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

In the Matter of the Accusation Against: **A-1 AUTO PAINT & BODY REPAIR, CALVIN COX, OWNER** **1350 East Sierra Avenue** **Tulare, California 93274** **Automotive Repair Dealer Registration No. ARD 263293** Respondent.	Case No. 77/14-33 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 17, 2013, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 77/14-33 against A-1 Auto Paint & Body Repair, Calvin Cox, Owner (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

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2. On or about September 15, 2010, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration No. ARD 263293 to Respondent. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 77/14-33 and will expire on September 30, 2014, unless renewed.

3. On or about December 20, 2013, Respondent was served by Certified and First Class Mail copies of Accusation No. 77/14-33, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 136, is required to be reported and maintained with the Bureau. Respondent's address of record was and is:

1350 East Sierra Avenue
Tulare, California 93274.

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

5. The aforementioned Certified and First Class Mail documents were never returned by the U.S. Postal Service.

6. Government Code section 11506 states, in pertinent part:

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

7. Respondent failed to file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No. 77/14-33.

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

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

9. Pursuant to its authority under Government Code section 11520, the Director after having reviewed the proof of service dated December 20, 2013, signed by Yesenia Rocha, and USPS Track & Confirm Notice No. 7196 9008 9111 1727 6304, finds Respondent is in default. The Director will take action without further hearing and, based on Accusation No. 77/14-33, proof of service and the Affidavit of Bureau Representative Jesus Gonzalez, finds that the allegations in the Accusation are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent A-1 Auto Paint & Body Repair, Calvin Cox, Owner has subjected its Automotive Repair Dealer Registration No. ARD 263293 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent's Automotive Repair Dealer Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the affidavit of Bureau Representative Jesus Gonzalez in this case:

a. Respondent violated Business and Professions Code section 9884.7, subdivision (a)(1), in that between on or about November 13 and 20, 2012, Respondent made statements which he knew or which by exercise of reasonable care should have known to be untrue or misleading by falsely representing to a Bureau representative and 21st Century Insurance Company that the Bureau's 1992 Toyota had been repaired pursuant to 21st Century Insurance Company Insurance Estimate, ID [redacted] dated October 30, 2012. In fact, Respondent failed to perform services and/or repairs specified therein, as follows:

i. The left front fender was replaced with an aftermarket part, not an original equipment factory part as specified.

ii. The front bumper was not replaced.

iii. The left front door was refinished below the side molding and the door components were not removed.

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b. Respondent violated Business and Professions Code section 9884.7, subdivision (a)(4), in that between on or about November 13 and 20, 2012, Respondent committed acts constituting fraud by charging and receiving payment for repairs that were not performed or for parts that were not supplied, as more particularly set forth above in paragraph (a), above

c. Respondent violated Business and Professions Code section 9884.7, subdivision (a)(6), in that between on or about November 13 and 20, 2012, as regards the Bureau's 1992 Toyota, Respondent failed to comply with provisions of California Code of Regulations, title 16, section 3365, by departing from accepted trade standards for good and workmanlike auto body and frame repairs, as follows:

i. Respondent failed to properly attach the hood bumper.

ii. Respondent failed to properly install the left front fender.

iii. The mud flap was not re-installed properly.

iv. The front bumper was not installed properly.

v. The front bumper cover was not installed properly.

vi. The inner fender liner had been damaged and was missing a fastener.

d. Respondent violated Business and Professions Code section 9884.7, subdivision (a)(1), in that between February 20 and 26, 2013, Respondent made statements which he knew or which by exercise of reasonable care should have known to be untrue or misleading by falsely representing to a Bureau representative and 21st Century Insurance Company that the Bureau's 2008 Toyota had been repaired pursuant to the 21st Century Insurance Company itemized estimate, ID [redacted]. In fact, Respondent failed to perform services and/or repairs specified therein, as follows:

i. The following parts were replaced with an aftermarket part when an original equipment factory part was specified:

a. The front bumper cover.

b. The left headlamp assembly.

c. The left fender.

