

BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**JAYS AUTO BODY**  
**JAVIER MARTINEZ, Owner**  
430 S 8<sup>th</sup> Street  
Fowler, CA 93625

Automotive Repair Dealer Registration  
No. ARD 252772

Respondent.

Case No. 77/11-47

OAH No. 2012030625

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective 12/15/12

DATED: October 24, 2012

  
DORÉATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

JAYS AUTO BODY; JAVIER  
MARTINEZ, OWNER,

Fowler, CA 93625

Automotive Repair Dealer Registration No.  
ARD 252772

Respondent.

Case No. 77/11-47

OAH No. 2012030625

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on September 25, 2012, in Fresno, California.

Brian S. Turner, Deputy Attorney General, represented Doug Balatti (complainant), Assistant Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

David V. Balakian of the Balakian Law Offices represented respondent Javier Martinez, doing business as Jays Auto Body, who was present throughout the hearing.

Evidence was received and the record was left open for complainant to submit a supplemental cost declaration. Respondent waived his right to respond to the supplemental cost declaration, explaining the arguments he made at hearing will apply equally to the supplemental evidence. On September 28, 2012, complainant submitted a Certification of Prosecution Costs; Declaration of Brian S. Turner, which was marked as Exhibit 8 and admitted, without objection. The record was closed and the matter was submitted for decision on October 1, 2012.

## SUMMARY

Complainant seeks to discipline respondent's automotive repair dealer registration based on numerous violations of the Automotive Repair Act. At hearing, the parties stipulated to a factual and legal basis for discipline and presented evidence solely on the issues of the appropriate level of discipline, the reasonableness of complainant's request for costs of investigation and enforcement, and respondent's ability to pay such costs. Cause exists to discipline respondent's registration. His admissions conclusively establish that he committed blatant acts of fraud in his repair of two Bureau vehicles, and he conceded that he engaged in similar conduct on other occasions but was not caught. He presented no evidence of his rehabilitation or any change in his business practices from that which existed when he engaged in his fraudulent conduct. Therefore, the only discipline warranted by the evidence is an outright revocation of his automotive repair dealer registration. Additionally, costs in the amount of \$5,900 are awarded to the Bureau.

## FACTUAL FINDINGS

1. On November 5, 2007, the Bureau issued Automotive Repair Dealer Registration No. ARD 252772 (registration) to Javier Martinez doing business as Jays Auto Body. The registration was in delinquency status from November 30, 2010, to December 3, 2010, and November 30, 2011, to December 8, 2011. It currently expires November 30, 2012, unless renewed or revoked.

2. On February 13, 2012, complainant, acting solely in his official capacity, filed an Accusation seeking to discipline respondent's registration based on numerous violations of the Automotive Repair Act.

3. At hearing, the parties stipulated to a factual and legal basis for disciplining the registration and presented evidence solely on the issues of the appropriate level of discipline, the reasonableness of complainant's request for costs of investigation and enforcement, and respondent's ability to pay such costs.<sup>1</sup>

### *Undercover Run on October 19, 2010*

4. On October 19, 2010, a Bureau undercover operative drove a Bureau-documented 2002 Chevrolet Silverado C1500 truck to Jays Auto Body for collision repairs. The operative spoke with respondent and told him he wanted the truck repaired. He also told

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<sup>1</sup> Respondent's stipulation to a factual and legal basis for discipline constitutes a judicial admission. (See, *Gonzales v. Pacific Greyhound Lines* (1950) 34 Cal.2d 749, 754-758.) "A judicial admission is a party's unequivocal concession of the truth of the matter, and removes the matter as an issue in the case." (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 48.)

respondent he wanted to customize the truck by installing a roll pan or shaving the tailgate handle. Respondent agreed to perform the work. He handed the operative a blank work order to sign, and the operative signed it. Respondent did not give the operative a copy of the signed work order.

