

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10
11 In the Matter of the Accusation Against:

Case No. *77/16-04*

12 **OSCAR H. MARTINEZ**
13 **dba INTERNATIONAL AUTOMOTIVE**
14 **2340 Lombard Street**
15 **San Francisco, CA 94123**

A C C U S A T I O N

16 **Automotive Repair Dealer Registration No.**
17 **ARD 249956**

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
21 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

22 2. On or about March 27, 2007, the Bureau of Automotive Repair issued Automotive
23 Repair Dealer Registration Number ARD 249956 to Oscar H. Martinez dba International
24 Automotive (Respondent). The Automotive Repair Dealer Registration expired on March 31,
25 2014, and has not been renewed.

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1 **JURISDICTION**

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

6 **STATUTORY PROVISIONS**

7 4. Section 9884.7 of the Code states:

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

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

16 . . .

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

19 "(4) Any other conduct which constitutes fraud.

20 . . .

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

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

26 . . .

27 "(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
28 than one place of business in this state, the director pursuant to subdivision (a) shall only suspend,

1 revoke, or place on probation the registration of the specific place of business which has violated
2 any of the provisions of this chapter. This violation, or action by the director, shall not affect in
3 any manner the right of the automotive repair dealer to operate his or her other places of business.

4 "(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
5 probation the registration for all places of business operated in this state by an automotive repair
6 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
7 and willful violations of this chapter, or regulations adopted pursuant to it."

8 5. Section 9884.9 of the Code states:

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

23 "(1) Make a notation on the invoice of the same facts set forth in the notation on the work
24 order .

25 "(2) Upon completion of the repairs, obtain the customer's signature or initials to an
26 acknowledgment of notice and consent, if there is an oral consent of the customer to additional
27 repairs, in the following language:

28 "I acknowledge notice and oral approval of an increase in the original estimated price.

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(signature or initials)"

"Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

"(b) The automotive repair dealer shall include with the written estimated price a statement of any automotive repair service that, if required to be done, will be done by someone other than the dealer or his or her employees. No service shall be done by other than the dealer or his or her employees without the consent of the customer, unless the customer cannot reasonably be notified. The dealer shall be responsible, in any case, for any service in the same manner as if the dealer or his or her employees had done the service.

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

"(d) A customer may designate another person to authorize work or parts supplied in excess of the estimated price, if the designation is made in writing at the time that the initial authorization to proceed is signed by the customer. The bureau may specify in regulation the form and content of a designation and the procedures to be followed by the automotive repair dealer in recording the designation. For the purposes of this section, a designee shall not be the automotive repair dealer providing repair services or an insurer involved in a claim that includes the motor vehicle being repaired, or an employee or agent or a person acting on behalf of the dealer or insurer."

6. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration
2 temporarily or permanently.

3 7. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
4 "commission," "committee," "department," "division," "examining committee," "program," and
5 "agency." "License" includes certificate, registration or other means to engage in a business or
6 profession regulated by the Code.

7 COSTS

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

12 FACTUAL BACKGROUND

13 9. On or about November 14, 2013, PS's 2013 newly purchased Toyota Prius was hit by
14 another vehicle resulting in extensive collision damage. The vehicle was towed to Respondent's
15 shop for repairs.

16 10. On November 18, 2013, PS met with Respondent and signed an estimate, authorizing
17 the repair work described as "IT WILL BE REPAIR AS PER INSURANCE STIMATE [sic]."
18 This estimate did not list the price for labor or parts. The estimate gave Respondent power of
19 attorney over PS and let Respondent cash checks issued to PS. PS signed the estimate but was
20 not given a copy.

21 11. On or about March 18, 2014, after two supplemental requests for more work were
22 approved, Respondent claimed to have finished repairs to PS's vehicle with the exception of the
23 installation of a fuel filler pipe bracket. However, the dash warning lights for the air bag and seat
24 belt systems were on. Respondent informed PS that the vehicle must go to the Dealer for
25 diagnosis.

26 12. Respondent informed PS that the front wheel alignment was out of specification.
27 Respondent claimed the alignment problem was unrelated to the accident, and it was not his
28 responsibility to repair it.

13. On or about March 19, 2014, PS's vehicle frame was measured and found to be out of specification. There was an 11 millimeter difference between the length of the left and the right rear of the vehicle frame. The industry standard maximum difference is 5 millimeters. The left rear of the vehicle was also pushed to the left by 8 millimeters. The industry standard maximum is 3 millimeters.

14. On May 20, 2014, a BAR program representative inspected PS's vehicle. This inspection identified that Respondent received \$5,112.49 for work that was not performed and for parts that were not supplied as follows:

<u>Line Item</u>	<u>Description</u>	<u>Parts Body</u>	<u>Body Labor</u>	<u>Paint Labor</u>	<u>Paints Supply</u>
3:	Replace Bumper Cover	\$202.17	3	3.3	3.3
4:	Add for Three Stage			2.3	2.3
5:	Add for Fog Lamps		0.3		
24:	Section Center floor pan	\$374.90	6	1.5	1.5
25:	Add for Three Stage			0.6	0.6
47:	Replace left quarter panel protector	\$12.18	0.2		
55:	Replace left inner panel	\$132.23	2.0	0.3	0.3
56:	Add for Three Stage			0.1	0.1
64:	Replace left inner wheelhouse	\$351.48	8.0	0.6	0.6
78:	Replace left upper insulator	\$7.93			
79:	Replace left lower insulator	\$8.53			
91:	Section rear floor pan	\$374.90	13.0		
102:	Replace nameplate "Prius V"	\$33.82	0.2		
103:	Replace nameplate "Hybrid"	\$27.67	0.2		
123:	Restore corrosion protection	\$10.00	0.2		
TOTALS		\$1535.81	33.1	8.7	8.7

1	33.1 Hours Body Labor @ \$75 per hour:	\$2482.50			
2	8.7 Hours Paint Labor @ 75 Hour:	\$652.50			
3	8.7 Hours Paint Supplies@ \$32:	\$278.40			
4	9% Sale Tax on Parts and Paint supplies	\$163.28			
5	TOTAL:	\$5112.49			

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7 15. There were numerous problems with the Prius following Respondent's "repairs." PS
8 took the Prius to another shop that estimated the vehicle needed over \$27,000 in corrective
9 repairs. PS has experienced problems with the warning lights, radio, Bluetooth, transmission, and
10 windows since his vehicle was "repaired" by Respondent.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Untrue or Misleading Statements)

13 16. Respondent is subject to disciplinary action under section 9884.7(a)(1) and Code in
14 that Respondent made untrue or misleading statements that Respondent knew or should have
15 known were untrue or misleading. Respondent claimed work was performed when in fact it was
16 not. The circumstances are described in paragraphs 9-15, above.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Fraud)

19 17. Respondent is subject to disciplinary action under section 9884.7(a)(4) in that
20 Respondent committed fraud. The circumstances are described in paragraphs 9-15, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Departure from Trade Standards)

23 18. Respondent is subject to disciplinary action under section 9884.7 (a)(7) in that
24 Respondent willfully departed from or disregarded accepted trade standards for good and
25 workmanlike repair in any material respect, which was prejudicial to another and without the
26 consent of the owner. The circumstances are described in paragraphs 9-15, above.

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

DATED: August 10, 2015


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

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