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ii. The following parts were not replaced:

a. The left front bumper mount bracket.

b. The front bumper absorber.

c. The front bumper reinforcement.

d. The left fender liner.

e. The left front door body side molding.

iii. The paint was not blended on the hood.

iv. The following parts on the left front door were not removed and installed:

a. The belt molding.

b. The mirror.

c. The outside handle.

d. The trim panel.

e. Respondent violated Business and Professions Code section 9884.7, subdivision (a)(4), in that between on or about February 20 and 26, 2013, Respondent committed acts constituting fraud by charging and receiving payment for repairs that were not performed or for parts that were not supplied, as more particularly set forth above in paragraph (d), above.

f. Respondent violated Business and Professions Code section 9884.7, subdivision (a)(6), in that between on or about February 20 and 26, 2013, as regards the Bureau's 2008 Toyota, Respondent failed to comply with provisions of California Code of Regulations, title 16, section 3365, by departing from accepted trade standards for good and workmanlike auto body and frame repairs, as follows:

i. The left structural apron front panel and panel extension were damaged and not repaired.

ii. The apron panel and extension had broken and missing paint.

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ORDER

IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 263293, heretofore issued to Respondent A-1 Auto Paint & Body Repair, Calvin Cox, Owner, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on February 25, 2014

It is so ORDERED FEB 04 2014

DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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DOJ Matter ID:SA2013111939

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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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: **A-1 AUTO PAINT & BODY REPAIR** **CALVIN COX, OWNER** 1350 East Sierra Avenue Tulare, California 93274 **Automotive Repair Dealer Registration No. ARD 263293** Respondent.	Case No. 77/14-33 **ACCUSATION**

Patrick Dorais ("Complainant") alleges:

PARTIES

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

2. On or about September 15, 2010, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 263293 to Calvin Cox ("Respondent"), owner of A-1 Auto Paint & Body Repair. The Automotive Repair Dealer Registration expires on September 30, 2014, unless renewed.

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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 states that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with any investigation or disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

STATUTORY AND REGULATORY PROVISIONS

5. Code section 9884.7 states, in pertinent part:

> (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.
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> . . .
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> (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.
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> . . .
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> (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.
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> (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

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

7. California Code of Regulations, title 16, section 3365, states, in pertinent part:

> 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. . . .

(Emphasis added.)

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.

UNDERCOVER OPERATION #1

9. On or about November 13, 2012, a Bureau undercover operator using an alias (the "operator") took a Bureau-documented 1992 Toyota to Respondent's facility and gave Respondent an itemized estimate from 21st Century Insurance Company, [redacted], dated October 30, 2012, totaling $1,926.80 ("insurance estimate") for repairs to the vehicle. Respondent told the operator that he could repair the vehicle according to the insurance estimate. On or about November 19, 2012, Farmer's Insurance Company issued a check in the amount of $1,426.80 payable to Respondent for repairs to the 1992 Toyota. The operator paid Respondent the $500.00 deductible and retrieved the vehicle on or about November 20, 2012.

10. The Bureau inspected the 1992 Toyota on or about November 27, 2012, which revealed that Respondent failed to repair the vehicle in accord with the insurance estimate.

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FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

11. Respondent is subject to discipline under Code section 9884.7, subdivision (a)(1), in that between on or about November 13 and 20, 2012, Respondent made statements which he knew or which by exercise of reasonable care should have known to be untrue or misleading by falsely representing to a Bureau representative and 21st Century Insurance Company that the Bureau's 1992 Toyota had been repaired pursuant to 21st Century Insurance Company Insurance Estimate, ID [redacted] dated October 30, 2012. In fact, Respondent failed to perform services and/or repairs specified therein, as follows:

a. The left front fender was replaced with an aftermarket part, not an original equipment factory part as specified.

b. The front bumper was not replaced.

c. The left front door was refinished below the side molding and the door components were not removed.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