5. The operative returned to Jays Auto Body on November 16, 2010, to pick up his truck. Respondent told the operative he had to use the original left bedside panel instead of replacing it, but he had painted the mirrors, door handles, and tailgate handle and installed a roll pan. The operative paid a \$250 deductible, but did not receive a copy of the invoice itemizing all the repairs performed. California State Automobile Association (CSAA) paid respondent \$2,687.58 for the repairs.

6. In performing repairs to the Chevrolet Silverado, respondent subjected his registration to discipline on the following grounds:

a. Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known were untrue or misleading in that he wrote on the preliminary estimate that he would replace the left bedside panel with a new OEM<sup>2</sup> part. The truth, however, is that he simply repaired the part and did not replace it. Nonetheless, respondent charged the operative and CSAA for a new OEM part.

b. Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known were untrue or misleading in that he wrote on the preliminary estimate that he would replace the rear step bumper with a new OEM part. The truth, however, is that he replaced the part with an aftermarket roll pan. Nonetheless, respondent charged the operative and CSAA for a new OEM part.

c. Respondent failed to provide the undercover operative with a copy of the work order as soon as the operative signed it.

d. Respondent committed fraud by accepting payment from respondent and CSAA for purportedly replacing the left bedside panel with a new OEM. In actuality, he repaired the part instead.

e. Respondent committed fraud by accepting payment from respondent and CSAA for purportedly replacing the rear step bumper with a new OEM part. In actuality, he replaced the part with an aftermarket roll pan.

f. Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the undercover operative or his authorized representative by failing to apply corrosion protection to the exposed inner-weld seams of the roll pan.

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<sup>2</sup> "OEM" is an acronym for Original Equipment Manufacturer, and refers to auto parts made by the manufacturer for use in the particular car when it was originally built.

g. Respondent failed to provide the undercover operative with a final invoice describing all service work performed and parts supplied.

h. Respondent failed to provide the undercover operative with a written estimate for parts and labor for a specific job.

*Undercover Run on April 11, 2011*

7. On April 11, 2011, two Bureau undercover operatives took a Bureau-documented 1998 GMC truck to Jays Auto Body to have the truck repainted. The undercover operatives told respondent the truck had been vandalized and they wanted the entire truck painted. Only one side of the truck had been vandalized, but respondent told them if they scratched the other side he could justify painting the entire truck. The operatives left with the truck and returned later. They told respondent that they did not inflict the suggested damage to the truck because they did not know what to do. Respondent told them not to worry about it and he would "take care of it."

8. On April 27, 2011, respondent prepared photographs of the truck and a preliminary repair estimate in the amount of \$3,850.75 and submitted the photographs and estimate to CSAA. One of the undercover operatives signed a blank repair order, but was not given a copy.

9. One of the undercover operatives returned to Jays Auto Body on May 23, 2011, to pick up the truck. Respondent charged the operative a \$100 deductible, but did not provide a copy of the invoice itemizing all the repairs performed. CSAA paid respondent \$3,750.75 for painting and repairing the truck.

10. In painting and repairing the truck, respondent subjected his registration to discipline as follows:

a. Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known were untrue or misleading in that he wrote on the preliminary estimate that there was damage to the hood, right fender, right door, right cab panel, right bedside, and tailpipe. The truth, however, was that such damage did not exist when the undercover operatives brought the truck into Jays Auto Body, and respondent, or someone working on his behalf, inflicted the damage themselves to justify painting the entire truck.

b. Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known were untrue or misleading in that he wrote on the preliminary estimate that he would replace the "SLE" nameplates and left and right "Z71 Off Road" decals. The truth, however, was that none of those items were replaced.

c. Respondent failed to provide either of the undercover operatives with a copy of the work order as soon as one of them signed it.

d. Respondent committed fraud by accepting payment from respondent and CSAA for repairing and painting damage to the hood, right fender, right door, right cab panel, right bedside and tailpipe. While such work was actually performed, the damage was caused by respondent, or someone acting on his behalf, to justify painting the entire truck.

e. Respondent committed fraud by accepting payment from respondent and CSAA for purportedly replacing the "SLE" nameplates and the left and right "Z71 Off Road" decals. In actuality, none of those items were replaced.

f. Respondent failed to provide either undercover operative with a final invoice describing all service work performed and parts supplied regarding the work performed on the truck.

g. Respondent failed to provide either undercover operative with a written price estimate for parts and labor for a specific job.

