19 f. Business and Professions Code § 9884.7(a)(6) [Unauthorized Repair/Parts Change];

20 g. Business and Professions Code § 9884.7(a)(6) [Invoice Violations];

21 h. Business and Professions Code § 9884.7(a)(5) [Gross Negligence];

22 ORDER

23 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 247625,
24 heretofore issued to Respondent Kern Valley Auto Body & Towing, Inc.; Delia Farrell Rasella, is
25 revoked.

26 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
27 written motion requesting that the Decision be vacated and stating the grounds relied on within
28 seven (7) days after service of the Decision on Respondent. The motion should be sent to the

1 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho
2 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on
3 a showing of good cause, as defined in the statute.

4 This Decision shall become effective on May 30, 2014.

5 It is so ORDERED MAY 08 2014

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DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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DOJ Matter ID:LA2013510107

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:
12
13 **KERN VALLEY AUTO BODY &**
TOWING, INC.; DELIA FARRELL
14 **RASELLA**
7421 Wofford Blvd.
15 Wofford Heights, CA 93285
16 **Automotive Repair Dealer Registration No.**
ARD 247625
17 Respondent.

Case No. 77/14-34

A C C U S A T I O N

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
22 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.
23 2. In 2006 the Bureau of Automotive Repair issued Automotive Repair Dealer
24 Registration Number ARD 247625 to Kern Valley Auto Body & Towing, Inc.; Delia Farrell
25 Rasella, president (Respondent or Kern Valley Auto). The Automotive Repair Dealer Registration
26 expired on October 31, 2013, and has not been renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Director of Consumer Affairs (Director) for the
3 Bureau of Automotive Repair (Bureau), under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 9884.7 of the Code states:

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

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

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

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

22 (4) Any other conduct that constitutes fraud.

23 (5) Conduct constituting gross negligence.

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

26 (7) Any willful departure from or disregard of accepted trade standards for good and
27 workmanlike repair in any material respect, which is prejudicial to another without consent of the
28 owner or his or her duly authorized representative.

1 6. Section 9884.8 of the Code states:

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

12 7. Section 9884.9, subdivision (c), of the Code states:

13 "In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto body
14 or collision repairs, shall provide an itemized written estimate for all parts and labor to the
15 customer. The estimate shall describe labor and parts separately and shall identify each part,
16 indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part
17 shall be identified on the written estimate and the written estimate shall indicate whether the crash
18 part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer
19 aftermarket crash part.

20 8. California Code of Regulations, title 16, section 3353, states in pertinent part:

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

23 ...

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

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1 also describe replacement crash parts as original equipment manufacturer (OEM) crash parts or
2 non-OEM aftermarket crash parts.

3 ...

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

9

10 9. California Code of Regulations, title 16, section 3356, subdivision (a), states in
11 pertinent part:

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

14 ...

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

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

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

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

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

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

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1 10. California Code of Regulations, title 16, section 3371, states in pertinent part:

2 "No dealer shall publish, utter, or make or cause to be published, uttered, or made any false
3 or misleading statement or advertisement which is known to be false or misleading, or which by
4 the exercise of reasonable care should be known to be false or misleading.

5
6 11. California Code of Regulations, title 16, section 3373, states:

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

12 **COST RECOVERY**

13 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
17 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
18 included in a stipulated settlement.

19 **UNDERCOVER OPERATION #1 – 2001 CHEVROLET**

20 13. On or about July 16, 2012, the Bureau initiated an undercover investigation of Kern
21 Valley Auto wherein an undercover Bureau operator took a fully documented Bureau vehicle to

22 Respondent's facility for collision repairs. The Bureau's investigation was prompted by several
23 anonymous consumer complaints alleging that Respondent was charging for Original Equipment
24 Manufacturer (OEM) parts and representing to consumers and their insurers that he was using
25 OEM parts when in fact he was using aftermarket parts instead.

26 14. The vehicle used by the Bureau in the July 16, 2012, undercover operation was a 2001
27 Chevrolet with damage to the right front fender. The undercover operator took the 2001
28 Chevrolet to Kern Valley Auto for repairs and provided an itemized insurance company repair

1 estimate to an employee, who represented to the undercover operator that all repairs would be
2 made in accordance with the insurance estimate. The insurance estimate listed the total cost of
3 repairs, including parts and labor, to be \$1,129.77. The employee then handed the undercover
4 operator a blank work order form and asked him to sign it in order to authorize the repairs. The
5 undercover operator was not given a copy of the signed work order.

