

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

In the Matter of the Accusation Against:

**DC'S RV CENTER  
DONALD WAYNE COLLINS, OWNER**  
3775 Buck Owens Blvd.  
Bakersfield, CA 93308

Automotive Repair Dealer Registration  
No. ARD 263370

Respondent.

Case No. 77/13-5

OAH No. 2013010777

**DECISION AFTER RECONSIDERATION**

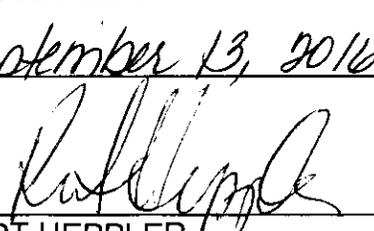
On September 9, 2015, the Director (Director) of the Department of Consumer Affairs (Department) issued an Order of Remand to Administrative Law Judge rejecting the Proposed Decision of the Administrative Law Judge (ALJ) for the taking of additional evidence and/or argument directed in particular to the amount of costs Respondent shall pay to the Bureau of Automotive Repair (Bureau) for prosecution and enforcement of the case. On September 24, 2015, the Director issued an Order Correcting Clerical Error Nunc Pro Tunc as of the date of entry of the decision.

On September 29, 2015, the Department received a request for reconsideration from Complainant. On October 5, 2015, the Director issued an Order Granting Reconsideration as to the September 9, 2015 order, giving the parties until November 13, 2015 to submit written argument regarding whether the costs of investigation and prosecution set forth in the Proposed Decision should be accepted, reduced or eliminated where the ALJ failed to include an analysis of the *Zuckerman* factors relating to the reasonableness of such costs. On November 13, 2015, Complainant submitted his Argument Following Reconsideration and Request to Adopt Proposed Decisions.

The Director, having read and considered the entire record, hereby adopts the attached Decision as the Decision in the above-entitled matter.

This Decision shall become effective on September 13, 2016.

DATED: August 9, 2016

  
KURT HEPPLER  
Supervising Attorney  
Division of Legal Affairs  
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

DC'S RV CENTER  
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Automotive Repair Dealer No. ARD 263370

Respondent.

Case No. 77/13-5

OAH No. 2013010777

**PROPOSED DECISION**

The hearing in the above captioned matter took place in Bakersfield, California, on February 17 through 19, and June 10, 2015, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH). Complainant was represented by William D. Gardner, Deputy Attorney General. Respondent DC's RV Center appeared through its owner, Donald Wayne Collins (Collins), with his attorney, Arnold Anchordoquy, Clifford & Brown.

This matter was consolidated for hearing with the proceeding *In the Matter of the Accusation Against DM Collins, Inc., dba DC's RV Center, Don Wayne Collins, President and Treasurer, Mia K. Collins, Secretary*, Bureau of Automotive Repair case number 77/13-3, OAH case number 2013010776, sometimes referred to as the related proceeding. A separate proposed decision shall issue in each case.<sup>1</sup>

Evidence was received, the matter was argued, and the case submitted for decision on June 10, 2015. The ALJ hereby makes his factual findings, legal conclusions, and orders.

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<sup>1</sup> The issuance of two proposed decisions is required by California Code of Regulations, title 1, section 1016, subdivision (d). The two decisions have some overlapping findings.

## FACTUAL FINDINGS

### *The Parties and Jurisdiction*

1. Complainant Patrick Dorais filed the Accusation and First Amended Accusation while acting in his official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

2. Respondent Donald Wayne Collins (Collins) does business as DC's RV Center on Buck Owens Boulevard, in Bakersfield, California. (That location will sometimes be referred to as the Buck Owens facility, to differentiate it from the shop that was operated by Respondent's corporation on Gibson Street in the same city.) Respondent is registered as an Automotive Repair Dealer (ARD), holding registration number ARD 263370. The registration was issued on September 28, 2010, and will expire on September 30, 2015, unless renewed.

3. Respondent is in the business of repairing and selling recreational vehicles. This proceeding, and the related proceeding, arise out of several repair transactions involving recreational vehicles. Complainant asserts that Respondent engaged in fraudulent conduct in those transactions.

4. Respondent filed a timely Notice of Defense, denying the allegations against him. This proceeding ensued. All jurisdictional requirements have been met.

### *The Fleetwood Motor Home Repair*

5. On or about December 24, 2010, consumer Don Brady (Brady) damaged his 2008 Fleetwood motor home when he struck a pole at a gas station. He damaged the left rear portion of the body, including a large fiberglass body component known as the rear cap. He turned the matter over to his insurer, Progressive Insurance (Progressive), and on December 31, 2010, a progressive representative, Matthew Nakata (Nakata), inspected and photographed the motor home.

6. The most obvious damage was to a compartment door on the left rear and lower side of the motor home, and to a square section of the rear cap, about as large as the compartment door, located just below the left rear tail light housing. Photos taken by Nakata indicate that the damaged portion of the rear cap had been taped back in place by Brady, with what appears to be duct tape. (See ex. 7-A-18.)