#### *Factors in Aggravation, Mitigation, and Rehabilitation*

11. Respondent is the father of five children and is currently going through a divorce from their mother. He has lost his home and lives at Jays Auto Body. Jays Auto Body is his only source of income and is the only means of support for his children.

12. Respondent attempted to blame his fraudulent misconduct on the poor economy and family problems he was experiencing at the time. However, his testimony was often disjointed, convoluted, and inconsistent. Therefore, his testimony was not credible.

13. At least one of respondent's current employees, a secretary named Jessica, was working for Jays Auto Body at the time the GMC truck was being painted and repaired. Respondent explained that he has trained her to perform collision repair estimates. Prior to working for respondent, she had no experience performing such work. Respondent does not review Jessica's work on a regular basis. He explained she is also responsible for preparing the final invoice that is sent to the insurance company for payment. She prepares the final invoice based on invoices for parts installed on the particular vehicle, as well as the labor estimates stated in the preliminary estimate, unless the person who performed the actual work tells her differently.

14. As discussed below, cause exists for disciplining respondent's automotive repair dealer registration. The parties' stipulation conclusively establishes that respondent engaged in fraudulent conduct in performing the repairs to the Chevrolet Silverado and GMC trucks. He admitted he engaged in similar conduct on other occasions but was not caught. His testimony demonstrated a complete lack of insight into the impropriety of his misconduct, which he attempted to justify during closing argument by explaining it was not like he committed a crime against a person – only against an insurance company. Respondent failed to demonstrate any change in his business practices which were implemented to prevent or reduce the likelihood of the reoccurrence of any misconduct. One

of his current employees was working for him when some of the misconduct occurred, he does not review her work on a regular basis, and there is no process in place to confirm that work identified in a preliminary estimate was actually performed prior to preparing the final invoice. Public safety and public protection demand an outright revocation of respondent's automotive repair dealer registration.

#### *Costs of Investigation and Enforcement*

15. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and enforcement in the total amount of \$33,074.80. This amount consists of costs incurred directly by the Bureau (\$28,324.80), as well as costs incurred by the Office of the Attorney General and billed to the Bureau (\$4,750). At hearing, complainant introduced, without objection, a Certification of Investigative and Other Costs in support of the investigation costs incurred directly by the Bureau. The Certification is divided into two categories – Investigator Costs (\$27,174.80) and Undercover Vehicle Operator & Evidence Costs (\$1,150). The first category, which is further divided into subcategories for Program Representative I, Program Representative II, and Program Representative III, provides no information about the general tasks performed or the amount of time spent on each particular task.

The category for Undercover Vehicle Operator & Evidence Costs is broken into two subcategories – Operator Fees (\$800) and Evidence (\$350). The combined itemized amount for both categories is supported by the declarations signed by John Galindo, which provide sufficient evidence to determine the reasonableness of the costs incurred.

Complainant also introduced, without objection, a Certification of Prosecution Costs; Declaration of Brian S. Turner, which requests costs incurred by the Office of the Attorney General and billed to the Bureau in the amount of \$4,750. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General in the amount of \$4,750.

16. While respondent did not object to the admission of any of complainant's evidence regarding costs, he argued: 1) the costs should be reduced in light of his stipulation to a factual and legal basis for discipline; 2) this matter did not justify the expenditure of 372 man-hours investigating his conduct; and 3) he is the sole source of income for his family and cannot afford to pay costs.

17. For the reasons discussed in Legal Conclusion 14 below, the costs incurred by the Office of the Attorney General and billed to the Bureau (\$4,750) are reasonable, as are the costs incurred directly by the Bureau for Operator Fees (\$800) and Evidence (\$350).