6 15. On or about July 20, 2012, the undercover operator received a phone call from Kern
7 Valley Auto informing him that the 2001 Chevrolet was ready for pickup. On or about July 24,
8 2012, the undercover operator returned to Kern Valley Auto and provided an individual who
9 identified himself as "Ed" with a cashier's check in the amount \$1,129.77 as payment for the
10 repairs. Ed signed Respondent's invoice and handed a copy of it to the undercover operator who
11 then took possession of the vehicle and left the facility. Respondent's invoice in the amount of
12 \$1,129.77 represented that all repairs had been made in accordance with the insurance estimate.
13 The invoice failed to list the service work performed or parts supplied, failed to indicate whether
14 parts provided were OEM crash parts or non-OEM aftermarket crash parts and failed to list
15 separately the subtotal price for labor, parts and applicable sales tax.

16 16. The 2001 Chevrolet was taken immediately to a Bureau vehicle documentation
17 laboratory where a Bureau program representative later inspected it to determine whether the
18 repairs had been made, as charged by Respondent, in accordance with the insurance estimate.
19 During his inspection of the 2001 Chevrolet, the Bureau program representative discovered the
20 following discrepancies between the work charged for by Respondent and the work that was
21 actually performed:

- 22 a. the front bumper cover was not removed and reinstalled;
- 23 b. the damaged front right fender was replaced with an aftermarket fender instead of new
24 factory OEM fender;
- 25 c. Respondent did not refinish or blend the paint to the right front door;
- 26 d. the right door upper molding was not removed and reinstalled;
- 27 e. the right door belt weatherstrip was not removed and reinstalled;
- 28 f. the right door side molding was not removed and reinstalled;

- 1 g. the right door mirror was not removed and reinstalled;
- 2 h. the right door outside handle was not removed and reinstalled;
- 3 i. the interior door trim panel was not removed and reinstalled.

4 17. As a result of its failure to perform the repair work in accordance with the insurance
5 estimate and final invoice, Respondent knowingly accepted payment in the amount of \$1,003.49
6 for work that had not been performed and parts that had not been provided.

7 UNDERCOVER OPERATION #2 – 2005 KIA

8 18. On or about October, 23, 2012, the Bureau sent another undercover Bureau operator
9 to Kern Valley Auto for repairs on a Bureau-documented vehicle. The vehicle used by the Bureau
10 in the October, 23, 2012, undercover operation was a 2005 Kia with collision damage to its right
11 front and right side. The undercover operator took the 2005 Kia to Kern Valley Auto for repairs
12 and provided an itemized insurance company repair estimate to an employee, who represented to
13 the undercover operator that all repairs would be made in accordance with the insurance estimate.
14 The insurance estimate listed the total cost of repairs, including parts and labor, to be \$2,889.60.
15 The employee then handed the undercover operator a blank work order form and asked her to sign
16 it in order to authorize the repairs. The undercover operator was not given a copy of the signed
17 work order.

18 19. After being notified that the 2005 Kia was ready for pickup, the undercover operator
19 returned to Kern Valley Auto on or about November 6, 2012, and provided an individual who
20 identified himself as "Ed" with a cashier's check in the amount \$500.00 as payment for the
21 insurance deductible. Per respondent's request, the operator also endorsed another check from the
22 insurance company in the amount of \$2,389.60 to cover the balance of the repair work. Ed signed
23 Respondent's invoice and handed a copy of it to the undercover operator who then took
24 possession of the vehicle and left the facility. Respondent's invoice in the amount of \$2,889.60
25 represented that all repairs had been made in accordance with the insurance estimate. The invoice
26 failed to list the service work performed or parts supplied, failed to indicate whether parts
27 provided were OEM crash parts or non-OEM aftermarket crash parts and failed to list separately
28 the subtotal price for labor, parts and applicable sales tax.

1 it in order to authorize the repairs. The undercover operator was not given a copy of the signed
2 work order.

3 23. On or about April 2, 2013, the undercover operator contacted Kern Valley Auto and
4 was informed that that the 2005 Honda was ready for pick up. The undercover operator returned
5 to Kern Valley Auto the next day and provided an individual who identified himself as "Ed" with
6 \$500.00 in cash as payment for the insurance deductible. The insurance company paid the balance
7 of the invoice directly to Respondent via a check issued in the amount of \$3,686.81. Ed signed
8 Respondent's invoice and handed a copy of it to the undercover operator who then took
9 possession of the vehicle and left the facility. Respondent's invoice for \$4,186.81 represented that
10 all repairs had been made in accordance with the insurance estimate. The invoice failed to list the
11 service work performed or parts supplied, failed to indicate whether parts provided were OEM
12 crash parts or non-OEM aftermarket crash parts and failed to list separately the subtotal price for
13 labor, parts and applicable sales tax.