7. Nakata later wrote a damage appraisal and estimate for repair; the record indicates that he sent it to Respondent after Brady left his motor home with Respondent. It called for several new components, including a new compartment door and door strut, and a new rear cap and new rear cap decal. The rear cap had an estimated cost of \$1,196.57, while the compartment door was \$178.88. The appraisal

indicates that the new parts were available from Giant RV in Corona, California. (During the hearing Nakata testified that he had checked on the availability of the parts.) Substantial labor was estimated for painting and related finish work, in excess of 23 hours.

8. On January 3, 2011, Brady signed a work order generated by Respondent, authorizing repairs on his motor home. The work order specified "R & R [remove and replace] rear cap with new." Among the parts specified was a rear cap and a new decal, showing the manufacturer's name and model name. A rear compartment door was also specified for replacement with a new door, along with items such as paint and moldings. (Ex. 8-1.) However, Brady was not given a copy of the repair order when he left his motor home with Respondent.

9. A printed and detailed invoice was later generated by Respondent. It conformed with Nakata's appraisal, specifying 12 hours labor to remove and replace the rear cap, one-half hour to replace the rear decal, and a total of 23.10 hours of labor related to painting the vehicle, primarily the rear cap.<sup>2</sup> The prices for the new parts—the rear cap, decal, compartment door—were the same as those specified by Nakata. The invoice did not set forth Respondent's ARD registration number.

10. On January 20, 2011, Progressive issued a check payable to Respondent and Brady for repair of Brady's motor home. The check was for \$7,747.39. Brady did not sign the check over, but his endorsement is shown on the back of the check (ex. 7-A-25). Who signed Brady's name on the back of the check is not clear from the record, but it is clear Brady did not sign it.

11. When Brady left the motor home at Respondent's Buck Owens facility, the damaged section of the rear cap was still taped in place. About one month later, he came and got the motor home for a trip, and the piece was not attached to the rear of the vehicle. He was told that a new cap was on order, but had not come in yet. Brady eventually brought the motor home back to Respondent's facility after his trip.

12. Brady picked up his motor home on April 29, 2011, after repairs had been made. He noted that the original deteriorated decal was still attached to the rear of the vehicle. When he brought that up to Respondent, the latter said that the rear cap had been repaired, and not replaced. Respondent offered to waive the insurance deductible—\$250—and Brady agreed to that.

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<sup>2</sup> Photos show the vehicle to have two colors on the rear cap: a bright blue in the lower part where the damage occurred, which color wraps around the lower side, where the compartment door was damaged, the upper part appearing grey in some photos. The invoice specified labor for painting the blue area, the "tan area," and the "gray area," that work totaling 10 hours. Other painting tasks, such as masking and clear coat added 13 more hours. (Ex. 8-3.)

13. Subsequent examination of the vehicle showed that the rear cap was not replaced. Instead, the damaged part of the rear cap had been fiber-glassed back into place, and the lower portion of the rear cap was repainted. It is inferred that if the decal had been replaced, Brady might not have perceived the change in repair method.

14. Respondent did not replace the compartment door with a new Fleetwood door. Instead, he had the door "re-skinned" with a new panel made by a fabricator in Bakersfield. The new metal sheet was installed onto the old compartment door frame.

15. (A) Prior to beginning work on the vehicle, Respondent did not inform Brady or Nakata that the rear cap was going to be repaired, rather than replaced with a new cap. Nor did he inform the parties at any other time in the repair process; again, the change was revealed when Brady picked the motor home up. The same applies to the repair rather than replacement of the compartment door. Respondent indicated at the hearing that a new rear cap and door were not available from the manufacturer of the motor home, as the firm had gone into bankruptcy prior to the time of repair. If that was the case, Respondent was obligated to inform the customer and Progressive of this issue, and to obtain authorization from the customer for the change in repair method. And, Respondent was obligated to deal with Progressive to determine how repairing the cap and compartment door would differ in cost from removing and replacing those items with new parts.

(B) Neither Brady nor Progressive authorized Respondent to change the repair method from that set forth in the repair order and insurance estimate.

16. It is reasonably inferred that the process of repairing the compartment door and cap was cheaper than replacing those items, especially the cap. As noted above, the labor estimate to remove and replace the rear cap was 12 hours, with another 23 devoted to painting with three colors, and clear coat. While the amount of time needed to repair the cap is not disclosed by the record, such a repair might have been accomplished in less than 12 hours. Certainly, Respondent would not have to paint any but the blue area of the vehicle, saving substantial paint and substantial labor in that area.

17. In September 2013, after the Bureau began investigating Respondent's activities, he paid a refund to Progressive Insurance in the amount of \$3,436.30, nearly half the amount that was authorized by Progressive at the beginning of the transaction.

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*Roof Repair to a 1995 Dutchman Fifth Wheel/Trailer*

18. On July 18, 2011, Florin Morris (Morris) took his 1995 Dutchman Fifth Wheel trailer to the Buck Owens facility to obtain an appraisal, because he wanted to sell the trailer. He spoke to one of Respondent's employees, Bobby V. (Bobby), about the appraisal.

