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3 **BEFORE THE**
4 **DEPARTMENT OF CONSUMER AFFAIRS**
5 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
6 **STATE OF CALIFORNIA**

7 In the Matter of the Accusation Against:

Case No. 77/15-12

8 **BROOKS PERFORMANCE, dba BROOKS**
9 **PERFORMANCE AND MACHINE;**
10 **CINDY BROOKS, Pres./Treas.**
11 **MITCHELL BROOKS, V.P./Secty**
12 3180 S. Parkway Drive
13 Fresno, CA 93725

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

14 **Automotive Repair Dealer Reg. No.**
15 **ARD 267691**

16 Respondent.

17 **FINDINGS OF FACT**

18 1. On or about August 26, 2014, Complainant Patrick Dorais, in his official capacity as
19 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation
20 No. 77/15-12 against Brooks Performance dba Brooks Performance and Machine, Cindy Brooks,
21 President/Treasurer and Mitchell Brooks, Vice President/Secretary (Respondent) before the
22 Director of Consumer Affairs. (Accusation attached as Exhibit A.)

23 2. On or about January 11, 2012, the Bureau of Automotive Repair (Bureau) issued
24 Automotive Repair Dealer Registration No. ARD 267691 to Respondent. The Automotive
25 Repair Dealer Registration expired on January 31, 2014, and has not been renewed.

26 3. On or about August 26, 2014, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. 77/15-12, Statement to Respondent, Notice of Defense,
28 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
Code section 136, is required to be reported and maintained with the Bureau. Respondent's
address of record was and is: 3180 S. Parkway Drive, Fresno, CA 93725.

1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 5. On or about September 22, 2014, the aforementioned documents were returned by the
5 U.S. Postal Service marked "No Forwarding Address." The address on the documents was the
6 same as the address on file with the Bureau. Respondent failed to maintain an updated address
7 with the Bureau and the Bureau has made attempts to serve the Respondent at the address on file.
8 Respondent has not made itself available for service and therefore, has not availed itself of its
9 right to file a notice of defense and appear at hearing.

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon them
17 of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No.
18 77/15-12.

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

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

24 9. Pursuant to its authority under Government Code section 11520, the Director after
25 having reviewed the proof of service dated August 26, 2014, signed by Nickell Mosely, and
26 return envelopes or USPS Track & Confirm Notice, finds Respondent is in default. The Director
27 will take action without further hearing and, based on Accusation, No. 77/15-12, proof of service
28 and on the Affidavit of Bureau Representative Ronald Grasmick, finds that the allegations in
Accusation are true.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Brooks Performance dba Brooks
3 Performance and Machine has subjected its Automotive Repair Dealer Registration No. ARD
4 267691 to discipline.

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

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

10 a. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts
11 constituting fraud against consumer K.S.

12 b. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
13 section 9884.9, subdivision (a), by failing to document consumer K. S.'s authorization for
14 additional repairs.

15 c. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
16 approximately seventeen (17) untrue or misleading statements to consumer N.B.

17 d. Code section 9884.7, subdivision (a)(4), in that Respondent committed approximately
18 seventeen (17) acts constituting fraud against consumer N.B.

19 e. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
20 section 9884.9, subdivision (a), in a material respect during its business with consumer N.B.

21 f. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
22 four (4) subsections of Regulation 3356 during its business with consumer N.B.

23 g. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts
24 constituting fraud against consumer C. C.

25 h. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
26 four (4) subsections of Regulation 3356 during its business with consumer C.C.

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1 i. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
2 statements which it knew or in the exercise of reasonable care should have known to be untrue or
3 misleading to consumers K. C., Jr., and K.C., Sr.

4 j. Code section 9884.7, subdivision (a)(4), in that Respondent committed two (2) acts
5 constituting fraud against consumers K. C., Jr., and K.C., Sr.

6 k. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
7 section 9884.9, subdivision (a), of that Code in a material respect during its business with
8 consumers K. C., Jr., and K.C., Sr.

9 l. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with
10 four (4) subsections of Regulation 3356 during its business with consumers K. C., Jr., and K.C.,
11 Sr.

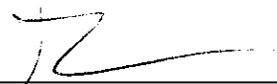
12 **ORDER**

13 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 267691,
14 heretofore issued to Respondent Brooks Performance dba Brooks Performance and Machine, is
15 revoked.

