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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:
13 **THE WORKS AUTOCARE**
FRANK RAY MOORE, OWNER
14 **4678 E. Olive**
Fresno, CA 93702
15 **Automotive Repair Dealer Reg. No. ARD 265745**
16 Respondent.

Case No. 77/15-21

ACCUSATION

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 July 6, 2011, the Director of Consumer Affairs ("Director") issued
23 Automotive Repair Dealer Registration Number ARD 265745 to Frank Ray Moore
24 ("Respondent"), owner of The Works Autocare. The automotive repair dealer registration
25 expired on July 31, 2013.

26 **JURISDICTION**

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

1 7. Code section 9884.6, subdivision (a), states that it is unlawful for any person to be an
2 automotive repair dealer unless that person has registered in accordance with this chapter and
3 unless that registration is currently valid.

4 8. Code section 9884.9, subdivision (a), states, in pertinent part:

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

20 9. Code section 22, subdivision (a), states:

21 “Board” as used in any provision of this Code, refers to the board in
22 which the administration of the provision is vested, and unless otherwise expressly
23 provided, shall include “bureau,” “commission,” “committee,” “department,”
24 “division,” “examining committee,” “program,” and “agency.”

25 10. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes
26 “registration” and “certificate.”

27 11. California Code of Regulations, title 16, section (“Regulation”) 3356 states, in
28 pertinent part:

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

 (1) The invoice shall show the automotive repair dealer’s registration
number and the corresponding business name and address as shown in the Bureau’s
records . . .

 (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.

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1 (B) Each part supplied, in such a manner that the customer can
understand what was purchased, and the price for each described part . . .

2 (C) The subtotal price for all service and repair work performed.

3 (D) The subtotal price for all parts supplied, not including sales tax.

4 (E) The applicable sales tax, if any

5 12. Regulation 3366 states:

6 (a) Except as provided in subsection (b) of this section, any automotive
7 repair dealer that advertises or performs, directly or through a sublet contractor,
8 automotive air conditioning work and uses the words service, inspection, diagnosis,
9 top off, performance check or any expression or term of like meaning in any form of
advertising or on a written estimate or invoice shall include and perform all of the
following procedures as part of that air conditioning work:

10 (1) Exposed hoses, tubing and connections are examined for damage or
leaks;

11 (2) The compressor and clutch, when accessible, are examined for
12 damage, missing bolts, missing hardware, broken housing and leaks;

13 (3) The compressor is rotated to determine if it is seized or locked up;

14 (4) Service ports are examined for missing caps, damaged threads and
conformance with labeling;

15 (5) The condenser coil is examined for damage, restrictions or leaks;

16 (6) The expansion device, if accessible, is examined for physical damage
or leaks;

17 (7) The accumulator receiver dryer and in-line filter have been checked
18 for damage, missing or loose hardware or leaks;

19 (8) The drive belt system has been checked for damaged or missing
20 pulleys or tensioners and for proper belt routing, tension, alignment, excessive wear
or cracking;

21 (9) The fan clutch has been examined for leakage, bearing wear and
proper operation;

22 (10) The cooling fan has been checked for bent or missing blades;

23 (11) Accessible electrical connections have been examined for loose,
24 burnt, broken or corroded parts;

25 (12) The refrigerant in use has been identified and checked for
26 contamination;

27 (13) The system has been checked for leakage at a minimum of 50-PSI
system pressure;

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1 (14) The compressor clutch, blower motor and air control doors have
been checked for proper operation;

2 (15) High and low side system operating pressures, as applicable, have
3 been measured and recorded on the final invoice; and,

4 (16) The center air distribution outlet temperature has been measured and
recorded on the final invoice.

5 (b) Whenever the automotive air conditioning work being advertised or
6 performed does not involve opening the refrigerant portion of the air conditioning
7 system, refrigerant evacuation, or full or partial refrigerant recharge, the procedures
specified in subsection (a) need be performed only to the extent required by accepted
trade standards.

8 COST RECOVERY

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

13 UNDERCOVER OPERATION OF JULY 25, 2013

14 14. On July 25, 2013, at approximately 1040 hours, an undercover operator of the Bureau
15 (“operator”) took the Bureau’s 2006 Chevrolet to Respondent’s facility. A defective air
16 conditioner (“A/C”) compressor relay had been installed in the Bureau-documented vehicle. The
17 operator told an employee at Respondent’s facility that he needed an A/C service because the air
18 from the vents was blowing hot. The employee drove the vehicle into the shop. Later, the
19 employee told the operator that it would cost \$25 to check the vehicle and \$50 to recharge the
20 A/C with refrigerant. The operator told the employee that would be fine. The employee had the
21 operator sign a repair order, but did not give the operator a copy or a written estimate. The
22 operator left the facility.

23 15. At approximately 1123 hours, Respondent’s employee, “Ralph,” called the operator
24 and told him that the vehicle’s A/C compressor was not turning on and that the problem was with
25 the relay or the compressor. Ralph also stated that the A/C system did not have any leaks. Ralph
26 told the operator that it would cost \$150 to repair the relay and recharge the A/C system and \$500
27 if the compressor was bad. The operator authorized Ralph to continue with the diagnosis. Ralph
28 told the operator that he would call him back in 45 minutes.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 24. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade
5 standards for good and workmanlike repair without the consent of the owner or the owner's duly
6 authorized representative, in the following material respects:

7 a. Respondent failed to record on the invoice the high and low side system operating
8 pressures of the A/C system on the Bureau's 2006 Chevrolet, as required by Regulation 3366,
9 subdivision (a)(15).