19. Bobby told Morris that the roof was damaged in the left front area. He found out that Morris had insurance on the trailer, and advised Morris to contact the insurance company about repairing the roof. Morris contacted the insurance company, and eventually an insurance adjuster called Morris and told him that the insurance company would pay for the repair.

20. On July 22, 2011, Respondent generated a repair order for Morris's trailer, showing total charges, including parts, labor, a shipping charge, and tax, of \$6,556.03. The repair order called for replacement of the rubber roof. The repair order indicated that a new rubber roof would have to be purchased, for \$718.89, and that eight sheets of luon<sup>3</sup> wood would be required for the job, at a price of \$159.12. The labor section of the work order stated that Respondent would R&R eight luon panels, and a 32-foot rubber roof. Labor for both steps was estimated at 16 hours, at \$120 per hour.

21. On or about July 28, 2011, the insurance company forwarded a check for \$6,306.16 to Morris, who then gave the check to Bobby at the Buck Owens facility. The trailer was, at that point, at Respondent's facility to be repaired. Morris endorsed the check over to Respondent. The amount of the check was less than the estimated cost of repair, because Morris had a \$250 deductible.

22. The repair of the roof was complete in early August 2011. Morris did not pick the trailer up. Instead, he left it at the Buck Owens facility on a 60-day consignment for sale. However, the trailer did not sell, and he picked it up on October 4, 2011, at which time he paid the \$250 deductible to Respondent. At that time, and not before, he received a copy of Respondent's invoice, a computer-generated, typewritten document, which also carries the title Repair Order. (See ex. 15.)

23. Morris later sold the trailer to a friend. The trailer was subsequently examined by Bureau personnel; there had been no repairs to the roof between the time that Morris retrieved it from Respondent and the time it was inspected by the Bureau. The Bureau inspectors removed some of the vents from the roof, which had

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<sup>3</sup> Much of the hearing was devoted to the issue of whether luon—sometimes spelled luan in documents—sheets were installed during roof repairs. This references a wood material sometimes known as Philippine Mahogany, properly spelled as lauan. The spelling used in the repair orders and other documents is used herein.

previously been removed and re-installed by Respondent's employees in the course of the roof repair. It was clear that luan sheets had not been installed under the new rubber roof membrane. And, a visual inspection of the new roof material indicated that it had not been installed over a smooth wood surface, which one would expect if luan had been used under the new rubber membrane.

24. Morris did not approve the change in repair method, where luan panels were not installed, nor did his insurance company.

*The Repair of a 2009 Eclipse Trailer/Coach*

25. In July 2012, Sam Billington (Billington) took his 2009 Eclipse Attitude Trailer/Coach to the Buck Owens facility. The trailer needed repair because the top left leading edge had been damaged. He spoke to one of Respondent's employees, and he left the trailer at the facility. He was not given any paperwork; the employee told Billington that paperwork would have to wait until Respondent returned to take care of it.

26. (A) On July 3, 2012, a preprinted repair order was filled out, and Billington signed it. The portion labeled "labor instructions" showed a total of 33 hours labor, six of which went to removing and replacing seven luan panels, and eight of which went to removing and replacing a 30 foot rubber roof. Another four hours of labor is shown in the portion where parts are itemized; that labor is for "repair D.S. [driver's side] roof corner bent in." (Ex. 20, p. 1.) The balance of the labor pertained to removing and reinstalling components such as roof vents, moldings, and roof ladder.

(B) The repair order specified parts valued at \$1,900, including the rubber roof, which cost \$989, a roof install kit at \$368, and seven sheets of luan, for \$154.<sup>4</sup>

(C) The total of the estimate was \$6,478.26. State Farm was listed on the repair order as the insurer, with a claim number.

27. A printed invoice was later generated by Respondent for the job, which showed the vehicle as coming in on August 3 and going out on August 8, 2012. The invoice shows that \$6,574.79 was paid for the work. The invoice states that seven sheets of luan were removed and replaced.

28. When Billington picked up the trailer, he noted that the rubber roof was not smooth; he described it as "bubbling." He didn't think it was correct, and voiced that opinion to someone at the facility. He was told the condition would improve in a

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<sup>4</sup> The prices here are rounded up or down to the nearest dollar, and may be in other findings.

few days. He left the trailer there. When he picked it up later, it had improved somewhat, but not completely.

29. On April 25, 2013, a Bureau representative took the trailer to an R.V. shop, Camper World, in Bakersfield. A technician there removed one of the roof vents, and was able to peel back some of the rubber roof material. It was clear that luon had not been installed under the rubber roof. What was visible was material known as chip board or OSB.

30. Billington did not authorize Respondent to change the repair method, by not using luon sheets in the roof, nor did his insurer.

#### *Other Matters*

31. (A) There was a certain amount of controversy during the hearing regarding the methodology for repairing the roof of a motor home or trailer, and the use of luon in that process. The motor homes and trailers in issue are not built with all-metal roofs. The center section is made of wood, and the photographic evidence indicates that the wood was typically "chipboard," also referred to as OSB, and apparently one-half to three-quarters of an inch thick. A rubber membrane is glued over that wood area and apparently onto the surrounding metal. This forms a watertight cover over the roof.