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

22 This Decision shall become effective on February 24, 2015

23 It is so ORDERED January 5, 2015

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25 
26 TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

27 Attachment:
28 Exhibit A: Accusation
11508624.DOC / DOJ Matter ID:SA2014116092

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACIIMAN
Supervising Deputy Attorney General
3 KRISTINA T. JANSEN
Deputy Attorney General
4 State Bar No. 258229
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5403
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. *177/15-12*

12 **BROOKS PERFORMANCE,**
13 **dba BROOKS PERFORMANCE AND MACHINE**
14 **CINDY BROOKS, PRES./TREAS.**
15 **MITCHELL BROOKS, V.P./SECTY**
3180 S. Parkway Drive
Fresno, CA 93725

A C C U S A T I O N

16 **Automotive Repair Dealer Reg. No. ARD 267691**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about January 11, 2012, the Director of Consumer Affairs ("Director") issued
24 Automotive Repair Dealer Registration Number ARD 267691 to Brooks Performance
25 ("Respondent"), doing business as Fresno Performance/Acc Engine, with Cindy Brooks as
26 president and treasurer and Mitchell Brooks as vice president and secretary. On or about
27 February 18, 2013, Respondent's business name was changed to Brooks Performance and

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1 Machine. Respondent's automotive repair dealer registration expired on January 31, 2014, and
2 has not been renewed.

3 JURISDICTION

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

6 4. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
7 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
8 against an automotive repair dealer or to render a decision temporarily or permanently
9 invalidating (suspending or revoking) a registration.

10 STATUTORY AND REGULATORY PROVISIONS

11 5. Code section 9884.7 states, in pertinent part:

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

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

21 (4) Any other conduct that constitutes fraud.

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

24 6. Code section 9884.7, subdivision (c), states, in pertinent part, that the Director may
25 suspend; revoke; or place on probation the registration for all places of business operated in this
26 state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
27 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
28 automotive repair dealer.

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1 7. Code section 9884.9, subdivision (a), states, in pertinent part:

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

17 8. Code section 22, subdivision (a), states:

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

22 9. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes
23 "registration" and "certificate."

24 10. California Code of Regulations, title 16, section ("Regulation") 3356 states, in
25 pertinent part:

26 (a) All invoices for service and repair work performed, and parts
27 supplied, as provided for in Section 9884.8 of the Business and Professions Code,
28 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.

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

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

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

2 11. Regulation 3373 states:

3 No automotive repair dealer or individual in charge shall, in filling out an
4 estimate, invoice, or work order, or record required to be maintained by section
5 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
6 information which will cause any such document to be false or misleading, or where
7 the tendency or effect thereby would be to mislead or deceive customers, prospective
8 customers, or the public.

7 COST RECOVERY

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

12 CONSUMER COMPLAINT (K. S.): 1971 DODGE DUSTER

13 13. On or about March 12, 2012, K. S., who was in the United States Navy, took the
14 engine from his 1971 Dodge Duster to Respondent's facility to have it rebuilt. In and between
15 April and June 2012, K. S. paid the facility a total of \$2,710.40.

16 14. In or about September 2012, K. S. went on deployment. When K. S. returned, he
17 contacted the facility to check on the status of the repairs. The facility would not return K. S.'s
18 call(s). Later, K. S. went to the facility and found that it was closed.

19 15. On or about June 25, 2013, K. S. filed a complaint with the Bureau.

20 16. On or about July 2, 2013, K. S. spoke with Mitchell Brooks and was informed that his
21 engine had been taken to Allegiance Auto Machine ("Allegiance") in Fresno. K. S. went to
22 Allegiance to pick up the engine. The engine had been disassembled, but it did not appear that
23 any work had been performed. K. S. returned to Respondent's facility and was given all of the
24 other engine parts except the flywheel.

25 17. On or about July 3, 2013, a Bureau representative met with K. S. and inspected the
26 engine. There was no indication that any repairs had been performed on the unit.

27 18. On or about July 9, 2013, the representative went to the facility and met with Cindy
28 and Mitchell Brooks. Mitchell Brooks ("M. Brooks") claimed that they did not start the work

1 until K. S. returned from deployment because they did not want the engine to sit and rust at the
2 facility. M. Brooks also claimed that the repairs had been under-quoted by a former employee,
3 that the work would now cost more than \$2,710.40, and that the Brooks did not have the money
4 to start the engine rebuild.

