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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. 77/16-04

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

DEFAULT DECISION AND ORDER

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

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about August 10, 2015, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 77/16-04 against Oscar H. Martinez (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about March 27, 2007, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration No. ARD 249956 to Respondent. The Automotive Repair Dealer Registration expired on March 31, 2014, and has not been renewed.

3. On or about August 13, 2015, Respondent was served by Certified and First Class Mail copies of the Accusation No. 77/16-04, Statement to Respondent, Notice of Defense,

1 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
2 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
3 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
4 address of record was and is:

5 2340 Lombard Street
6 San Francisco, CA 94123.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

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

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

16 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
18 77/16-04.

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

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

24 8. Pursuant to its authority under Government Code section 11520, the Director after
25 having reviewed the proof of service dated August 13, 2015, signed by Joan Randolph, finds
26 Respondent is in default. The Director will take action without further hearing and, based on
27 Accusation, No. 77/16-04, proof of service and on the Affidavit of Bureau Representative Dan
28 Cervantez, finds that the allegations in Accusation are true.

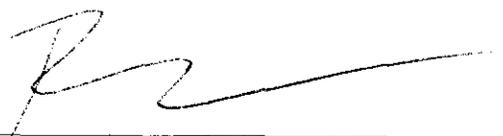
DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Oscar H. Martinez has subjected
his Automotive Repair Dealer Registration No. ARD 249956 to discipline.

1 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on
2 a showing of good cause, as defined in the statute.

3 This Decision shall become effective on April 24, 2016.

4 It is so ORDERED March 29, 2016

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6 

7
8 TAMARA COLSON
9 Assistant General Counsel
10 Division of Legal Affairs
11 Department of Consumer Affairs

12 41367830.DOC
13 DOJ Matter ID:SF2015401763

14 Attachment:
15 Exhibit A: Accusation
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Exhibit A

Accusation

(OSCAR H. MARTINEZ)

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

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 **OSCAR H. MARTINEZ**
13 **dba INTERNATIONAL AUTOMOTIVE**
14 **2340 Lombard Street**
15 **San Francisco, CA 94123**
16 **Automotive Repair Dealer Registration No.**
17 **ARD 249956**
18 Respondent.

Case No. 77/16-04

ACCUSATION

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.

26 ///
27 ///
28 ///

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.

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

6 14. On May 20, 2014, a BAR program representative inspected PS's vehicle. This
 7 inspection identified that Respondent received \$5,112.49 for work that was not performed and for
 8 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		

6

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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FOURTH CAUSE FOR DISCIPLINE

(Failure to Provide Document to the Consumer)

19. Respondent is subject to disciplinary action under section 9884.7(a)(3) in that Respondent failed to provide a copy of a document PS signed. The circumstances are described in paragraphs 9-10, above.

FIFTH CAUSE FOR DISCIPLINE

(Violation of the Automotive Repair Act)

20. Respondent is subject to disciplinary action under section 9884.7(a)(6) in that Respondent violated section 9884.9 by failing to give PS a written estimated price for labor and parts for the work on PS's Prius. The circumstances are described in paragraphs 9-10, above.

OTHER MATTERS

21. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

PRAYER

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

- 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 249956, issued to Oscar H. Martinez dba International Automotive;
- 2. Revoking or suspending any other automotive repair dealer registration issued in the name of Oscar H. Martinez;
- 3. Ordering Oscar H. Martinez 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;

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

DATED: August 10, 2015

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

SF2015401763
41330250.docx

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**
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11 **STATE OF CALIFORNIA**

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15 **2340 Lombard Street**
16 **San Francisco, CA 94123**

STATEMENT TO RESPONDENT

[Gov. Code §§ 11504, 11505(b)]

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

Respondent.

19 **TO RESPONDENT:**

20 Enclosed is a copy of the Accusation that has been filed with the Director of Consumer
21 Affairs, Bureau of Automotive Repair (Bureau), and which is hereby served on you.

22 Unless a written request for a hearing signed by you or on your behalf is delivered or
23 mailed to the Bureau, represented by Deputy Attorney General Justin R. Surber, within fifteen
24 (15) days after a copy of the Accusation was personally served on you or mailed to you, you will
25 be deemed to have waived your right to a hearing in this matter and the Bureau may proceed upon
26 the Accusation without a hearing and may take action thereon as provided by law.

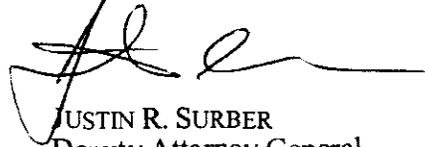
27 The request for hearing may be made by delivering or mailing one of the enclosed forms
28 entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in
section 11506 of the Government Code, to

1 Disciplinary Guidelines will be provided to you on your written request to the state agency
2 bringing this action.

3 If you are interested in pursuing this alternative to a formal administrative hearing, or if you
4 have any questions, you or your attorney should contact Deputy Attorney General Justin R.
5 Surber at the earliest opportunity.

