

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

In the Matter of the Accusation Against:)	
)	
F. RADICH MOTORS, INC.,)	Case No. 77/06-115
dba ELK GROVE HONDA)	
8550 Laguna Grove Blvd.)	OAH No. N2007050159
Elk Grove, CA 95758)	
)	
Automotive Repair Dealer Registration)	
No. AE 058496)	
)	
Smog Check Station License No. RE 058496)	
)	
)	
Respondent.)	
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AMENDED DECISION AFTER REMAND FROM SUPERIOR COURT

On January 21, 2008, the administrative law judge submitted her proposed decision to the Director of the Department of Consumer Affairs. The Director declined to adopt that decision and issued its Decision After Nonadoption on July 16, 2008, to become effective on August 18, 2008.

Thereafter, respondent filed a Petition for Writ of Mandamus in Sacramento County Superior Court, Case No. 34-2008-800000-CU-WM-GDS. On December 4, 2008, the court issued its judgment in the matter remanding the case back to the Department for reconsideration. A copy of the Judgment is attached as Exhibit "A".

Having reconsidered the matter, in light of the Court's decision, the Director now makes the following Decision on Remand:

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of Consumer Affairs as her decision in the above-entitled matter, except for those Factual Findings and Legal Conclusions modified and/or stricken by the Superior Court in its judgment and ruling dated December 4, 2008, and the Order which is modified to read as follows:

ORDER

1. Automotive Repair Dealer Registration Number AE 058496 issued to F. Radich Motors, Inc., doing Business as Elk Grove Honda is suspended for a period of one (1) business day, however, since two business days have already been served, this requirement is considered met.

2. Respondent shall pay the Bureau, or the Department's designee, the amount of \$5,000 as reimbursement for the reasonable costs to investigate and enforce this action against Respondent. The \$5,000 shall be offset, however, by \$3,964.85, the amount of cost recovery to Respondent authorized by the court. Respondent is therefore ordered to pay the balance of \$1,035.15 in full within 30 days from the effective date of the decision in this matter unless other arrangements are made, in writing, with the Bureau or the Department's designee.

The Accusation against Smog Check Station License No. RE 058496 is dismissed.

This Decision shall become effective on April 16, 2009.

DATED: March 13, 2009

P. J. Harris
PATRICIA HARRIS
Deputy Director, Bureau Relations
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

F. RADICH MOTORS, INC.,
DOING BUSINESS AS ELK GROVE
HONDA
8550 Laguna Grove Blvd.
Elk Grove, CA 95758

Automotive Repair Dealer Registration No.
AE 058496

Smog Check Station License No. RE 058496

Respondent.

Case No. 77/06-115

OAH No. N2007050159

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, heard this matter on July 18, 2007, July 19, 2007, July 20, 2007, September 17, 2007 and September 18, 2007, in Sacramento, California.

Deputy Attorney General Patrick M. Kenady represented complainant.

Joseph W. Scalia, Attorney At Law, and Douglas Drake, Attorney at Law, represented respondent.

Oral and documentary evidence was received. The record remained open for the receipt of closing briefs. On October 19, 2007 respondent submitted its closing brief, which was marked for identification as Exhibit R. On October 23, 2007, complainant submitted its closing brief, which was marked for identification as Exhibit 33. The matter was submitted and the record closed on October 23, 2007.

FACTUAL FINDINGS

1. On April 5, 2007, complainant, Sherry Mehl, made and filed the Accusation against respondent in her official capacity as Chief of the Bureau of Automotive Repair, Department of Consumer Affairs (Bureau).
2. Respondent timely filed a Notice of Defense and the instant hearing was held pursuant to Government Code section 11500 et. seq.
3. On May 10, 1977, the Bureau issued Automotive Repair Dealer Registration Number AE 058496 to respondent, F. Radich Motors, Inc. doing business as Elk Grove Honda. The Bureau issued Smog Check Station License No. RE 058496 to respondent. At all times relevant herein, respondent's Automotive Repair Dealer Registration and Smog Check Station License were, and currently are, in full force and effect.

DULLANTY VEHICLE - 1988 HONDA ACCORD

Estimates and Authorization For Repairs

4. On June 17, 2004, respondent performed air conditioning repairs on a 1988 Honda Accord, owned by Mary Dullanty. Ms. Dullanty authorized an estimate of \$199, for diagnosis. After work commenced, respondent's technicians discovered that the air-conditioning failure was due to defects in the after market air-conditioner that had been installed by another facility. Ms. Dullanty gave oral approval for a \$1,800 repair to replace the air-conditioning system. Respondent prepared Invoice Number 435909 identifying parts and labor. Ms. Dullanty signed the original work order and the portion of the invoice acknowledging receipt of vehicle and receipt of a copy of the invoice. Respondent failed to obtain Ms. Dullanty's signature on the portion of the invoice which confirmed her oral approval of repairs in excess of the original estimate. Specifically, respondent failed to properly document Invoice Number 435909 to show the consumer's authorization for installation of an evaporator core, and her authorization for the final revised estimate of \$1,800.