(B) There was generally agreement that if the rubber roof had to be removed, all attached devices—A/C units, vents, antennas, etc.—had to be removed, and then the rubber material pulled up. That process would often pull up chunks of wood that adhered to the rubber material. The new roof had to be glued to a smooth surface, for several reasons. One reason was that a pit or crater under the roof could lead to a later puncture if something was put on the roof, or someone walked on it.

(C) There was testimony that a small area of such pitting might be filled with a material such as Bondo, though one witness pointed out that such material may come loose as the roof flexes during travel. And, there was credible testimony that luon would be used to cover a large area of pitted chipboard to produce a smooth surface for the glue and rubber. In that situation, the luon would be laminated to the existing chipboard. One of Complainant's witnesses, Andrew Tabangcora, estimated that at his firm luon would be used in approximately 20 percent of the roof repairs.

(D) The evidence indicated that the luon is fairly thin, between one-eighth and one-quarter of an inch thick. Such material would not be a substitute for thicker chipboard in terms of strength; it is doubtful that one could stand on a roof made of quarter-inch luon.

(E) It appeared that a repair shop could replace all of the chipboard if it was badly damaged in the repair process, and Respondent indicated that such happened in some cases. However, that explanation is questionable. Tabangcora testified that such would be expensive both in terms of material and labor. While there is no evidence in the record as to the exact price difference between luon and chipboard, the notion that they are interchangeable in terms of price is certainly questionable. Second, in at least one case the photographic evidence indicates that the chipboard was not new. (Ex. 53, photo 6.) None of the repair orders or invoices stated that OSB/chipboard had been used rather than luon; the latter was specified.

(F) Two former employees of Respondent's firms testified that luon material was not kept on hand at the two facilities, that it was not used in roof repairs, and further, that Collins expected such material to be specified in any roof repair job. That evidence is credited, in part because luon was not found in any roof repair examined by the Bureau's representatives.

(G) On the last day of the hearing, Collins testified, in a less-than-credible manner, that he used the term luon in a generic sense, and was really referring to chipboard. That claim was not supported by other evidence, and is contradicted by repair orders he generated at either facility, as well as subsequent invoices.

32. (A) Respondent took pains to develop the case that many of the parts for the trailers and motor homes were unavailable because manufactures such as Fleetwood had gone into bankruptcy in the years prior to many of the transactions. This was asserted as a justification to repair a component, such as the rear cap of the Brady motor home or Alajarin's bumper (see related case proposed decision), or a compartment door, rather than replace it as provided in the repair order, insurance estimate, or invoice.

(B) This defense is rejected. First, there was credible evidence that parts could be obtained from the manufacturer. Such testimony was provided by the insurance adjuster, Nakata. At the time he wrote the Brady repair estimate, he not only specified new parts, he specified where they could be obtained, that is, at Giant RV in Corona, California. Tabangcora also testified that parts were available from the manufacturers. Second, if parts were scarce, or impossible to obtain, as Collins asserted, this begs the question as to why he would set out charges for hundreds of dollars to ship the allegedly unavailable new parts to him. It is obvious that if Collins knew, when he wrote repair orders that specified not only new parts such as a rear cap or front bumper, that such parts were not available, then he knew he was, at best, wasting everyone's time, and at worst, committing fraud. His failure to inform his customers and their insurers that new parts specified were not actually available was misleading and the non-disclosure of a material fact. Finally, if he was forced to repair a component instead of replace it, the failure to disclose that fact and to adjust

the repair charges accordingly was the concealment of a material fact from the customer and the insurer.

(C) To be clear, it is found that new parts such as those specified for the Brady, Aljamarin, and other transactions, were available, and Collins determined to charge for new parts and their shipment, but instead repaired them for a significant profit.

33. The evidence indicates that Collins had day-to-day control of both of the facilities, Gibson and Buck Owens. He wrote the bulk of the repair estimates, and interfaced with the representatives of the insurance companies. He made an effort to paint the operation at Gibson as some sort of rogue facility, where two employees, Foster and Aquino, cut corners and engaged in fraudulent activities. However, one of his most loyal employees, Guerrero, was placed at Gibson during this period. Further, there is no explanation as to how Aquino could profit by repairing Alajarin's bumper rather than replacing it. He could not pocket the money charged for the new bumper, nor could he pocket the money charged to Alajarin and the insurer to ship a non-existent bumper to the Gibson facility. Likewise, Foster had nothing to gain by helping scam the insurer on the repair of Brady's motor home.

34. Foster and Aquino testified that Collins required questionable practices, such as specifying new parts and equipment and then repairing old parts, as happened in the Brady and Alajarin jobs, and always calling for installation of luon sheets when none were to be used and were, in fact, not used. Their testimony was credible. This finding is based, in part, on their demeanor while testifying: they were steadfast in their testimony during cross-examination; Foster did not blink when he looked Collins in the eye and accused the latter of serious misconduct. Further, their claims are borne out by other findings made herein, based on documents and inspection reports.