5 19. On or about July 10, 2013, the representative returned to the facility and obtained
6 copies of K. S.'s service file, including Service Order #181 dated March 13, 2012. The service
7 order showed that K. S. had authorized the facility to tear down (disassemble) and inspect the
8 engine for \$100. The representative recommended that the facility issue K. S. a refund of his
9 \$2,610.40. M. Brooks again claimed that they did not have the money, and refused to issue K. S.
10 a refund.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 20. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
14 subdivision (a)(4), in that Respondent committed acts constituting fraud, as follows: After
15 obtaining \$2,710.40 from K. S. for the rebuilding of the engine on his 1971 Dodge Duster,
16 Respondent, through its automotive technicians, employees, or officers, including Mitchell and
17 Cindy Brooks, failed to perform any of the work, with the exception of the tear down and
18 inspection, failed to refund any portion of the \$2,710.40 to K. S., and misappropriated or diverted
19 K. S.'s money.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with the Code)**

22 21. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
23 ~~subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of~~
24 that Code in a material respect, as follows: Respondent failed to document on Service Order
25 #181 K. S.'s authorization for the \$2,610.40 in additional repairs, i.e., the rebuilding of the
26 engine.

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1 representatives reviewed the repair records and found that N. B. had paid Brooks Performance
2 approximately \$14,500. R. G. inspected the vehicle using Invoice #590 for comparison and
3 found that Brooks Performance failed to perform approximately \$12,938.95 in repairs on the
4 vehicle.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Untrue or Misleading Statements)**

7 27. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
8 subdivision (a)(1), in that Respondent made or authorized statements which it knew or in the
9 exercise of reasonable care should have known to be untrue or misleading, as follows:

10 a. Respondent represented on the invoice that a custom wiring harness was supplied or
11 installed on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
12 vehicle.

13 b. Respondent represented on the invoice that hoses, oil, water, and miscellaneous parts
14 (required for the engine operation) were supplied or installed on N. B.'s 1992 Ford Mustang. In
15 fact, none of those parts were supplied or installed on the vehicle.

16 c. Respondent represented on the invoice that a "Be Cool" radiator was supplied or
17 installed on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
18 vehicle.

19 d. Respondent represented on the invoice that a used electric fan was supplied or
20 installed on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
21 vehicle.

22 e. Respondent represented on the invoice that a flex-a-lite fan switch was supplied or
23 installed on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
24 vehicle.

25 f. Respondent represented on the invoice that GM performance sensors were supplied
26 or installed on N. B.'s 1992 Ford Mustang. In fact, those parts were not supplied or installed on
27 the vehicle.

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1 g. Respondent represented on the invoice that a Bosch fuel injector was supplied or
2 installed on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
3 vehicle.

4 h. Respondent represented on the invoice that a small block Chevy power steering
5 pulley was supplied or installed on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied
6 or installed on the vehicle.

7 i. Respondent represented on the invoice that a GM performance starter was supplied or
8 installed on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
9 vehicle.

10 j. Respondent represented on the invoice that used coil packs were supplied or installed
11 on N. B.'s 1992 Ford Mustang. In fact, those parts were not supplied or installed on the vehicle.

12 k. Respondent represented on the invoice that a thermostat was supplied or installed on
13 N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the vehicle.

14 l. Respondent represented on the invoice that a custom made throttle cable was supplied
15 or installed on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
16 vehicle.

17 m. Respondent represented on the invoice that a battery relocation kit was supplied or
18 installed on N. B.'s 1992 Ford Mustang. In fact, a battery relocation kit was not supplied or
19 installed on the vehicle.

20 n. Respondent represented on the invoice that a custom made fuel system was supplied
21 or installed on N. B.'s 1992 Ford Mustang. In fact, a custom made fuel system was not supplied
22 or installed on the vehicle.

23 ~~o. Respondent represented on the invoice that a custom built exhaust system was~~
24 supplied or installed on N. B.'s 1992 Ford Mustang. In fact, a custom built exhaust system was
25 not supplied or installed on the vehicle.

26 p. Respondent represented on the invoice that a custom built intake system was supplied
27 or installed on N. B.'s 1992 Ford Mustang. In fact, a custom built intake system was not supplied
28 or installed on the vehicle.