CHEUNGVEHICLE - 2001 HONDA ODYSSEY

Estimates For Repairs

5. On December 3, 2004 Betty Cheung took her 2001 Honda Odyssey to Elk Grove Honda for repair following a collision. The vehicle had sustained damage to the right front side fender and the front end. Ms. Cheung was insured through California State Automobile Association (CSAA). CSAA assigned insurance claim number 08-2C3475- 4 to Ms. Cheung's claim and identified the date of loss as December 3, 2004. CSAA secured an estimate for repairs from Le Appraisal Services, dated December 7, 2004. The estimate referenced claim number 08C34754 as well as the date of loss and name of insured. The estimate itemized parts and labor totaling \$6,177.98. Ms. Cheung gave this estimate to Elk

Grove Honda. On December 8, 2004, a representative of Elk Grove Honda called CSAA and stated that Ms. Cheung wished to have her vehicle repaired at their body shop, and that they had received a copy of CSAA's estimate. The following day, CSAA issued a check for \$5,677.98 payable to Elk Grove Honda and the Cheungs for repair work on the vehicle. This check represented the Le Appraisal Services estimate amount of \$6,177.98, minus Ms. Cheung's \$500 deductible.

Elk Grove Honda prepared a document entitled "Final Invoice for Repair Order" (number 11979). The date and time of the estimate is obscured, however it appears to be a January, 2005 date. The "closed date" on the document is December 31, 2004, and Ms. Cheung's attached authorization is dated January 6, 2005. Elk Grove Honda regarded this document as its own estimate for the repair of damage on Ms. Cheung's vehicle. This document referenced "Insurance Claim # 082C 34754" and identified CSAA as the insurance company, the date of loss as "12/8/2004" and the deductible amount of \$500. The total amount of the estimate was \$6,177.98, identical to the estimate total prepared by Le Appraisal Services. The estimate indicated that the "Payer" for each of the parts or services, was "Ins." This Final Invoice for Repair Order was prepared by an "Estimator" employed by Elk Grove Honda. Ms. Cheung signed an authorization for repairs on January 6, 2005. Her signature appears on a separate page, which follows the estimate.

Elk Grove Honda did not submit its estimate for repair of the Cheung vehicle to CSAA. Nor did Elk Grove Honda advise CSAA or Ms. Cheung that it had prepared its own estimate, subsequent to collecting \$5,677.98 from CSAA.

Both the estimates prepared by Elk Grove Honda and Le Appraisal Services included itemized charges for the following services: 1) refinishing the right front apron panel¹, 2) restoring corrosion protection², and 3) masking for overspray.³ The Bureau alleges that Elk Grove Honda did not restore the corrosion protection on the Cheung vehicle, did not refinish the right front apron panel completely, and did not completely cover the vehicle for overspray. The Bureau alleges that Elk Grove Honda charged CSAA and the customer a total of \$79.67 for the parts and labor Le Appraisal Services estimated for these items.

¹ Le Appraisal Services' estimate, at line 35, includes a charge of one half hour time to refinish the right front apron panel. Elk Grove Honda's estimate, at line 33, includes a charge of \$33.

² Le Appraisal Services' estimate, at line 77, includes a part charge of \$8 and labor time of .2 (two-tenths) for restoring corrosion protection. Elk Grove Honda's estimate, at line 77, includes a charge of \$10 for parts and \$6.60 for labor.

³ Le Appraisal Services' estimate, at line 79, includes a part charge of \$5 and labor time of .1 (one-tenth) for masking for overspray. Elk Grove Honda's estimate, at line 70, includes a charge of \$5 for parts and \$6.60 for labor.

Refinishing and Corrosion Protection

6. On February 24, 2005, representatives from the Bureau examined the Cheung vehicle and documented their findings with a report and photographs. Mark Guess, Bureau Program Representative, observed that the right front apron panel was not completely refinished, because four of the welds were bare. If they had they been refinished completely there would be paint on the welds. Additionally, a burn mark from welding was visible underneath the right front side and rust was developing in an area where the right front apron panel was installed. The Bureau alleges that if the right front apron panel had been completely refinished, the welds and the burn mark would be painted over and rust would not be developing.