35. Collins was less than a model of cooperation when the Bureau was investigating the claims against him. While Collins appeared cooperative during the hearing, he presented little evidence in mitigation, pointed the finger of blame at others, and has little evidence of rehabilitation, aside from paying several thousand dollars back to Brady's insurer after his misconduct came to light.

#### *Costs*

36. The Bureau has incurred costs in the investigation and prosecution of this matter in the amount of \$35,013.90. Given the complexity of the matter, those costs are deemed reasonable.

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## LEGAL CONCLUSIONS

1. Jurisdiction to proceed was established pursuant to section 9884.7 of the Business and Professions Code,<sup>5</sup> based on Factual Findings 1 through 4.

### *On Credibility*

2. (A) It is settled that the trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of "one credible witness may constitute substantial evidence," including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, at 1052.)

(B) The rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. That is, disbelief does not create affirmative evidence to the contrary of that which is discarded. That the trier of fact may disbelieve the testimony of a witness who testifies to the negative of an issue does not of itself furnish any evidence in support of the affirmative of that issue, and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative. (*Hutchinson v. Contractors' State License Bd.* (1956) 143 Cal.App.2d 628, 632-633, quoting *Marovich v. Central California Traction Co.* (1923) 191 Cal.295, 304.)

(C) Discrepancies in a witness's testimony, or between that witness's testimony and that of others, does not necessarily mean that the testimony should be discredited. (*Wilson v. State Personnel Bd.* (1976) 58 Cal App.3d 865, 879.)

(D) "On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted -- but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability." (*Wilson v. State Personnel Board, supra* at 877-878, quoting *Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.)

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<sup>5</sup> All further statutory references are to the Business and Professions Code.

3. The Bureau has enacted a regulation to assist in the definition of false or misleading statements, as those terms are used in Code section 9884.7, subdivision (a)(1). Thus, California Code of Regulations, title 16, section 3372 states:

In determining whether any advertisement, statement, or representation is false or misleading, it shall be considered in its entirety as it would be read or heard by persons to whom it is designed to appeal. An advertisement, statement, or representation shall be considered false or misleading if it tends to deceive the public or impose upon credulous or ignorant persons.

4. (A) It was established that Respondent violated California Code of Regulations, title 16, section 3353, subdivision (e), by changing the method of repairing Brady's motor home without his authorization, when Respondent repaired the rear cap of that vehicle instead of replacing it, based on Factual Findings 5 through 15 (B).

(B) It was established that Respondent violated California Code of Regulations, title 16, section 3356, subdivision (a), by failing to show his ARD number on his invoice, based on Factual Finding 9.

(C) Respondent's ARD is subject to discipline for his violations of the regulations, based on Legal Conclusion 4(A) and 4(B), and their factual predicates.

5. It was established that on at least three occasions Respondent, himself or acting through employees, made statements that he knew were untrue, or in the exercise of reasonable care should have known to be untrue. This includes, but is not limited to statements that parts or components would be replaced with new parts when they were going to be repaired; statements that new parts were installed when they were not; that parts or components had been installed when they had not been installed; or that labor would be provided, or had been provided, when it had not. Therefore, Respondent's ARD is subject to discipline pursuant to section 9884.7, subdivision (a)(1). This conclusion is based on Factual Findings 5 through 35.

6. It was established that on at least three occasions Respondent, himself or acting through his employees, committed acts of fraud. Those acts include, but are not limited to, representing that repairs would be completed with new parts, when repairs were made instead to existing parts; by representing that components or materials had been installed, when they were not; by representing that labor would be provided, or had been provided, when it was not. It is reasonably inferred that Respondent intended to defraud customers and insurers by these actions. Therefore, Respondent's ARD is subject to discipline pursuant to section 9884.7, subdivision (a)(4). This Conclusion is based on Factual Findings 5 through 35.

7. The Bureau is entitled to recover its reasonable costs of investigation and prosecution pursuant to section 125.3, based on Legal Conclusions 1, 4, 5 and 6. The reasonable costs are \$35,013.90, based on Factual Finding 36.

8. The Director may discipline the registration of any other place of business operated by Respondent in this state, pursuant to section 9884.7, subdivision (c), based on Legal Conclusions 1, 4, 5, and 6.

9. The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) The record establishes that Respondent engaged in a course of fraudulent conduct, in several transactions, including those established in the related proceeding. There is little or no evidence of remorse or rehabilitation, or in mitigation. The only way to protect the public from such pernicious shenanigans is to revoke Respondent's ARD.