## LEGAL CONCLUSIONS

### *Cause for Discipline Based on Undercover Run on October 19, 2010*

1. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has made or authorized in any manner or by any means any written or oral statement which is untrue or misleading when the person knew, or through the exercise of reasonable care should have known, that the statement was untrue or misleading. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) As discussed in Factual Finding 6a, respondent made a false or misleading statement by promising in a preliminary repair estimate to replace the left bedside panel with a new OEM part. The truth is that he simply repaired the part without replacing it. He also promised in a preliminary repair estimate to replace the rear step bumper with a new OEM part. The truth is that he replaced the part with an aftermarket roll pan. (Factual Finding 6b.) Therefore, cause exists to discipline his automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), based on either false or misleading statement.

2. An Automotive Repair Dealer registration may be disciplined when the dealer fails or refuses "to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document." (Bus. & Prof. Code, § 9884.7, subd. (a)(3).) For the reasons discussed in Factual Finding 6c, cause exists to discipline respondent's automotive repair dealer registration because he failed to provide the undercover operative a copy of the signed work order after it was signed.

3. An automotive repair dealer registration may be disciplined when the dealer has committed an act that constitutes fraud. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).) As discussed in Factual Finding 6d, respondent committed fraud by accepting payment for replacing the left bedside panel with a new OEM part when all he actually did was repair the part. He also accepted payment for replacing the rear step bumper with a new OEM part when what he actually did was replace the part with an aftermarket roll pan. (Factual Finding 6e.) Therefore, cause exists to discipline respondent's automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), based on either of his fraudulent acts

4. An automotive repair dealer registration may be disciplined when the dealer, in the course of repairing a vehicle, makes "any willful departure from or disregard of accepted trade standards for good and workmanlike repair ... ." (Bus. & Prof. Code, § 9884.7, subd. (a)(7).) Respondent committed a willful departure from and disregarded accepted trade standards for good and workmanlike repair when he failed to apply corrosion protection to exposed inner-weld seams of the roll pan as discussed in Factual Finding 6f. Therefore, cause exists to discipline respondent's automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(7).

5. An automotive repair dealer registration may be disciplined when the dealer

fails in any material respect to comply with the Automotive Repair Act or any regulations adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) A dealer is required to provide the customer with an invoice describing all work that was performed and all parts that were supplied. (Bus. & Prof. Code, § 9884.8.) As discussed in Factual Finding 6g, respondent provided no such invoice to the undercover operative. Therefore, cause exists to discipline respondent's automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), based on his violation of Business and Professions Code section 9884.8.

6. Business and Professions Code section 9884.9, subdivision (c), requires a dealer to provide the customer with a written estimate prior to commencing any work and accruing any charges. Respondent did not provide any such estimate to the undercover operative as discussed in Factual Finding 6h. Therefore, cause exists to discipline respondent's automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), based on his violation of Business and Professions Code section 9884.9, subdivision (c).

*Cause for Disciplined Based on Undercover Run on April 11, 2011*

7. Respondent made an untrue or misleading statement when he stated in a preliminary estimate that there was damage to the hood, right fender, right door, right cab panel, right bedside, and tailpipe. In reality, there was no such damage when the truck was brought into respondent's facility. (Factual Finding 10a.) Additionally, he made an untrue or misleading statement when he wrote in a preliminary estimate that he would replace the "SLE" nameplates and left and right "Z71 Off Road" decals. In reality, he replaced none of those items. (Factual Finding 10b.) Therefore, cause exists to discipline respondent's automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), based on either of his untrue or misleading statements.

8. As discussed in Factual Finding 10c, respondent failed to provide either undercover operative a copy of the signed work order immediately after it was signed. Therefore, cause exists to discipline respondent's automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(3).