6 Dated: August 13, 2015

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

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10 
11 JUSTIN R. SURBER
Deputy Attorney General
Attorneys for Complainant

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13
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15 **2340 Lombard Street**
16 **San Francisco, CA 94123**

A C C U S A T I O N

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

Respondent.

19 Complainant alleges:

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,
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7 4. Section 9884.7 of the Code states:

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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."

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13 customer that shall be obtained at some time after it is determined that the estimated price is
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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.

1 _____
2 (signature or initials)"

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

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

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

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19 excess of the estimated price, if the designation is made in writing at the time that the initial
20 authorization to proceed is signed by the customer. The bureau may specify in regulation the
21 form and content of a designation and the procedures to be followed by the automotive repair
22 dealer in recording the designation. For the purposes of this section, a designee shall not be the
23 automotive repair dealer providing repair services or an insurer involved in a claim that includes
24 the motor vehicle being repaired, or an employee or agent or a person acting on behalf of the
25 dealer or insurer."

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

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

6 14. On May 20, 2014, a BAR program representative inspected PS's vehicle. This
 7 inspection identified that Respondent received \$5,112.49 for work that was not performed and for
 8 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			

6

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.

27 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Failure to Provide Document to the Consumer)

3 19. Respondent is subject to disciplinary action under section 9884.7(a)(3) in that
4 Respondent failed to provide a copy of a document PS signed. The circumstances are described
5 in paragraphs 9-10, above.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 (Violation of the Automotive Repair Act)

8 20. Respondent is subject to disciplinary action under section 9884.7(a)(6) in that
9 Respondent violated section 9884.9 by failing to give PS a written estimated price for labor and
10 parts for the work on PS's Prius. The circumstances are described in paragraphs 9-10, above.

11 **OTHER MATTERS**

12 21. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
13 or place on probation the registration for all places of business operated in this state by
14 Respondent, upon a finding that Respondent has, or is, engaged in a course of repeated and
15 willful violations of the laws and regulations pertaining to an automotive repair dealer.

16 **PRAYER**

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

19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
20 249956, issued to Oscar H. Martinez dba International Automotive;

21 2. Revoking or suspending any other automotive repair dealer registration issued in the
22 name of Oscar H. Martinez;

23 3. Ordering Oscar H. Martinez to pay the Bureau of Automotive Repair the reasonable
24 costs of the investigation and enforcement of this case, pursuant to Business and Professions
25 Code section 125.3;

26 ///

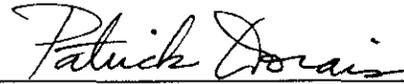
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4. Taking such other and further action as deemed necessary and proper.

DATED: August 10, 2015



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

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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
7

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

12 In the Matter of the Accusation Against:

Case No. 77/16-04

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

REQUEST FOR DISCOVERY

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

Respondent.

19 **TO RESPONDENT:**

20 Under section 11507.6 of the Government Code of the State of California, parties to an
21 administrative hearing, including the Complainant, are entitled to certain information concerning
22 the opposing party's case. A copy of the provisions of section 11507.6 of the Government Code
concerning such rights is included among the papers served.

23 **PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU ARE**
24 **HEREBY REQUESTED TO:**

- 25 1. Provide the names and addresses of witnesses to the extent known to the Respondent,
26 including, but not limited to, those intended to be called to testify at the hearing, and
27 2. Provide an opportunity for the Complainant to inspect and make a copy of any of the
28 following in the possession or custody or under control of the Respondent:

1 a. A statement of a person, other than the Respondent, named in the
2 initial administrative pleading, or in any additional pleading, when it is claimed that
3 the act or omission of the Respondent as to this person is the basis for the
4 administrative proceeding;

5 b. A statement pertaining to the subject matter of the proceeding made
6 by any party to another party or persons;

7 c. Statements of witnesses then proposed to be called by the
8 Respondent and of other persons having personal knowledge of the acts, omissions or
9 events which are the basis for the proceeding, not included in (a) or (b) above;

10 d. All writings, including but not limited to reports of mental, physical
11 and blood examinations and things which the Respondent now proposes to offer in
12 evidence;

13 e. Any other writing or thing which is relevant and which would be
14 admissible in evidence, including but not limited to, any patient or hospital records
15 pertaining to the persons named in the pleading;

16 f. Investigative reports made by or on behalf of the Respondent
17 pertaining to the subject matter of the proceeding, to the extent that these reports (1)
18 contain the names and addresses of witnesses or of persons having personal
19 knowledge of the acts, omissions or events which are the basis for the proceeding, or
20 (2) reflect matters perceived by the investigator in the course of his or her
21 investigation, or (3) contain or include by attachment any statement or writing
22 described in (a) to (e), inclusive, or summary thereof.