10 b. Respondent failed to record on the invoice the center air distribution outlet
11 temperature of the AC system on the Bureau's 2006 Chevrolet, as required by Regulation 3366,
12 subdivision (a)(16).

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Violations of the Code)**

15 25. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
16 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
17 that Code in the following material respects:

18 a. Respondent's employee failed to provide the operator with a written estimate for the
19 A/C service or diagnosis on the Bureau's 2006 Chevrolet.

20 b. Respondent failed to record on the invoice the operator's authorization for the
21 additional repairs or services on the Bureau's 2006 Chevrolet, the replacement of the A/C
22 compressor relay, and recharging of the A/C system.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 26. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following
5 material respects:

6 a. **Subdivision (a)(1)**: Respondent failed to show his automotive repair dealer
7 registration number on the invoice. Further, Respondent listed his business name as The Works
8 Auto Repair and Collision rather than The Works Autocare.

9 b. **Subdivision (a)(2)(A)(B)**: Respondent failed to list, describe, or identify on the
10 invoice all parts supplied on the Bureau's 2006 Chevrolet, specifically the A/C compressor relay
11 and refrigerant. Further, Respondent failed to list separately on the invoice the price for each
12 repair performed and each part supplied on the vehicle.

13 c. **Subdivision (a)(2)(C), (D), and (E)**: Respondent failed to list on the invoice the
14 subtotal price for all service and repair work performed and all parts supplied on the Bureau's
15 2006 Chevrolet, including the applicable sales tax, if any.

16 **UNDERCOVER OPERATION OF OCTOBER 16, 2013**

17 27. On October 16, 2013, at approximately 1445 hours, an undercover operator of the
18 Bureau ("operator") took the Bureau's 1995 Ford to Respondent's facility. A defective fuse had
19 been installed in the battery charging circuit of the Bureau-documented vehicle. The operator
20 entered the facility and spoke with Respondent's employee, Ralph. The operator told Ralph that
21 the battery light was on and asked Ralph if he could check the vehicle. Ralph connected a meter
22 to the battery while the engine was running and told the operator that the alternator was not
23 charging. Ralph called an auto parts store, then told the operator that the alternator would cost
24 \$140. Ralph offered to install the alternator in the vehicle for \$50 if the operator wanted to pick
25 the part up himself. The operator authorized Ralph to purchase the alternator and install it in the
26 vehicle. Ralph told the operator that he would have the vehicle ready in one hour. Ralph did not
27 have the operator sign a repair order or give him a written estimate. The operator left the facility.

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1 28. At approximately 1620 hours, the operator returned to Respondent's facility and met
2 with Ralph. Ralph told the operator that the vehicle was ready and that he had also replaced one
3 of the fuses. The operator paid Ralph \$190 in cash for the repairs and received a copy of an
4 invoice.

5 29. On October 17, 2013, the Bureau inspected the vehicle and found that Respondent's
6 facility had replaced the defective fuse, but had performed an unnecessary repair, as set forth
7 below.

8 **NINTH CAUSE FOR DISCIPLINE**

9 **(Untrue or Misleading Statements)**

10 30. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
11 subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the
12 exercise of reasonable care should have known to be untrue or misleading, as follows:
13 Respondent's employee, Ralph, represented to the operator that the alternator on the Bureau's
14 1995 Ford was not charging. In fact, the alternator was in good working condition at the time the
15 vehicle was taken to Respondent's facility and was not in need of replacement. Further, the only
16 repair needed on the vehicle was the replacement of the defective fuse in the battery charging
17 circuit.

18 **TENTH CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 31. Respondent's registration is subject to disciplinary action pursuant to Code section
21 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows:
22 Respondent's employee, Ralph, made a false or misleading statement to the operator regarding
23 the charging system in the Bureau's 1995 Ford, as set forth in paragraph 30 above, in order to
24 induce the operator to authorize an unnecessary repair on the vehicle, the replacement of the
25 alternator, then sold the operator the unnecessary repair.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Code)**

3 32. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply with provisions of the Code in the
5 following material respects:

6 a. **Section 9884.6, subdivision (a)**: Respondent performed automotive repairs on the
7 Bureau's 1995 Ford when his automotive repair dealer registration was expired or invalid.

8 b. **Section 9884.9, subdivision (a)**: Respondent's employee, Ralph, failed to provide
9 the operator with a written estimate for the diagnosis on the Bureau's 1995 Ford.

10 **TWELFTH CAUSE FOR DISCIPLINE**

11 **(Violations of Regulations)**

12 33. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
13 subdivision (a)(6), in that Respondent failed to comply with Regulation 3356 in the following
14 material respects:

15 a. **Subdivision (a)(1)**: Respondent failed to show his automotive repair dealer
16 registration number on the invoice. Further, Respondent listed his business name as The Works
17 Auto Repair and Collision rather than The Works Autocare.

18 b. **Subdivision (a)(2)(C), (D), and (E)**: Respondent failed to list on the invoice the
19 subtotal prices for all service and repair work performed and all parts supplied on the Bureau's
20 1995 Ford, including the applicable sales tax, if any.

21 **OTHER MATTERS**

22 34. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
23 or place on probation the registration for all places of business operated in this state by
24 Respondent Frank Ray Moore, owner of The Works Autocare, upon a finding that Respondent
25 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
26 pertaining to an automotive repair dealer.

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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 265745, issued to Frank Ray Moore, owner of The Works Autocare;
2. Revoking or suspending any other automotive repair dealer registration issued to Frank Ray Moore;
3. Ordering Frank Ray Moore, owner of The Works Autocare, 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: *October 15, 2014* 

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

SA2014116527