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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. 7711-47

13 **JAYS AUTO BODY**
430 S 8th Street
14 **Fowler, CA 93625**
JAVIER MARTINEZ, OWNER
15 **Automotive Repair Dealer Registration No. ARD 252772**
16 Respondent.

ACCUSATION

17 Complainant alleges:

18 **PARTIES**

19 1. Doug Balatti ("Complainant") brings this Accusation solely in his official capacity as
20 the Assistant Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer
21 Affairs.

22 **Automotive Repair Dealer Registration**

23 2. On a date uncertain in 2007, the Bureau issued Automotive Repair Dealer
24 Registration Number ARD 252772 ("registration") to Javier Martinez ("Respondent"), doing
25 business as Jays Auto Body. The automotive repair dealer registration was in full force and effect
26 at all times relevant to the charges brought herein and will expire on November 30, 2012, unless
27 renewed.

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1 obtained at some time after it is determined that the estimated price is insufficient and
2 before the work not estimated is done or the parts not estimated are supplied. Written
3 consent or authorization for an increase in the original estimated price may be
4 provided by electronic mail or facsimile transmission from the customer. The bureau
5 may specify in regulation the procedures to be followed by an automotive repair
6 dealer if an authorization or consent for an increase in the original estimated price is
7 provided by electronic mail or facsimile transmission. If that consent is oral, the
8 dealer shall make a notation on the work order of the date, time, name of person
9 authorizing the additional repairs and telephone number called, if any, together with a
10 specification of the additional parts and labor and the total additional cost, and shall
11 do either of the following:

12 (1) Make a notation on the invoice of the same facts set forth in the
13 notation on the work order .

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

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

19 _____
20 (signature or initials)"

21 6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
22 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
23 proceeding against an automotive repair dealer or to render a decision invalidating a registration
24 temporarily or permanently.

25 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
26 "commission," "committee," "department," "division," "examining committee," "program," and
27 "agency." "License" includes certificate, registration or other means to engage in a business or
28 profession regulated by the Code.

COST RECOVERY

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 11. Respondent has subjected his registration to discipline pursuant to Code section
4 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in
5 the exercise of reasonable care he should have known to be untrue or misleading, as follows:

6 a. Respondent represented on his preliminary estimate dated October 26, 2010, that he
7 would replace the left bedside panel with a new OEM part. Instead, Respondent repaired the part.

8 b. Respondent represented on his preliminary estimate dated October 26, 2010, that he
9 would replace the rear step bumper with a new OEM part. Instead, Respondent replaced that part
10 with an aftermarket roll pan.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Failure to Provide the Operator with a Copy of a Signed Document)**

13 12. Respondent has subjected his registration to discipline pursuant to Code section
14 9884.7, subdivision (a)(3), in that Respondent failed to provide the operator with a copy of the
15 work order as soon as the operator signed the document.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 13. Respondent has subjected his registration to discipline pursuant to Code section
19 9884.7, subdivision (a)(4), in that Respondent accepted payment from the operator and CSAA for
20 repairs and part replacements that had not been performed, constituting fraud, as follows:

21 a. Respondent failed to replace the left bedside panel with a new OEM part. Instead,
22 Respondent repaired the part.

23 b. Respondent failed to replace the rear step bumper with a new OEM part. Instead,
24 Respondent replaced that part with an aftermarket roll pan.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Departure from Trade Standards)**

27 14. Respondent has subjected his registration to discipline pursuant to Code section
28 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted

1 trade standards for good and workmanlike repair without the consent of the owner or the owner's
2 duly authorized representative by failing to apply corrosion protection to exposed inner weld
3 seams of the roll pan.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Violations of the Code)**

6 15. Respondent has subjected his registration to discipline pursuant to Code section
7 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of that Code in
8 the following material respects:

9 a. **Section 9884.8:** Respondent failed to provide the operator with a final invoice
10 describing all service work performed and parts supplied regarding the collision repairs
11 performed on the operator's vehicle.

12 b. **Section 9884.9, subdivision (c):** Respondent failed to provide the operator with a
13 written estimated price for parts and labor for a specific job regarding the repairs he performed on
14 the operator's vehicle.