23
24 For the purpose of this Request for Discovery, "statements" include written statements by
25 the person, signed, or otherwise authenticated by him or her, stenographic, mechanical, electrical
26 or other recordings, or transcripts thereof, of oral statements by the person, and written reports or
27 summaries of these oral statements.
28

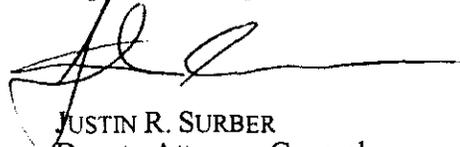
1 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery
2 should be deemed to authorize the inspection or copying of any writing or thing which is
3 privileged from disclosure by law or otherwise made confidential or protected as attorney's work
4 product.

5 Your response to this Request for Discovery should be directed to the undersigned attorney
6 for the Complainant at the address on the first page of this Request for Discovery within 30 days
7 after service of the Accusation.

8 Failure without substantial justification to comply with this Request for Discovery may
9 subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30 of the
10 Government Code.

11 Dated: August 13, 2015

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

14 
15 JUSTIN R. SURBER
16 Deputy Attorney General
17 *Attorneys for Complainant*

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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:

OSCAR H. MARTINEZ

Respondent.

Case No. 77/16-04

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense. I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

Dated: _____

Respondent's Name: _____

Respondent's Signature: _____

Respondent's Mailing
Address: _____

City, State and Zip Code: _____

Respondent's Telephone: _____

Respondent's Fax: _____

Respondent's E-mail _____

Check appropriate box:

- I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone: _____

Counsel's Fax: _____

Counsel's E-mail: _____

- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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

In the Matter of the Accusation Against:

OSCAR H. MARTINEZ

Respondent.

Case No. 77/16-04

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

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Dated: _____

Respondent's Name: _____

Respondent's Signature: _____

Respondent's Mailing _____

Address: _____

City, State and Zip Code: _____

Respondent's Telephone: _____

Respondent's Fax: _____

Respondent's E-mail _____

Check appropriate box:

- I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone: _____

Counsel's Fax: _____

Counsel's E-mail: _____

- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: In the Matter of the Accusation Against:
Oscar H. Martinez; dba International Automotive

Case No.: 77/16-04

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

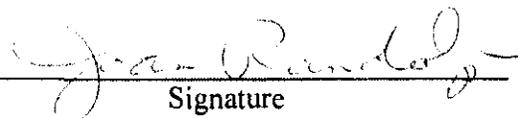
On August 13, 2015, I served the attached **STATEMENT TO RESPONDENT** by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT** was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Oscar H. Martinez
International Automotive
2340 Lombard Street
San Francisco, CA 94123

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 13, 2015, at San Francisco, California.

Joan Randolph

Declarant



Signature

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: In the Matter of the Accusation Against:
Oscar H. Martinez; dba International Automotive

Case No.: 77/16-04

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On August 13, 2015, I served the attached **STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; NOTICE OF DEFENSE; GOVERNMENT CODE SECTIONS 11507.5, 11507.6, 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; NOTICE OF DEFENSE; GOVERNMENT CODE SECTIONS 11507.5, 11507.6, 11507.7** was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Oscar H. Martinez
International Automotive
2340 Lombard Street
San Francisco, CA 94123

Certified Article Number

9414 7266 9904 2009 2591 25

SENDERS RECORD

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 10, 2015, at San Francisco, California.

Joan Randolph

Declarant


Signature

WALZ
CERTIFIED
MAILER™

FROM **WALZ**

U.S. PAT. NO. 5,501,393

7414 7266 7904 2009 2591 25

Label #1
Oscar H. Martinez
International Automotive
2340 Lombard Street
San Francisco, CA 94123

Label #2
Oscar H. Martinez
International Automotive
2340 Lombard Street
San Francisco, CA 94123

Label #3
Justin R. Surber
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

TO:
Oscar H. Martinez
International Automotive
2340 Lombard Street
San Francisco, CA 94123

SENDER: Justin R. Surber

REFERENCE: SF2015401763

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®
Receipt for
Certified Mail™

POSTMARK OR DATE

8-13-15

No Insurance Coverage Provided
Do Not Use for International Mail

FOLD AND TEAR THIS WAY → OPTIONAL

Label #5

Oscar H. Martinez
International Automotive
2340 Lombard Street
San Francisco, CA 94123

Label #8

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™



7414 7266 7904 2009 2591 25

Certified Article Number

7414 7266 7904 2009 2591 25

SENDERS RECORD

Charge Amount:

Charge To:

FOLD AND TEAR THIS WAY →

2. Article Number



7414 7266 7904 2009 2591 25

3. Service Type **CERTIFIED MAIL®**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

Oscar H. Martinez
International Automotive
2340 Lombard Street
San Francisco, CA 94123

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature Agent Addressee

X D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

Statement to Respondent
SF2015401763
Justin R. Surber

Thank you for using Return Receipt Service