Respondent maintains that it provided corrosion protection according to industry standards to the right front apron panel including the welds. Elk Grove Honda's Body Shop Manager, Michael Stickel, testified that the body shop followed OEM⁴ Manual instructions for corrosion protection. Weld primer was used on the areas where the two pieces of metal met and body wax (Waxol) was sprayed in the areas which were inaccessible to the paint sprayer. The body wax is an oily substance which is thicker than water, but runs. Paint was applied to approximately 60 welds in the area, the remaining four welds were inaccessible to the paint spray gun but were protected from corrosion by application of the body wax.

The photographs in evidence were persuasive that the burn mark on the front apron panel had not been painted over and the part was therefore not finished. Although the evidence was persuasive that applying Waxol to welds is within the trade standards, the photographs show welds which appear bare and one is rusting. Respondent did not demonstrate that the welds in question were inaccessible to a paint gun, nor did it refute Mr. Guess's testimony and photographs showing that the welds were bare. The fact that 60 welds were spot painted is persuasive evidence that the industry standard requires painting welds and the areas where two pieces of metal meet, regardless of whether primers and other corrosion protections are used.

Presence of Overspray

7. The Bureau alleges that Elk Grove Honda did not protect the Cheung vehicle from overspray. Mr. Guess examined the vehicle and took photographs of the areas of overspray. There was overspray present on engine components, on the upper tie bar, near the right fender and on the right door molding.

Mr. Stickel testified that the body shop had painted the entire core support area. And if the body shop had failed to mask the area for overspray there would be significant overspray. He pointed out that the overspray was minimal and the overspray on the engine was on the plastic cover over the engine components and not on the engine components. Essentially, he testified that the small amount of overspray, and the pattern of the overspray,

⁴ Original Equipment Manufacturer

verifies that the body shop had masked the vehicle. He said that given the extent and type of painting, a breach in the masking is not uncommon.

The evidence was persuasive that Elk Grove Honda masked the vehicle, but did not clean overspray caused by breaches in the masking.

HOFFMAN VEHICLE - 2001 HONDA ACCORD LX

Estimate For Repairs

8. On November 12, 2004 Ms. Hoffman took her 2001 Honda Accord LX to Elk Grove Honda for repair following a front end collision. Ms. Hoffman was insured through CSAA.⁵ Elk Grove Honda prepared an estimate dated December 8, 2004⁶ for \$8,311.10. Ms. Hoffman assumed that Elk Grove Honda would perform the repairs CSAA authorized. CSAA paid Elk Grove Honda \$8,311.10 pursuant to the December 8, 2004, estimate and a final invoice and supplemental invoice.

The Elk Grove Honda estimate specified the following repairs pertinent here:

Repair the right fender panel, with labor at 1.5 hours⁷;
Refinish the right fender outside at 1.4 hour⁸;
Remove/replace left fender panel⁹;
Refinish left fender outside at 1.4 hours¹⁰;
Refinish left fender edge at .05 hours¹¹;
Repair of the right front body side member at 2 hours¹²;
Refinish of the right side member at 1 hour¹³;
Repair of the left front body side member at 4 hours¹⁴;
Refinish of the left side member at 1 hour¹⁵.

The Bureau alleges that Elk Grove Honda did not completely repair the right fender panel, refinish the right side member or refinish the left side member, as charged in its estimate and invoice. Additionally, the Bureau alleges that Elk Grove Honda charged for paint materials for the above referenced services, when the services had not been performed. The Bureau alleges that Elk Grove Honda charged CSAA and the customer a total of \$255.07 for the parts (paint) and labor estimated and invoiced for these items.

⁵ CSAA prepared an estimate, dated November 17, 2004, for \$6,508.48.

⁶ Estimate version 2, supplement 3.

⁷ Line 48 of the estimate.

⁸ Line 49 of the estimate.

⁹ Line 50 of the estimate.

¹⁰ Line 51 of the estimate.

¹¹ Line 52 of the estimate.

¹² Line 57 of the estimate.

¹³ Line 58 of the estimate.

¹⁴ Line 60 of the estimate.

¹⁵ Line 61 of the estimate.

Repair of Right Fender Panel and Refinish of Right and Left Side Members

9. On February, 24, 2005, Mr. Guess examined the Hoffman vehicle and documented his findings with a report and photographs. Mr. Guess observed that the right fender panel was not completely repaired. The fender was buckled at the fender edge, along the upper tie bar, in the area bolted to the fender. The area had buckled as a result of the accident. There were paint fractures present along a damaged portion of the left edge of the right front fender. The right fender front edge was rusting and bare metal was left exposed.