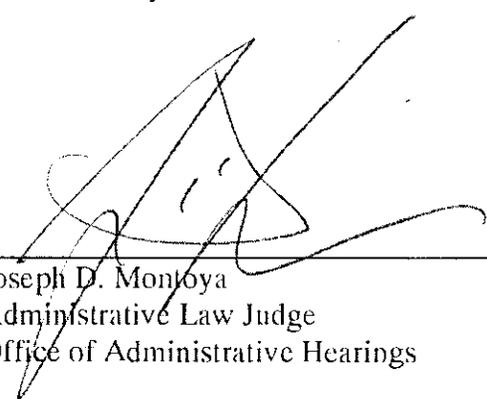
#### ORDER

1. Automotive Repair Dealer Registration number ARD 263370, issued to Donald Wayne Collins doing business as DC's RV Center is hereby revoked.

2. Any other Automotive Repair Dealer Registration issued to Donald Wayne Collins, Inc. is hereby revoked.

3. Respondent Donald Wayne Collins, Inc. shall pay costs of \$35,013.90 to the Bureau of Automotive Repair within 60 days of the effective date of this decision.

July 10, 2015



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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings

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8 **BEFORE THE**  
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OAH No. 2013010777

15 Automotive Repair Dealer Reg. No. ARD 263370

**FIRST AMENDED ACCUSATION**

16 Respondent.  
17

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about September 28, 2010, the Director of Consumer Affairs ("Director")  
23 issued Automotive Repair Dealer Registration Number ARD 263370 to Donald Wayne Collins  
24 ("Respondent"), owner of DC's RV Center. Respondent's automotive repair dealer registration  
25 was in full force and effect at all times relevant to the charges brought herein and will expire on  
26 September 30, 2014, unless renewed.

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1 7. Code section 22, subdivision (a), states:

2 "Board" as used in any provision of this Code, refers to the board in  
3 which the administration of the provision is vested, and unless otherwise expressly  
4 provided, shall include "bureau," "commission," "committee," "department,"  
"division," "examining committee," "program," and "agency."

5 8. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes  
6 "registration" and "certificate."

7 9. California Code of Regulations, title 16, section ("Regulation") 3353 states, in  
8 pertinent part:

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

11 . . . .

12 (c) Revising an Itemized Work Order. If the customer has authorized  
13 repairs according to a work order on which parts and labor are itemized, the dealer  
14 shall not change the method of repair or parts supplied without the written, oral, or  
15 electronic 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.

16 10. Regulation 3356 states, in pertinent part:

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

19 (1) The invoice shall show the automotive repair dealer's registration  
20 number . . .

21 COST RECOVERY

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

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1 a. Respondent represented on the invoice that the license plate, with lamps, on Don B.'s  
2 2008 Fleetwood Bounder motor home had been removed and reinstalled. In fact, that part had  
3 not been removed and reinstalled on the motor home.

4 b. Respondent represented on the invoice that the tail lamps on Don B.'s 2008  
5 Fleetwood Bounder motor home had been removed and reinstalled. In fact, those parts had not  
6 been removed and reinstalled on the motor home.

7 c. Respondent represented on the invoice that the two bolts for the trailer hitch on Don  
8 B.'s 2008 Fleetwood Bounder motor home had been removed and reinstalled. In fact, the bolts  
9 had not been removed and reinstalled on the motor home.

10 d. Respondent represented on the invoice that the rear cap molding on Don B.'s 2008  
11 Fleetwood Bounder motor home had been removed and reinstalled. In fact, that part had not been  
12 removed and reinstalled on the motor home.

13 e. Respondent represented on the invoice that the left rear compartment door lock on  
14 Don B.'s 2008 Fleetwood Bounder motor home had been removed and reinstalled. In fact, that  
15 part had not been removed and reinstalled on the motor home.

16 f. Respondent represented on the invoice that the 6 rear cap clearance lamps on Don  
17 B.'s 2008 Fleetwood Bounder motor home had been removed and reinstalled. In fact, those parts  
18 had not been removed and reinstalled on the motor home.

19 g. Respondent represented on the invoice that the back up camera on Don B.'s 2008  
20 Fleetwood Bounder motor home had been removed and reinstalled. In fact, that part had not been  
21 removed and reinstalled on the motor home.

22 h. Respondent represented on the invoice that the ladder on Don B.'s 2008 Fleetwood  
23 Bounder motor home had been removed and reinstalled. In fact, that part had not been removed  
24 and reinstalled on the motor home.

25 i. Respondent represented on the invoice that the left rear compartment door on Don  
26 B.'s 2008 Fleetwood Bounder motor home had been replaced. In fact, that part had not been  
27 replaced on the motor home, but was repaired instead.

28 ///

1 j. Respondent represented on the invoice that the left rear compartment door strut on  
2 Don B.'s 2008 Fleetwood Bounder motor home had been replaced. In fact, that part had not been  
3 replaced on the motor home.

4 k. Respondent represented on the invoice that the rear cap on Don B.'s 2008 Fleetwood  
5 Bounder motor home had been replaced. In fact, that part had not been replaced on the motor  
6 home, but was repaired instead.

7 l. Respondent represented on the invoice that the rear cap decal on Don B.'s 2008  
8 Fleetwood Bounder motor home had been replaced. In fact, the rear cap decal had not been  
9 replaced on the motor home.