1 q. Respondent represented on the invoice that a Turbonetics Turbo kit for an LSI Fox
2 Conversion; i.e., turbo charger, was supplied or installed on N. B.'s 1992 Ford Mustang. In fact,
3 a turbo charger was not been supplied or installed on the vehicle.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Fraud)**

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

8 a. Respondent obtained payment from N. B. for supplying or installing a custom wiring
9 harness on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
10 vehicle.

11 b. Respondent obtained payment from N. B. for supplying or installing hoses, oil, water,
12 and miscellaneous parts (required for the engine operation) on N. B.'s 1992 Ford Mustang. In
13 fact, none of those parts were supplied or installed on the vehicle.

14 c. Respondent obtained payment from N. B. for supplying or installing a "Be Cool"
15 radiator on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
16 vehicle.

17 d. Respondent obtained payment from N. B. for supplying or installing a used electric
18 fan on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the vehicle.

19 e. Respondent obtained payment from N. B. for supplying or installing a flex-a-lite fan
20 switch on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
21 vehicle.

22 f. Respondent obtained payment from N. B. for supplying or installing GM
23 performance sensors on N. B.'s 1992 Ford Mustang. In fact, those parts were not supplied or
24 installed on the vehicle.

25 g. Respondent obtained payment from N. B. for supplying or installing a Bosch fuel
26 injector on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
27 vehicle.

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1 h. Respondent obtained payment from N. B. for supplying or installing a small block
2 Chevy power steering pulley on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or
3 installed on the vehicle.

4 i. Respondent obtained payment from N. B. for supplying or installing a GM
5 performance starter on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed
6 on the vehicle.

7 j. Respondent obtained payment from N. B. for supplying or installing used coil packs
8 on N. B.'s 1992 Ford Mustang. In fact, those parts were not supplied or installed on the vehicle.

9 k. Respondent obtained payment from N. B. for supplying or installing a thermostat on
10 N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the vehicle.

11 l. Respondent obtained payment from N. B. for supplying or installing a custom made
12 throttle cable on N. B.'s 1992 Ford Mustang. In fact, that part was not supplied or installed on the
13 vehicle.

14 m. Respondent obtained payment from N. B. for supplying or installing a battery
15 relocation kit on N. B.'s 1992 Ford Mustang. In fact, a battery relocation kit was not supplied or
16 installed on the vehicle.

17 n. Respondent obtained payment from N. B. for supplying or installing a custom made
18 fuel system on N. B.'s 1992 Ford Mustang. In fact, a custom made fuel system was not supplied
19 or installed on the vehicle.

20 o. Respondent obtained payment from N. B. for supplying or installing a custom built
21 exhaust system on N. B.'s 1992 Ford Mustang. In fact, a custom built exhaust system was not
22 supplied or installed on the vehicle.

23 ~~p. Respondent obtained payment from N. B. for supplying or installing a custom built~~
24 intake system on N. B.'s 1992 Ford Mustang. In fact, a custom built intake system was not
25 supplied or installed on the vehicle.

26 q. Respondent obtained payment from N. B. for supplying or installing a Turbonetics
27 Turbo kit for an LSI Fox Conversion; i.e., turbo charger, on N. B.'s 1992 Ford Mustang. In fact,
28 a turbo charger was not been supplied or installed on the vehicle.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with the Code)

3 29. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
5 that Code in a material respect, as follows: Respondent failed to specify on Service Order #251
6 the parts and/or labor that were included in the repairs described as "general service . . . install
7 LSI with customers new cross member" and "general service: custom wire harness".

8 SIXTH CAUSE FOR DISCIPLINE

9 (Failure to Comply with Regulations)

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

13 a. Subdivision (a)(1): Respondent failed to show its automotive repair dealer
14 registration number on the invoice or its correct business name (the business name was listed as
15 Brooks Performance rather than Brooks Performance, doing business as Fresno Performance/Acc
16 Engine).

17 b. Subdivision (a)(2)(A): Respondent failed to list, describe or identify on the invoice
18 all service and repair work performed on N. B.'s 1992 Ford Mustang.

19 c. Subdivision (a)(2)(B): Respondent failed to state on the invoice whether the parts
20 installed or supplied on N. B.'s 1992 Ford Mustang were new, used, reconditioned, or rebuilt.

