

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

In the Matter of the Accusation Against:

**ELEGANCE PAINT AND BODY,
OWNER JAVIER HERNANDEZ**

1821 Container Circle
Riverside, CA 92509

Automotive Repair Dealer Registration No.
ARD 262478

Respondent.

Case No. 77/14-54

OAH No. 2014050596

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective July 7, 2015.

DATED: June 12, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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9 **BEFORE THE**
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10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
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12 In the Matter of the Accusation Against:

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13 **ELEGANCE PAINT AND BODY,**
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14 **1821 Container Circle**
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15

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16 **Automotive Repair Dealer Registration No.**
ARD 262478
17

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18 Respondent.

19
20 In the interest of a prompt and speedy settlement of this matter, consistent with the public
21 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of
22 Automotive Repair the parties hereby agree to the following Stipulated Settlement and
23 Disciplinary Order which will be submitted to the Director for the Director's approval and
24 adoption as the final disposition of the Accusation.

25 **PARTIES**

26 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair. He
27 brought this action solely in his official capacity and is represented in this matter by Kamala D.
28

1 Harris, Attorney General of the State of California, by Lauro A. Paredes, Deputy Attorney
2 General.

3 2. Respondent Elegance Paint and Body (Respondent) is representing itself in this
4 proceeding and has chosen not to exercise its right to be represented by counsel.

5 3. On or about July 6, 2010, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration No. ARD 262478 to Elegance Paint and Body (Respondent). The
7 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
8 charges brought in Accusation No. 77/14-54 and expired on March 18, 2014.

9 **JURISDICTION**

10 4. Accusation No. 77/14-54 was filed before the Director of Consumer Affairs
11 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
12 Respondent. The Accusation and all other statutorily required documents were properly served
13 on Respondent on April 9, 2014. Respondent timely filed its Notice of Defense contesting the
14 Accusation.

15 5. A copy of Accusation No. 77/14-54 is attached as exhibit A and incorporated herein
16 by reference.

17 **ADVISEMENT AND WAIVERS**

18 6. Respondent has carefully read, and understands the charges and allegations in
19 Accusation No. 77/14-54. Respondent has also carefully read, and understands the effects of this
20 Stipulated Settlement and Disciplinary Order.

21 7. Respondent is fully aware of its legal rights in this matter, including the right to a
22 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
23 its own expense; the right to confront and cross-examine the witnesses against them; the right to
24 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
25 the attendance of witnesses and the production of documents; the right to reconsideration and
26 court review of an adverse decision; and all other rights accorded by the California
27 Administrative Procedure Act and other applicable laws.

28

1 14. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Director may, without further notice or formal proceeding, issue and enter the following
3 Disciplinary Order:

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 262478
6 issued to Respondent Elegance Paint and Body (Respondent) is revoked. However, the
7 revocation is stayed and Respondent is placed on probation for three (3) years on the following
8 terms and conditions.

9 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 262478 issued
10 to Respondent Elegance Paint and Body is suspended for ten (10) consecutive days beginning on
11 the effective day of this decision.

12 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
13 automotive inspections, estimates and repairs.

14 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
15 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
16 conspicuously displayed in a location open to and frequented by customers and shall remain
17 posted during the entire period of actual suspension.

18 4. **Reporting.** Respondent or Respondent's authorized representative must report in
19 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
20 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
21 maintaining compliance with the terms and conditions of probation.

22 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
23 any financial interest which any partners, officers, or owners of the Respondent facility may have
24 in any other business required to be registered pursuant to Section 9884.6 of the Business and
25 Professions Code.

26 6. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
27 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



LAURO A. PAREDES
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 77/14-54

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Riverside, CA 92509

ACCUSATION

15 **Automotive Repair Dealer Registration No.**
16 **ARD 262478**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 **Automotive Repair Dealer Registration**

24 2. On July 6, 2010, the Bureau of Automotive Repair issued Automotive Repair Dealer
25 Registration Number ARD 262478 to Elegance Paint and Body, Javier Hernandez, owner
26 (Respondent). Respondent's registration became delinquent on June 30, 2011 and was reinstated
27 on June 10, 2013. Respondent's Automotive Repair Dealer Registration was delinquent at all
28 times relevant to the charges brought herein and will expire on June 30, 2014, unless renewed.

