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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:

**THE WORKS AUTOCARE;
FRANK RAY MOORE, OWNER
4678 E. Olive
Fresno, CA 93702**

**Automotive Repair Dealer Reg. No. ARD
265745**

Respondent.

Case No. 77/15-21

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 15, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 77/15-21 against The Works Autocare; Frank Ray Moore, Owner (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about July 6, 2011, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration No. ARD 265745 to Respondent. The Automotive Repair Dealer Registration expired on July 31, 2013, and has not been renewed.

///

1 3. On or about October 21, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 77/15-21, Statement to Respondent, Notice of Defense,
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
4 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
5 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
6 address of record was and is:

7 4678 E. Olive
8 Fresno, CA 93702.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

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

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

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

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 77/15-21.

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

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

28 9. Pursuant to its authority under Government Code section 11520, the Director after
having reviewed the proof of service dated October 21, 2014, signed by Aja D. Lynch, and USPS
Track & Confirm Notice No. 7196 9008 9111 2439 6248, finds Respondent is in default. The
Director will take action without further hearing and, based on Accusation No. 77/15-21, proof of

1 service, and on the Affidavit of Bureau Representative William Nicks, finds that the allegations in
2 the Accusation are true.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent The Works Autocare; Frank Ray
5 Moore, Owner has subjected his Automotive Repair Dealer Registration No. ARD 265745 to
6 discipline.

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

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

12 a. Respondent violated Business and Professions Code section 9884.7, subdivision
13 (a)(1), in that on or about July 25, 2013, Respondent made or authorized statements which he
14 knew or in the exercise of reasonable care should have known to be untrue or misleading to a
15 Bureau undercover operator regarding the Bureau's 2006 Chevrolet, as follows:

16 i. Respondent's employee represented to the Bureau's undercover operator that
17 the A/C system on the Bureau's 2006 Chevrolet would be recharged with refrigerant at a cost of
18 \$50 as part of the A/C service. In fact, Respondent's employee had no basis for recommending or
19 selling refrigerant to the operator or adding refrigerant to the A/C system in that the refrigerant in
20 use on the vehicle had not been identified and checked for contamination by the facility as
21 required by California Code of Regulations, title 16, section 3366, subdivision (a)(12). Further,
22 the A/C system had been recharged with refrigerant prior to the time the vehicle was taken to
23 Respondent's facility and the vehicle was not in need of any refrigerant or a refrigerant service.

24 ii. Respondent's employee, Ralph, represented to the Bureau's undercover
25 operator that the A/C system on the Bureau's 2006 Chevrolet was just about empty of refrigerant.
26 In fact, the A/C system had been recharged with refrigerant prior to the time the vehicle was
27 taken to Respondent's facility.

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1 b. Respondent violated Business and Professions Code section 9884.7, subdivision
2 (a)(2), in that on or about July 25, 2013, Respondent's employee caused or allowed the Bureau's
3 undercover operator to sign the repair order which did not state the odometer reading of the
4 Bureau's 2006 Chevrolet.

5 c. Respondent violated Business and Professions Code section 9884.7, subdivision
6 (a)(3), in that on or about July 25, 2013, Respondent's employee failed to provide the Bureau's
7 undercover operator with a copy of any document requiring his signature.

8 d. Respondent violated Business and Professions Code section 9884.7, subdivision
9 (a)(4), in that on or about July 25, 2013, Respondent committed an act constituting fraud, as
10 follows: Respondent obtained payment from the Bureau's undercover operator for evacuating
11 and recharging the A/C system on the Bureau's 2006 Chevrolet as part of the A/C service. In
12 fact, Respondent had no basis for selling refrigerant to the operator or adding refrigerant to the
13 A/C system in that the refrigerant in use on the vehicle had not been identified and checked for
14 contamination by the facility as required by California Code of Regulations, title 16, section
15 3366, subdivision (a)(12). Further, the A/C system had been recharged with refrigerant prior to
16 the time the vehicle was taken to Respondent's facility, and the vehicle was not in need of any
17 refrigerant or a refrigerant service.

18 e. Respondent violated Business and Professions Code section 9884.7, subdivision
19 (a)(5), in that on or about July 25, 2013, Respondent committed an act constituting gross
20 negligence, as follows: Respondent removed the park/lamp relay on the Bureau's 2006 Chevrolet
21 and replaced it with the defective A/C compressor relay, preventing the vehicle's front park
22 lamps, rear tail lamps, and license plate lamps from operating (with the headlight switch in the on
23 or park position).

