

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
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. **77/16-51**

13 **LIBERTY AUTO LLC.**
14 **dba LIBERTY AUTO**
15 **435 23rd Avenue**
16 **Oakland, CA 94606**

A C C U S A T I O N

17 **RAJAN BARTAULA- Member**
18 **RAJ KUMAR HAMAL YADAV- Member**
19 **BHAKTA THAPA- Member**
20 **ASHWIN BIKRAM CHAUDHARY- Member**

21 **Automotive Repair Dealer Registration No.**
22 **ARD 274332**

23 Respondent.

24 Complainant alleges:

25 **PARTIES**

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

28 2. On or about September 24, 2013, the Bureau of Automotive Repair issued
Automotive Repair Dealer Registration Number ARD 274332 to Liberty Auto LLC.
(Respondent). The Automotive Repair Dealer Registration was in full force and effect at all times
relevant to the charges brought herein and will expire on September 30, 2016, unless renewed.

1 JURISDICTION AND STATUTORY PROVISIONS

2 3. This Accusation is brought before the Director of the Department of Consumer
3 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
4 All section references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 9884.7 of the Code states:

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

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

14 ...

15 (4) Any other conduct which constitutes fraud.

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

18 (7) Any willful departure from or disregard of accepted trade standards for good and
19 workmanlike repair in any material respect, which is prejudicial to another without consent of the
20 owner or his or her duly authorized representative.

21 ...

22 "(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
23 probation the registration for all places of business operated in this state by an automotive repair
24 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
25 and willful violations of this chapter, or regulations adopted pursuant to it."

26 5. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
27 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
28

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration
2 temporarily or permanently.

3 **REGULATORY PROVISIONS**

4 6. California Code of Regulations, Title 16, section 3365, states:

5 "The accepted trade standards for good and workmanlike auto body and frame repairs shall
6 include, but not be limited to, the following:

7 (a) Repair procedures including but not limited to the sectioning of component parts, shall
8 be performed in accordance with OEM service specifications or nationally distributed and
9 periodically updated service specifications that are generally accepted by the autobody repair
10 industry.

11 (b) All corrosion protection shall be applied in accordance with manufacturers'
12 specifications or nationally distributed and periodically updated service specifications that are
13 generally accepted by the autobody repair industry."

14 **COSTS**

15 7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
19 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
20 included in a stipulated settlement.

21 **FACTUAL BACKGROUND**

22 8. In or about January 2015, Respondent performed automotive repair work on a 2013
23 Honda Civic, VIN 19XFB2F54DE247814 ("Honda Civic") that was in an accident. Respondent
24 charged and was paid by an insurance company for automotive repair work on the Honda Civic.
25 The Honda Civic was not repaired according to the insurance estimates. Respondent charged an
26 insurance company for work that was not performed. Respondent received \$2,064.29 for repairs
27 that were not performed on the Honda Civic. The following repairs were charged for and not
28 performed:

- 1 a. The rear impact bar was not replaced as specified
2 b. The left bumper bracket was not replace as specified
3 c. The rear deck lid (trunk) was not replaced as specified
4 d. The rear body panel was not replaced as specified
5 9. The work Respondent did do on the Honda Civic did not meet trade standards for
6 good and workmanlike repair. There were areas of the body of the Honda Civic with unrepaired
7 collision damage and wrinkled body panels as well as areas where Respondent failed to apply
8 corrosion protection. The owner of the Honda Civic did not consent to this nor did her
9 representative.

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Fraud)

12 10. Respondent is subject to disciplinary action under section 9884.7, subsection (a)(4),
13 of the Code in that Respondent participated in conduct that constituted fraud. The circumstances
14 are described in paragraphs 8-9, above.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Untrue or Misleading Statements)

17 11. Respondent is subject to disciplinary action under section 9884.7, subsection (a)(1),
18 of the Code in that Respondent made statement that were untrue or misleading, and which were
19 known, or which by the exercise of reasonable care, should have been known, to have been untrue
20 or misleading. Respondent made statements that certain work was performed and parts were
21 installed on the Honda Civic when in fact that work was not performed and those parts were not
22 installed. The circumstances are further described in paragraphs 8-9, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 (Willful Violation of Trade Standards)

25 12. Respondent is subject to disciplinary action under section 9884.7, subsection (a)(7),
26 of the Code and section 9884.7, subsection (a)(6), of the Code in conjunction with California
27 Code of Regulation, Title 16, section 3365, subsection (b), in that Respondent made a willful
28 departure from or disregarded accepted trade standards for good and workmanlike repair in any

1 material respect, which was prejudicial to another and was without consent of the owner or her
2 duly authorized representative. The circumstances are described in paragraph 9, above.

3 **OTHER MATTERS**

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

8 **PRAYER**

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

11 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
12 274332, issued to Liberty Auto LLC.

13 2. Revoking or suspending any other automotive repair dealer registration issued in the
14 name of Liberty Auto LLC;

15 3. Ordering Liberty Auto LLC to pay the Bureau of Automotive Repair the reasonable
16 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
17 section 125.3;

18 4. Taking such other and further action as deemed necessary and proper.

19
20 DATED: March 30, 2016


21 PATRICK DORAIS
22 Chief
23 Bureau of Automotive Repair
24 Department of Consumer Affairs
25 State of California
26 Complainant

27 SF2015403139
28 41440755.doc