10 m. Respondent represented to Biesel that the damaged rear cap section on Don B.'s 2008  
11 Fleetwood Bounder motor home was missing when, in fact, Respondent used the damaged piece  
12 or section in the repair of the rear cap.

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Failure to Provide Customer with Copy of Signed Document)

15 25. Respondent is subject to disciplinary action pursuant to Code section 9884.7,  
16 subdivision (a)(3), in that Respondent or his employees failed to provide Don B. with a copy of  
17 the written estimate, as set forth in paragraph 15 above.

18 **THIRD CAUSE FOR DISCIPLINE**

19 (Fraud)

20 26. Respondent is subject to disciplinary action pursuant to Code section 9884.7,  
21 subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows:

22 a. Respondent obtained payment from Progressive for removing and reinstalling the  
23 license plate, with lamps, on Don B.'s 2008 Fleetwood Bounder motor home. In fact, that part  
24 had not been removed and reinstalled on the motor home.

25 b. Respondent obtained payment from Progressive for removing and reinstalling the tail  
26 lamps on Don B.'s 2008 Fleetwood Bounder motor home. In fact, those parts had not been  
27 removed and reinstalled on the motor home.

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1 c. Respondent obtained payment from Progressive for removing and reinstalling the two  
2 bolts for the trailer hitch on Don B.'s 2008 Fleetwood Bounder motor home. In fact, the bolts had  
3 not been removed and reinstalled on the motor home.

4 d. Respondent obtained payment from Progressive for removing and reinstalling the rear  
5 cap molding on Don B.'s 2008 Fleetwood Bounder motor home. In fact, that part had not been  
6 removed and reinstalled on the motor home.

7 e. Respondent obtained payment from Progressive for removing and reinstalling the left  
8 rear compartment door lock on Don B.'s 2008 Fleetwood Bounder motor home. In fact, that part  
9 had not been removed and reinstalled on the motor home.

10 f. Respondent obtained payment from Progressive for removing and reinstalling the 6  
11 rear cap clearance lamps on Don B.'s 2008 Fleetwood Bounder motor home. In fact, those parts  
12 had not been removed and reinstalled on the motor home.

13 g. Respondent obtained payment from Progressive for removing and reinstalling the  
14 back up camera on Don B.'s 2008 Fleetwood Bounder motor home. In fact, that part had not been  
15 removed and reinstalled on the motor home.

16 h. Respondent obtained payment from Progressive for removing and reinstalling the  
17 ladder on Don B.'s 2008 Fleetwood Bounder motor home. In fact, that part had not been removed  
18 and reinstalled on the motor home.

19 i. Respondent obtained payment from Progressive for replacing the left rear  
20 compartment door on Don B.'s 2008 Fleetwood Bounder motor home. In fact, that part had not  
21 been replaced on the motor home, but was repaired instead.

22 j. Respondent obtained payment from Progressive for replacing the left rear  
23 compartment door strut on Don B.'s 2008 Fleetwood Bounder motor home. In fact, that part had  
24 not been replaced on the motor home.

25 k. Respondent obtained payment from Progressive for replacing the rear cap on Don B.'s  
26 2008 Fleetwood Bounder motor home. In fact, that part had not been replaced on the motor  
27 home, but was repaired instead.

28 ///

1 i. Respondent obtained payment from Progressive for replacing the rear cap decal on  
2 Don B.'s 2008 Fleetwood Bounder motor home. In fact, the rear cap decal had not been replaced  
3 on the motor home.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Violations of Regulations)**

6 27. Respondent is subject to disciplinary action pursuant to Code section 9884.7,  
7 subdivision (a)(6), in that Respondent failed to comply with provisions of California Code of  
8 Regulations, title 16, the following material respects:

9 a. **3353, subdivision (e)**: Respondent changed the method of repair on Don B.'s 2008  
10 Fleetwood Bounder motor home without Don B.'s authorization in that Respondent repaired the  
11 rear cap instead of replacing it as set forth on the written estimate, described in paragraph 18  
12 above.

13 b. **3356, subdivision (1)**: Respondent failed to show his automotive repair dealer  
14 registration number on the invoice.

15 **VEHICLE INSPECTION: 1995 DUTCHMAN SIGNATURE 5TH WHEEL/TRAILER**

16 28. On or about July 18, 2011, consumer Florin M. took his 1995 Dutchman Signature 5<sup>th</sup>  
17 wheel/trailer to Respondent's facility for an appraisal because he was planning to sell the trailer.  
18 Respondent's employee, "Bobby", inspected the trailer and noticed that the left side roof area was  
19 damaged. Bobby recommended that Florin M. report the damage to his insurance company.  
20 Later, Florin M. contacted Personal Express Insurance ("Personal Express") and made a claim for  
21 the damage.

22 29. On or about July 19, 2011, Florin M. received a call from Personal Express,  
23 informing him that they had agreed to pay for the repairs.

24 30. On or about July 22, 2011, Florin M. received a check for \$6,306.03 from Personal  
25 Express and took it to Respondent's facility.