15 **UNDERCOVER RUN APRIL 11, 2011**

16 16. On or about April 11, 2011, two Bureau undercover operators ("operators") took a
17 Bureau-documented 1998 GMC truck to Respondent's facility to have the vehicle repainted. The
18 operators spoke with Respondent and told him that the left side of the vehicle had been
19 vandalized. One of the operators asked Respondent if he could paint the entire vehicle.
20 Respondent stated to the operator: "I should not be telling you this but if you scratch the other
21 side of the truck and bring it back I will hook you up." Respondent also recommended removing
22 the body side mouldings, telling the operator he would paint the mirrors and door handles the
23 same color as the truck at no extra charge.

24 17. On or about April 25, 2011, the operators returned to Respondent's facility and spoke
25 with Respondent. One of the operators told Respondent that he did not scratch the other side of
26 the vehicle because he was not sure of what to do but that he still wanted the truck painted.
27 Respondent told the operators to leave the vehicle and he would take care of the hood and sides.

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1 18. On or about April 27, 2011, Respondent prepared and submitted photos and a
2 preliminary estimate dated April 27, 2011, for repairs to the 1998 GMC truck totaling \$3,850.75
3 to CSAA. One of the operators signed a blank work order; however, he was not provided with a
4 copy of that document. On or about May 23, 2011, one of the operators returned to Respondent's
5 facility to retrieve the vehicle. Respondent informed the operator that the plastic bed rail caps had
6 broken when they disassembled the truck to paint it. Respondent told the operator that he did not
7 have to pay the \$100 because of the broken caps; however, the operator paid Respondent the \$100
8 deductible and received a service invoice dated April 25, 2011, for the deductible. CSAA paid
9 Respondent \$3,750.75 for the paint job.

10 19. On or about May 26, 2011, the Bureau reinspected the vehicle. That inspection
11 revealed the following:

12 a. There was the appearance of new paint on the left fender, left door, left cab, and left
13 bed-side.

14 b. There was the appearance of new paint on the right fender, right door, right cab, right
15 bed-side, the tailgate, the hood, the grill shell, and the front filler panels.

16 c. There were 28 parts on this vehicle that were invoiced as removed and reinstalled.
17 Most of those parts had been removed and reinstalled; however, there were 8 black and silver
18 mouldings that were not been reinstalled on the vehicle. They are referenced on the invoice as
19 line item numbers 12, 13, 28, 29, 39, 40, 41, and 42.

20 d. There were items to be replaced with OEM parts. Those items include new GM
21 nameplates and decals. The original "SLF" nameplates had not been replaced to either side of the
22 cab. Further, the GM "Z71" decals were not replaced. Those nameplates and decals are
23 referenced on the invoice as line item numbers 20, 21, 45, and 46.

24 e. The right and left bed rail caps broken during the repairs were not replaced.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Code)**

3 23. Respondent has subjected his registration to discipline pursuant to Code section
4 9884.7, subdivision (a)(6), in that on or about April 25, 2011, Respondent failed to comply with
5 provisions of that Code in the following material respects:

6 a. **Section 9884.8:** Respondent failed to provide the operator with a final invoice
7 describing all service work performed and parts supplied regarding the collision repairs
8 performed on the operator's vehicle.

9 b. **Section 9884.9, subdivision (c):** Respondent failed to provide the operator with a
10 written estimated price for parts and labor for a specific job regarding the repairs he performed on
11 the operator's vehicle.

12 **OTHER MATTERS**

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

17 **PRAYER**

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

- 20 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
21 Registration Number ARD 252772, issued to Javier Martinez, doing business as Jays Auto Body;
22 2. Revoking, suspending, or placing on probation any other automotive repair dealer
23 registration issued to Javier Martinez;

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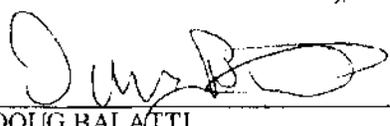
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3. Ordering Javier Martinez to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 2/10/12


DOUG BALATTI
Assistant Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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