12. Respondent is subject to discipline under Code section 9884.7, subdivision (a)(4), in that between on or about November 13 and 20, 2012, Respondent committed acts constituting fraud by charging and receiving payment for repairs that were not performed or for parts that were not supplied, as more particularly set forth above in paragraph 11, above.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply With Regulations)

13. Respondent is subject to discipline under Code section 9884.7, subdivision (a)(6), in that between on or about November 13 and 20, 2012, as regards the Bureau's 1992 Toyota, Respondent failed to comply with provisions of California Code of Regulations, title 16, section 3365, by departing from accepted trade standards for good and workmanlike auto body and frame repairs, as follows:

a. Respondent failed to properly attach the hood bumper.

b. Respondent failed to properly install the left front fender.

c. The mud flap was not re-installed properly.

d. The front bumper was not installed properly.

e. The front bumper cover was not installed properly.

f. The inner fender liner had been damaged and was missing a fastener

UNDERCOVER OPERATION #2

14. On or about February 20, 2013, a Bureau undercover operator using an alias (the "operator") took a Bureau-documented 2008 Toyota to Respondent's facility, and gave Respondent 21st Century Insurance Company itemized estimate, ID [redacted], dated February 8, 2013, totaling $2,411.43 ("insurance estimate") for repairs to the vehicle. Respondent informed the operator that he could repair the vehicle according to the insurance estimate. On or about February 20, 2013, Farmers' Insurance Company issued a check in the amount of $1,911.43, payable to Respondent for repairs to the 2008 Toyota. The operator paid Respondent the $500.00 deductible and retrieved the vehicle on or about February 26, 2013.

15. The Bureau inspected the 2008 Toyota on or about March 6, 2013, which revealed that Respondent failed to repair the vehicle in accord with the insurance estimate.

FOURTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

16. Respondent is subject to discipline under Code section 9884.7, subdivision (a)(1), in that between February 20 and 26, 2013, Respondent made statements which he knew or which by exercise of reasonable care should have known to be untrue or misleading by falsely representing to a Bureau representative and 21st Century Insurance Company that the Bureau's 2008 Toyota had been repaired pursuant to the 21st Century Insurance Company itemized estimate, ID [redacted]. In fact, Respondent failed to perform services and/or repairs specified therein, as follows:

a. The following parts were replaced with an aftermarket part when an original equipment factory part was specified:

i. The front bumper cover.

ii. The left headlamp assembly.

iii. The left fender.

b. The following parts were not replaced:

i. The left front bumper mount bracket.

ii. The front bumper absorber.

iii. The front bumper reinforcement.

iv. The left fender liner.

v. The left front door body side molding.

c. The paint was not blended on the hood.

d. The following parts on the left front door were not removed and installed:

i. The belt molding.

ii. The mirror.

iii. The outside handle.

iv. The trim panel.

FIFTH CAUSE FOR DISCIPLINE

(Fraud)

17. Respondent is subject to discipline under Code section 9884.7, subdivision (a)(4), in that between on or about February 20 and 26, 2013, Respondent committed acts constituting fraud by charging and receiving payment for repairs that were not performed or for parts that were not supplied, as more particularly set forth above in paragraph 16, above.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply With Regulations)

18. Respondent is subject to discipline under Code section 9884.7, subdivision (a)(6), in that between on or about February 20 and 26, 2013, as regards the Bureau's 2008 Toyota, Respondent failed to comply with provisions of California Code of Regulations, title 16, section 3365, by departing from accepted trade standards for good and workmanlike auto body and frame repairs, as follows:

a. The left structural apron front panel and panel extension were damaged and were not

repaired.

b. The apron panel and extension had broken and missing paint.

OTHER MATTERS

19. 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 Calvin Cox, owner of A-1 Auto Paint & Body Repair, 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 263293, issued to Calvin Cox, owner of A-1 Auto Paint & Body Repair;

2. Revoking or suspending any other automotive repair dealer registration issued to Calvin Cox;

3. Ordering Calvin Cox to pay the Director of Consumer Affairs 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: December 17, 2013

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

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