26 31. On or about August 3, 2011, the facility completed the repairs. The trailer was then  
27 parked on the facility's sales lot for 60 days pursuant to a consignment agreement between Florin  
28 M. and the facility.

1 32. On or about October 4, 2011, Florin M. returned to the facility to retrieve the trailer  
2 after the consignment period had expired. Florin M. paid the facility a \$250 insurance deductible  
3 and received a copy of Invoice No. 21687, totaling \$6,556.03.

4 33. On or about October 18, 2011, Florin M. sold the trailer to Frederick Noel ("Noel").

5 34. On or about February 8, 2012, a representative of the Bureau went to Stier's RV  
6 Center ("Stier's") to inspect the trailer. The representative had Stier's remove a skylight (as  
7 authorized by Noel) in order to gain access to the roof area. The representative inspected the roof  
8 area around the skylight opening and found that there were no Luan wood panels or sheets  
9 installed between the roof structure and the rubber roof cap. The total estimated value of the  
10 repair that Respondent failed to perform on the trailer is approximately \$1,012.24.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 35. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
14 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which  
15 he knew, or in the exercise of reasonable care should have known to be untrue or misleading, as  
16 follows: Respondent represented on the written estimate and invoice that the Luan wood panels  
17 or sheets on Florin M.'s 1995 Dutchman Signature 5<sup>th</sup> wheel/trailer were replaced. In fact, the  
18 Luan wood panels were not replaced on the trailer as invoiced.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 36. Respondent is subject to disciplinary action pursuant to Code section 9884.7,  
22 subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows:  
23 Respondent obtained payment from Personal Express and Florin M. for replacing the Luan wood  
24 panels or sheets on Florin M.'s 1995 Dutchman Signature 5<sup>th</sup> wheel/trailer. In fact, the Luan  
25 wood panels were not replaced on the trailer as invoiced.

26 **VEHICLE INSPECTION: 2009 ECLIPSE ATTITUDE TRAILER/COACH**

27 37. On or about April 25, 2013, a Bureau program representative inspected a 2009  
28 Eclipse Attitude Trailer/Coach owned by consumer Sam B. Consumer Sam B. had taken the RV

1 to Respondent's facility for repairs on or about July 3, 2012. No additional repairs had been  
2 performed on the RV after it was repaired by Respondent. The Bureau program representative  
3 inspected the vehicle using Respondent's invoice/RO #26031 and estimate/invoice #010609 for  
4 reference. Among other things, the invoices listed the installation of seven (7) Luan panels, and  
5 indicated that the total cost for parts, including sales tax, and the labor associated with their  
6 installation was \$885.09. Per his interview with Sam B. and his review of pertinent insurance  
7 records, the Bureau program representative confirmed that Respondent had been paid in full for  
8 all of the parts and labor contained on the invoices.

9 38. Based on his inspection of the 2009 Eclipse Attitude Trailer/Coach, the Bureau  
10 program representative was able to confirm that Respondent had not installed any of the seven (7)  
11 Luan panels identified in the invoices but had instead simply charged Sam B. and his insurer for  
12 parts and labor that were never provided or performed. Accordingly, the Bureau program  
13 representative was able to confirm that Respondent had obtained payment for more than \$850.00  
14 in fraudulent charges for parts and labor that were not provided to the consumer.

15 **SEVENTH CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 39. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
18 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which  
19 he knew, or in the exercise of reasonable care should have known to be untrue or misleading, as  
20 follows: Respondent represented on the written estimate and invoices that seven (7) Luan panels  
21 had been installed on Sam B.'s 2009 Eclipse Attitude Trailer/Coach. In fact, said parts were not  
22 installed on the RV as invoiced by Respondent. Complainant refers to, and by this reference  
23 incorporates, the allegations set forth above in paragraphs 37 and 38, inclusive, as though set  
24 forth fully herein.

25 **EIGHTH CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 40. Respondent is subject to disciplinary action pursuant to Code section 9884.7,  
28 subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows:

1 Respondent obtained payment, including related labor charges and sales tax, for seven (7) Luan  
2 panels that were claimed to have been installed on Sam B.'s 2009 Eclipse Attitude Trailer/Coach.  
3 In fact, said parts were not installed on the RV as invoiced by Respondent. Complainant refers  
4 to, and by this reference incorporates, the allegations set forth above in paragraphs 37 and 38,  
5 inclusive, as though set forth fully herein.

6 OTHER MATTERS

7 41. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,  
8 or place on probation the registration for all places of business operated in this state by  
9 Respondent Donald Wayne Collins, owner of DC's RV Center, upon a finding that said  
10 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and  
11 regulations pertaining to an automotive repair dealer.

12 PRAYER

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

- 15 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
16 263370, issued to Donald Wayne Collins, owner of DC's RV Center;
- 17 2. Revoking or suspending any other automotive repair dealer registration issued to  
18 Donald Wayne Collins;
- 19 3. Ordering Donald Wayne Collins, owner of DC's RV Center, to pay the Director of  
20 Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant  
21 to Business and Professions Code section 125.3;
- 22 4. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: January 17, 2014

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

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