14 24. Upon leaving Kern Valley Auto, the undercover operator immediately returned the
15 2005 Honda to the custody of the Bureau, and on or about April 15, 2013, a Bureau program
16 representative began his inspection of the vehicle to determine whether the repairs had been made,
17 as charged by Respondent, in accordance with the insurance estimate. During his inspection of the
18 2005 Honda, the Bureau program representative discovered the following discrepancies between
19 the work charged for by Respondent and the work that was actually performed:

20 a. the damaged front bumper cover was replaced with an aftermarket bumper cover
21 instead of a new factory OEM bumper cover;

22 b. the left headlamp assembly was replaced with an aftermarket part instead of a new
23 factory OEM headlamp;

24 c. the damaged left fender was replaced with an aftermarket fender instead of new
25 factory OEM fender;

26 d. the left fender liner was not replaced;

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28 ///

1 e. the left rear turn and stop lamp was not removed and reinstalled

2 f. the repaired areas were not buffed and polished.

3 25. As a result of its failure to perform the repair work in accordance with the
4 insurance estimate and final invoice, Respondent knowingly accepted payment of \$2,055.82 for
5 work that had not been performed and parts that had not been provided.

6 **FIRST CAUSE FOR DISCIPLINE**

7 (Fraud)

8 26. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(4), in
9 that Respondent engaged in conduct that constitutes fraud. Complainant refers to, and by this
10 reference incorporates, the allegations set forth above in paragraphs 13 through 25, inclusive, as
11 though set forth fully herein.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (False/Misleading Statements)

14 27. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(1), in
15 conjunction with California Code of Regulations, title 16, sections 3371 and 3373, in that
16 Respondent made written and oral statements that were untrue and/or misleading which
17 Respondent knew or should have known were untrue and/or misleading. Complainant refers to,
18 and by this reference incorporates, the allegations set forth above in paragraphs 13 through 25,
19 inclusive, as though set forth fully herein.

20 **THIRD CAUSE FOR DISCIPLINE**

21 (Unlawful Work Order)

22 28. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(2), in
23 that Respondent caused customers to sign work orders that did not state the repairs requested or
24 contain odometer readings for the vehicles being authorized for repair. Complainant refers to, and
25 by this reference incorporates, the allegations set forth above in paragraphs 14, 18 and 22,
26 inclusive, as though set forth fully herein.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Provide Customer with Copy of Signed Document)**

3 29. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(2), in
4 that Respondent failed to provide customers with copies of signed work orders at the time the
5 customers signed said documents. Complainant refers to, and by this reference incorporates, the
6 allegations set forth above in paragraphs 14, 18 and 22, inclusive, as though set forth fully herein.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Willful Departure/Disregard for Trade Standard)**

9 30. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(7), in
10 that Respondent willfully disregarded and/or departed from accepted trade standards for good and
11 workmanlike repair. The circumstances are as follows:

12 a. With respect to the vehicle described herein as the Bureau's 2001 Chevrolet,
13 Respondent willfully failed to refinish or blend the paint to the right front door of the vehicle as set
14 forth above in paragraph 16, subparagraph c.

15 b. With respect to the vehicle described herein as the Bureau's 2005 Kia, Respondent
16 failed to reinstall six (6) plastic fasteners that secured the front bumper of the vehicle, failed to
17 reinstall a fastener for the right side cowl grille and omitted a rubber seal, and failed to reinstall a
18 bolt for the cowl panel extension and right front fender.

19 c. With respect to the vehicle described herein as the Bureau's 2005 Honda, Respondent
20 failed to buff and polish the vehicle's paintwork as set forth above in paragraph 24, subparagraph
21 f.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(Unauthorized Repair/Parts Changes)**

24 31. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(6), in
25 conjunction with California Code of Regulations, title 16, section 3353, subdivision (e), in that
26 Respondent changed agreed upon methods of repair and parts to be supplied without customer
27 authorization. Complainant refers to, and by this reference incorporates, the allegations set forth
28 above in paragraphs 13 through 24, inclusive, as though set forth fully herein.

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2. Ordering Kern Valley Auto Body & Towing, Inc.; Delia Farrell Rasella, president, 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;

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

DATED: December 20, 2013



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

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