JURISDICTION

3. Business and Professions Code (Code) section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

4. Code section 9884.13 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 proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

5. Code section 477 provides, in pertinent part, that "Board" includes "bureau." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

STATUTORY PROVISIONS

6. Section 9884.6 of the Code states:

(a) It is unlawful for any person to be an automotive repair dealer unless that person has registered in accordance with this chapter [the Automotive Repair Act] and unless that registration is currently valid.

...

7. Section 9884.7 of the Code states:

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

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

...

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

(4) Any other conduct that constitutes fraud.

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

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

...

8. Code section 9884.8 states, in pertinent part:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied...One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

9. Section 9884.9 of the Code states:

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

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

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

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

(signature or initials)"

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

4 10. Section 9884.11 of the Code states that:

5 [e]ach automotive repair dealer shall maintain any records that are required
6 by regulations adopted to carry out this chapter [the Automotive Repair Act].
7 Those records shall be open for reasonable inspection by the chief or other
8 law enforcement officials. All of those records shall be maintained for at
9 least three years.

10 REGULATORY PROVISIONS

11 11. California Code of Regulations, title 16, section 3353, states:

12 No work for compensation shall be commenced and no charges shall accrue
13 without specific authorization from the customer in accordance with the following
14 requirements:

15 (a) Estimate for Parts and Labor. Every dealer shall give to each customer a
16 written estimated price for labor and parts for a specific job.

17 (b) Estimate for Auto Body or Collision Repairs. Every dealer, when doing
18 auto body or collision repairs, shall give to each customer a written estimated price
19 for parts and labor for a specific job. Parts and labor shall be described separately
20 and each part shall be identified, indicating whether the replacement part is new,
21 used, rebuilt or reconditioned. The estimate shall also describe replacement crash
22 parts as original equipment manufacturer (OEM) crash parts or non-OEM aftermarket
23 crash parts.

24 ...

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

...

23 12. California Code of Regulations, title 16, section 3356, states:

24 (a) All invoices for service and repair work performed, and parts supplied, as
25 provided for in Section 9884.8 of the Business and Professions Code, shall comply
26 with the following:

27 (1) The invoice shall show the automotive repair dealer's registration number
28 and the corresponding business name and address as shown in the Bureau's records. If
the automotive repair dealer's telephone number is shown, it shall comply with the
requirements of subsection (b) of Section 3371 of this chapter.

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

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

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

...

13. California Code of Regulations, title 16, section 3358, states:

Each automotive repair dealer shall maintain legible copies of the following records for not less than three years:

(a) All invoices relating to automotive repair including invoices received from other sources for parts and/or labor.

(b) All written estimates pertaining to work performed.

(c) All work orders and/or contracts for repairs, parts and labor. All such records shall be open for reasonable inspection and/or reproduction by the bureau or other law enforcement officials during normal business hours.

14. California Code of Regulations, title 16, section 3365, states:

The accepted trade standards for good and workmanlike auto body and frame repairs shall include, but not be limited to, the following:

(a) Repair procedures including but not limited to the sectioning of component parts, shall be performed in accordance with OEM service specifications or nationally distributed and periodically updated service specifications that are generally accepted by the autobody repair industry.

(b) All corrosion protection shall be applied in accordance with manufacturers' specifications or nationally distributed and periodically updated service specifications that are generally accepted by the autobody repair industry.

15. California Code of Regulations, title 16, section 3371, states:

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

should be known to be false or misleading. Advertisements and advertising signs shall clearly show the following:

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1 **COST RECOVERY**

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

6 **CONSUMER COMPLAINT NUMBER ONE**

7 **H. RIVERA – 2008 HONDA ACCORD**

8 17. On or about April 8, 2012 consumer H. Rivera's (Rivera) 2008 Honda Accord was
9 involved in a collision. In June 2012, Rivera brought his 2008 Honda Accord to Respondent's
10 facility. WestCoast Appraisers prepared estimate W1204253 for Freedom National Insurance
11 Company, detailing the required parts and labor need for repairs in the amount of \$12,151.03.
12 Respondent agreed to do the work as stated on the estimate. Rivera did not receive a copy of the
13 work order authorizing the repairs.