9. Respondent committed fraud by accepting payment for repairing and painting damage to the hood, right fender, right door, right cab panel, right bedside, and tailpipe when such damage was caused by him, or someone acting on his behalf, in order to justify painting the entire truck as discussed in Factual Finding 10d. He also committed fraud by accepting payment for replacing the "SLE" nameplates and left and right "Z71 Off Road" decals without actually replacing those parts. (Factual Finding 10e.) Therefore, cause exists to discipline respondent's automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), based on either of his fraudulent acts.

10. Respondent failed to provide either of the undercover operatives with a final invoice describing all service work performed and parts supplied regarding repairs made to

the truck. (Factual Finding 10f.) Therefore, cause exists to discipline his automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), based on his violation of Business and Professions Code section 9884.8.

11. Respondent failed to provide either undercover operative with a written price estimate for parts and labor for a specific job as discussed in Factual Finding 10g. Therefore, cause exists to discipline his automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), based on his violation of Business and Professions Code section 9884.9, subdivision (c).

### *Conclusion*

12. Cause exists to discipline respondent's automotive repair dealer registration based on his numerous violations of the Automotive Repair Act as discussed in Legal Conclusions 1 through 11, individually and collectively. When all relevant evidence is considered, respondent has not shown sufficient rehabilitation or change in his business practices since engaging in his misconduct to justify allowing him to keep his registration, even on a probationary basis, for the reasons discussed in Factual Finding 14. Therefore, respondent's automotive repair dealer registration must be revoked.

### *Cost Recovery*

13. Business and Professions Code section 125.3, subdivision (a), states:

Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may 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.

California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on

each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*, at p. 45.)

14. As discussed in Factual Finding 15, complainant introduced no evidence of the general tasks performed or the amount of time spent on each task in support of its claim for Investigator Costs in the amount of \$27,174.80. (See, Cal. Code of Regs., tit. 1, § 1042, subd. (b)(1).) Without such information, there is no factual basis for determining the reasonableness of the Bureau's expenditure of 372 man-hours investigating this matter and, therefore, no factual basis for awarding the Bureau any costs for that time.

The entire amount requested for costs incurred by the Office of the Attorney General (\$4,750) is reasonable, as are the costs incurred directly by the Bureau for Operator Fees (\$800) and Evidence (\$350). As discussed in Factual Finding 15, the declarations signed by Messrs. Turner and Galindo constitute prima facie evidence of the reasonableness of the costs supported by those declarations – \$4,750 and \$1,150. (Bus. & Prof., § 125.3, subd. (c).) Respondent failed to rebut such evidence.

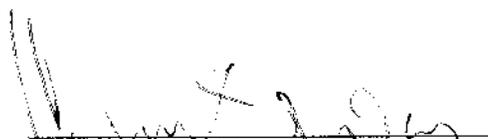
None of respondent's arguments against an award of costs are persuasive. While his stipulation to a factual and legal basis for discipline saved time, and therefore costs, at hearing, none of the costs which complainant seeks to recover are based on time spent at hearing. (Bus. & Prof. Code, § 125.3, subd. (c).) Furthermore, respondent introduced no evidence that the outcome would have been any different had the hearing proceeded without his stipulation. And while his ability to pay is one factor to be considered, the other *Zuckerman* factors and evidence of his misconduct justify requiring him to pay costs in this matter. Respondent's argument about the amount of time spent by the Bureau investigating this matter is moot in light of the discussion above.

After considering the relevant evidence and the pertinent *Zuckerman* factors, costs in the amount of \$5,900 are reasonable and awarded as set forth in the Order below.

ORDER

1. Automotive Repair Dealer Registration No. ARD 252772 is REVOKED.
2. Respondent shall reimburse the Bureau the sum of \$5,900 for costs incurred in this matter. Respondent may pay these costs according to a payment plan approved by the Bureau or its designee.

DATED: October 4, 2012



COREN D. WONG  
Administrative Law Judge  
Office of Administrative Hearings

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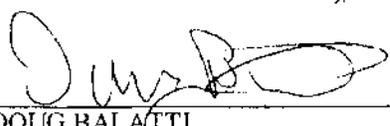
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3. Ordering Javier Martinez to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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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