21 d. Subdivisions (a)(2)(C) and (D): Respondent failed to show on the invoice the
22 subtotal prices for all service and repair work performed and all parts supplied on N. B.'s 1992
23 Ford Mustang.

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1 Respondent, through its automotive technicians, employees, or officers, including Mitchell and
2 Cindy Brooks, failed to complete the work, failed to refund any portion of the \$4,635.29 to
3 C. C.'s account, and misappropriated or diverted C. C.'s money.

4 **EIGHTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations)**

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

9 a. **Subdivision (a)(1)**: Respondent failed to show its automotive repair dealer
10 registration number on the invoice or its correct business name (the business name was listed as
11 Brooks Performance rather than Brooks Performance, doing business as Brooks Performance and
12 Machine).

13 b. **Subdivision (a)(2)(A)**: Respondent failed to list, describe or identify on the invoice
14 all service and repair work performed on the 1979 Chevrolet Camaro (Respondent listed the parts
15 supplied on the vehicle, but not the related repairs).

16 c. **Subdivision (a)(2)(B)**: Respondent failed to state on the invoice whether the parts
17 supplied on the 1979 Chevrolet Camaro were new, used, reconditioned, or rebuilt.

18 d. **Subdivisions (a)(2)(C) and (D)**: Respondent failed to show on the invoice the
19 subtotal prices for all service and repair work performed and all parts supplied on the 1979
20 Chevrolet Camaro.

21 **CONSUMER COMPLAINT (K. C.): 1997 PONTIAC TRANS AM**

22 37. Complainant incorporates by reference as though fully set forth herein the allegations
23 contained in paragraph 26 above.

24 38. On or about May 26, 2012, K. C., Jr., a United States Marine, took his 1997 Pontiac
25 Trans Am to Respondent's facility to have the existing engine replaced with a custom built
26 performance engine. K. C., Jr. was subsequently deployed.

27 39. In or about October 2013, K. C., Sr. filed a complaint with the Bureau, stating, in
28 substance, as follows: K. C., Sr. and his son were co-owners of the vehicle. M. Brooks told

1 K. C., Sr. and his son that it would cost over \$18,000 to perform the above work, and requested
2 half of the money up front. K. C., Sr. and his son approved the estimate price and paid M. Brooks
3 a total of \$10,000 in May 2012. In or about July 2013, K. C., Sr. went to the facility to make
4 another payment. K. C., Sr. found the door locked and saw a note on the door, indicating that the
5 facility's customers needed to retrieve their vehicles from the shop on July 11, 2013. Later,
6 K. C., Sr. met with M. Brooks and asked him where the new engine and parts were for the
7 vehicle. M. Brooks said, "I owe you and your son about \$15,000", or words to that effect. K. C.,
8 Sr. had the vehicle towed from the facility. The original engine was returned to K. C., Sr.;
9 however, the oil pan, a valve cover, and one of the head bolts had been removed.

10 40. On or about November 6, 2013, Bureau Representative R. G. inspected the vehicle
11 and found that the engine and all accessory drives had been removed in addition to the
12 transmission and cooling system. K. C., Sr. provided R. G. with copies of various documents he
13 had received from the facility, including Estimate #286 dated May 26, 2012, Invoice #636 dated
14 March 12, 2013, and a handwritten note dated July 18, 2013, signed by Cindy Brooks. The
15 documents showed that between May 2012 and June 2013, K. C., Sr. and/or his son paid the
16 facility a total of \$14,185.

17 41. On or about November 14, 2013, R. G. met with the Brooks and informed them that
18 he had inspected the vehicle, and found that the engine, transmission, and all under hood
19 components had been removed, but no other work had been performed. M. Brooks claimed that
20 they had ordered most of the parts, including the cylinder heads, crankshaft, rods, and pistons, but
21 diverted the parts to other vehicles since K. C., Jr. was on deployment. R. G. showed the Brooks
22 the note identified in paragraph 40 above. The note indicated that the Brooks had deducted
23 ~~\$1,000 from K. C., Sr. and his son's account for the removal of the old engine, leaving a net~~
24 credit of \$13,185. The Brooks agreed they owed K. C., Sr. and his son \$13,185. R. G. told the
25 Brooks that based upon his inspection of the vehicle, he had determined that none of the repairs
26 listed on the invoice had been performed and/or completed. The Brooks refused to refund K. C.,
27 Sr. and his son any money.