14 18. On July 18, 2012 an inspection of Rivera's vehicle was performed by Bureau
15 personnel using a copy of estimate W1204253 as a reference and found the following were not
16 repaired or installed as required by the estimate:

- 17 a. Line #22 – Exhaust muffler with Pipe.
- 18 b. Line # 34 – Left Center Pillar Inner Panel (HSS).
- 19 c. Line # 35 – Left Center Pillar Inner Panel Reinforcement (HSS).
- 20 d. Line # 36 – Left Rocker Reinforcement (HSS).
- 21 e. Line # 37 – Floor Panel (HSS).
- 22 f. Line #38 – Left Lower Center Pillar Trim Panel.
- 23 g. Line #60 – Front Left Upper Door Hinge
- 24 h. Line #62 – Lower Front Upper Hinge Labor
- 25 i. Line #63 – Left Front Lower Door Hinge
- 26 j. Line #64 – Left Front Lower Hinge Labor
- 27 k. Line #76 – Left Rear Upper Door Hinge
- 28 l. Line #78 – Left Rear Upper Hinge Labor

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- m. Line #79 – Left Rear Lower Door Hinge
- n. Line #80 – Left Rear Lower Hinge Labor
- o. The airbag light on Respondent’s vehicle was also left on, potentially indicating that the airbag was not replaced.

19. On July 17, 2012, Bureau personnel inspected Respondent’s facility and found him to be operating without a valid registration.

FIRST CAUSE FOR DISCIPLINE
(Untrue or Misleading Statements)

20. Respondent’s registration is subject to discipline under Code section 9884.7(a)(1), in that Respondent made statements which he knew or which by exercise of reasonable care should have known to be untrue or misleading by falsely representing that the 2008 Honda Accord owned by H. Rivera had been repaired in accordance with the estimate W1204253 when, in fact, it was not, as more particularly set forth in paragraphs 17-18 above.

SECOND CAUSE FOR DISCIPLINE
(Fraud)

21. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision(a)(4), in that Respondent committed acts constituting fraud, by charging for and receiving payment for repairs that were not performed, as more particularly set forth above in paragraphs 17-19 above.

THIRD CAUSE FOR DISCIPLINE
(Failure to Comply with Regulations)

22. Respondent has subjected his registration to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), and 9884.8 in that Respondent failed to comply with the California Code of Regulations title 16, in a material respect, as outlined in paragraph 17 though 19 above and as follows:

- a. Section 3353: Failing to receive written authorization for work performed.
- b. Section 3353 (b): Failure to give the customer a written estimate.
- c. Section 3356(a)(2)(A): Failure to record all serviced performed on an invoice.

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b. Section 3356(a)(2)(B): Failure to record each part supplied on an invoice.

FOURTH CAUSE FOR DISCIPLINE

(Willful Departure from Industry Standard)

23. Respondent has subjected his registration to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(7), in that Respondent's repair of the 2008 Honda Accord owned by Rivera willfully departed from or disregarded the accepted trade standards in that the repairs were not conducted in accordance with estimate W1204253, as more particularly set forth in paragraphs 17-18 above.

CONSUMER COMPLAINT NUMBER TWO

S. SANDERS – 2007 TOYOTA COROLLA LE

24. On or about September 19, 2012 consumer S. Sanders' (Sanders) 2007 Toyota Corolla LE was involved in a collision. On or about September 20, 2012 Sanders brought her vehicle to Respondent's facility for repairs. On or about October 17, 2012, Sanders picked up her vehicle from Respondent's facility with the assurance that it was fully repaired. Respondent did not properly repair the suspension on Sanders' vehicle causing it to pull noticeably to one side. S. Sanders had to take her car to a different licensed auto repair facility to have her car properly repaired.

25. On January 23, 2013, Bureau personnel inspected Respondent's facility and found him to be operating without a valid registration.

FIFTH CAUSE FOR DISCIPLINE

(Willful Departure from Industry Standard)

26. Respondent has subjected his registration to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(7), in that, Respondent's willfully departed from or disregarded the accepted trade standards in repairing S. Sanders' 2007 Toyota Corolla LE. In that the vehicle was not properly repaired and pulled noticeably to one side as more particularly set forth in paragraph 24 above.

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