24 f. Respondent violated Business and Professions Code section 9884.7, subdivision
25 (a)(7), in that on or about July 25, 2013, Respondent willfully departed from or disregarded
26 accepted trade standards for good and workmanlike repair without the consent of the owner or the
27 owner's duly authorized representative, in the following material respects:

28 ///

1 i. Respondent failed to record on the invoice the high and low side system
2 operating pressures of the A/C system on the Bureau's 2006 Chevrolet, as required by California
3 Code of Regulations, title 16, section 3366, subdivision (a)(15).

4 ii. Respondent failed to record on the invoice the center air distribution outlet
5 temperature of the AC system on the Bureau's 2006 Chevrolet, as required by California Code of
6 Regulations, title 16, section 3366, subdivision (a)(16).

7 g. Respondent violated Business and Professions Code section 9884.7, subdivision
8 (a)(6), in that on or about July 25, 2013, Respondent failed to comply with section 9884.9,
9 subdivision (a), of that Code in the following material respects:

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

12 ii. Respondent failed to record on the invoice the Bureau's undercover operator's
13 authorization for the additional repairs or services on the Bureau's 2006 Chevrolet, the
14 replacement of the A/C compressor relay, and recharging of the A/C system.

15 h. Respondent violated Business and Professions Code sections 9884.7, subdivision
16 (a)(6), and 9884.8 in that on or about July 25, 2013, Respondent failed to comply with California
17 Code of Regulations, title 16, section 3356 in the following material respects:

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

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

25 iii. Subdivisions (a)(2)(C), (D), and (E): Respondent failed to list on the invoice
26 the subtotal price for all service and repair work performed and all parts supplied on the Bureau's
27 2006 Chevrolet, including the applicable sales tax, if any.

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1 i. Respondent violated Business and Professions Code section 9884.7, subdivision
2 (a)(1), in that on or about October 16, 2013, Respondent made or authorized a statement which he
3 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
4 follows: Respondent's employee, Ralph, represented to the Bureau's undercover operator that the
5 alternator on the Bureau's 1995 Ford was not charging. In fact, the alternator was in good
6 working condition at the time the vehicle was taken to Respondent's facility and was not in need
7 of replacement. Further, the only repair needed on the vehicle was the replacement of the
8 defective fuse in the battery charging circuit.

9 j. Respondent violated Business and Professions Code section 9884.7, subdivision
10 (a)(4), in that on or about October 16, 2013, Respondent committed an act constituting fraud, as
11 follows: Respondent's employee, Ralph, made a false or misleading statement to the Bureau's
12 undercover operator regarding the charging system in the Bureau's 1995 Ford, as set forth in
13 paragraph 3(i) above, in order to induce the operator to authorize an unnecessary repair on the
14 vehicle, the replacement of the alternator, then sold the operator the unnecessary repair.

15 k. Respondent violated Business and Professions Code section 9884.7, subdivision
16 (a)(6), in that on or about October 16, 2013, Respondent failed to comply with provisions of that
17 Code in the following material respects:

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

20 ii. **Section 9884.9, subdivision (a):** Respondent's employee, Ralph, failed to
21 provide the Bureau's undercover operator with a written estimate for the diagnosis on the
22 Bureau's 1995 Ford.

23 l. Respondent violated Business and Professions Code sections 9884.7, subdivision
24 (a)(6), and 9884.8 in that on or about October 16, 2013, Respondent failed to comply with
25 California Code of Regulations, title 16, section 3356 in the following material respects:

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

1 ii. Subdivisions (a)(2)(C), (D), and (E): Respondent failed to list on the invoice
2 the subtotal prices for all service and repair work performed and all parts supplied on the
3 Bureau's 1995 Ford, including the applicable sales tax, if any.

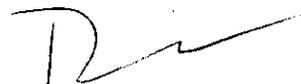
4 ORDER

5 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 265745,
6 heretofore issued to Respondent The Works Autocare; Frank Ray Moore, Owner, is revoked.

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

13 This Decision shall become effective on March 10, 2015.

14 It is so ORDERED March 17, 2015

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17 
18 TAMARA COLSON
19 Assistant General Counsel
Department of Consumer Affairs

20 11611203.DOC
SA2014116527

21 Attachment:
22 Exhibit A: Accusation
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Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No.

77/15-21

13 **THE WORKS AUTOCARE**
14 **FRANK RAY MOORE, OWNER**
4678 E. Olive
Fresno, CA 93702

ACCUSATION

15 **Automotive Repair Dealer Reg. No. ARD 265745**

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 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.

///

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
17 or leaks;

18 (7) The accumulator receiver dryer and in-line filter have been checked
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
22 proper operation;

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

24 (11) Accessible electrical connections have been examined for loose,
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 **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 **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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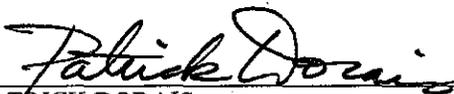
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PRAYER

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