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1 NINTH CAUSE FOR DISCIPLINE

2 (Untrue or Misleading Statements)

3 42. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(1), in that Respondent made or authorized statements which it knew or in the
5 exercise of reasonable care should have known to be untrue or misleading, as follows:

6 Respondent represented on Invoice #636 that certain parts were supplied or installed on K. C.,
7 Sr.'s and K. C., Jr.'s 1997 Pontiac Trans Am, including, but not limited to, CNC heads, cylinder
8 head studs, push rods, a Texas Speed Rambler Bullet True Dual, a connecting rod, Texas Speed
9 Long Tube LSI headers, a front crank seal, a South Bend clutch, Manley Performance non-twist
10 forgings, a water pump gasket, a rear main seal housing, a rear main seal, an oil pan gasket, 4
11 custom camshafts, an axle assembly, a cylinder head gasket, a cable driven throttle body, an
12 exhaust manifold gasket, an oil pump, an intake manifold, and/or a valley cover gasket. In fact,
13 none of those parts were supplied or installed on the vehicle.

14 TENTH CAUSE FOR DISCIPLINE

15 (Fraud)

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

18 a. After obtaining \$14,185 from K. C., Sr. and/or K. C., Jr. for the installation of a
19 custom built performance engine in their 1997 Pontiac Trans Am, Respondent, through its
20 automotive technicians, employees, or officers, including Mitchell and Cindy Brooks, failed to
21 complete the work, failed to refund K. C., Sr. and/or K. C., Jr. any portion of the \$13,185
22 remaining on their account, and misappropriated or diverted K. C., Sr.'s and/or K. C., Jr.'s
23 money.

24 b. Respondent's officers, Mitchell and Cindy Brooks, diverted parts that they had
25 purchased for K. C., Sr.'s and K. C., Jr.'s 1997 Pontiac Trans Am to other consumers' vehicles,
26 as set forth in paragraph 41 above.

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1 ELEVENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with the Code)

3 44. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of
5 that Code in a material respect, as follows: Respondent failed to specify on Estimate #286 the
6 parts and/or labor that were included in the repairs described as "machine: machine pkg",
7 "machine: engine balancing", "machine: engine assembly", and "4 custom camshaft intake design
8 #3729 exhaust design #3732".

9 TWELFTH CAUSE FOR DISCIPLINE

10 (Failure to Comply with Regulations)

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

14 a. Subdivision (a)(1): Respondent failed to show its automotive repair dealer
15 registration number on the invoice or its correct business name (the business name was listed as
16 Brooks Performance rather than Brooks Performance, doing business as Brooks Performance and
17 Machine).

18 b. Subdivision (a)(2)(A): Respondent failed to list, describe or identify on the invoice
19 all service and repair work performed on the 1997 Pontiac Trans Am.

20 c. Subdivision (a)(2)(B): Respondent failed to state on the invoice whether the parts
21 supplied on the 1997 Pontiac Trans Am were new, used, reconditioned, or rebuilt.

22 d. Subdivisions (a)(2)(C) and (D): Respondent failed to show on the invoice the
23 subtotal prices for all service and repair work performed and all parts supplied on the 1997
24 Pontiac Trans Am.

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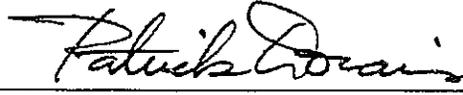
1 OTHER MATTERS

2 46. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
3 or place on probation the registration for all places of business operated in this state by
4 Respondent Brooks Performance, doing business as Brooks Performance and Machine, upon a
5 finding that Respondent has, or is, engaged in a course of repeated and willful violations of the
6 laws and regulations pertaining to an automotive repair dealer.

7 PRAYER

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

- 10 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
11 267691, issued to Brooks Performance, doing business as Brooks Performance and Machine;
12 2. Ordering Brooks Performance, doing business as Brooks Performance and Machine,
13 to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement
14 of this case, pursuant to Business and Professions Code section 125.3;
15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: August 26, 2014 

17 PATRICK DORAIS
18 Chief
19 Bureau of Automotive Repair
20 Department of Consumer Affairs
21 State of California
22 Complainant

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