Mr. Guess examined the right and left side members (frame rails) and took measurements of paint thickness of these areas and adjoining areas. He determined that the right and left side members had not been painted and were, therefore, not refinished. He measured paint thickness on both side members with an electronic gauge, which measures paint thickness in thousandths of an inch. The gauge showed paint thicknesses consistent with adjoining factory finishes on the apron assembly, indicating that the side members had not been repainted.¹⁶ The left side member also had black spray paint at the front. The vehicle side members were painted a gold color. Guess determined that had the side members been completely painted, the black spray painted area would be painted gold. Additionally, there was debris, oil residue and dirt on both the right and left side members, which Guess determined would not have been present had the parts been refinished.

10. Respondent maintains that it repaired the right front fender to industry standards and refinished the right and left side members. Mr. Stickle and Jeffrey Watson, manager of Elk Grove Honda auto body shop, testified that the Hoffman vehicle was returned to the Elk Grove Honda body shop in August 2007, following another collision to an unrelated area of the vehicle. They had an opportunity to examine the areas of the vehicle that Elk Grove Honda had previously repaired and took photographs of the right front fender panel and the right and left side member panels. When they took the front bumper off the car they observed that "everything up front was painted." The right fender had been repaired and they confirmed this by examining the right fender and by comparing it to the left fender. They found no buckling or gaps which would indicate buckling.

Respondent's photographs of the right and left fender were not persuasive. They depict the outside of the vehicles and attempt to show that there are no gaps or buckling in the outside right fender. However, complainant's photographs show that the right front fender had a slight buckle, paint fractures and developing rust in an interior area edge of the right front fender. The buckling is apparent in the interior of the fender, but is not significant enough to affect the appearance of the outside fender.

¹⁶ Paint thickness/depth readings on the right apron assembly, which was not refinished, read 2.6 and 2.9. Paint thickness/depth readings on the right side member, read 2.77 and 1.8. Paint thickness/depth readings on the left side member read 2.7, 2.6, and 2.9. Paint thickness/depth readings on the left apron assembly, which was not refinished, read 2.9 and 3.0.

Respondent argued that neither it, nor CSAA, estimated repair of the right fender edge, where the buckling, rusting and flaking is seen. Respondent points to the sections of the invoice and notes there is no charge for repair or refinish of the right fender edge (while there is such a charge for the left fender edge.) Complainant contends the edge of the fender is part of the fender assembly and that respondent estimated and billed for repair of the fender.

Regarding the repair of the right front fender to industry standards, as noted below in the Legal Conclusions, the Accusation does not allege that respondent's repair was below industry standards, only that respondent committed misrepresentation and fraud. The evidence is persuasive that CSAA's and respondent's estimates contain a separate line item for refinishing of the left fender edge, while the line items for the right fender do not specify refinishing of the right fender edge. However, the discrepancy appears to be due to the fact that the left fender was replaced and the right fender panel was repaired. The evidence is persuasive that the repair of a fender panel encompasses repair of the fender in its entirety and refinishing repaired areas in their entirety. Here, the evidence is persuasive that respondent failed to repair the right front fender to industry standards. The omission was substantial and respondent "should have known" that the repair bill it submitted to CSAA and the insured was not accurate in that the right front fender had not been completely repaired.

Mr. Stickle and Mr. Watson also examined the vehicle's side members and determined that the repaired portions had been refinished. Stickle testified that the electronic gauge would have come up with close readings between the factory painted areas and the refinished areas, because if filler and bondo are used, the newly painted area would be thicker than the original factory painted area. However, if the refinishing did not require these materials, the measurements between the areas would be very close. Watson testified that there can be between 1 and 2 mils between painting measurements on new and original painted areas because parts are sanded, primed and sealed and sanded again before repainting. Here there was no chipped or broken paint on either member, and "everything looked good," leading him to believe that the side members were repainted. Stickle also pointed out that there was "quite a bit of work done" on the side members and there "would be no way you could miss" it if they were not repainted or refinished. Stickle testified that one "could not miss it if they were not refinished, there would be hammer marks etc. because there were two to four hours of work done on each member."

Respondent photographed the side members after removing the front bumper and headlights. The photographs depicted the area where the side members intersected with the bumper and ran into the vehicle until they became obscured by engine parts. The photographed sections appeared painted in the photographs. However, these are not the areas of the side members which complainant alleges were left unfinished. Complainant alleges that the remainder of the side members was unfinished. Respondent countered that it estimated and billed to refinish the repaired areas of the side members, not the side members in their entirety. Complainant's witnesses testified that it would have been unnecessary and taken far more than the 4 hours estimated by both CSAA and respondent to remove the side

members from the vehicle to refinish them in their entirety. Respondent's witnesses testified that the areas that were repaired were refinished. On the whole, respondent's evidence was more persuasive in respect to the refinishing of the side members. Respondent did not refinish the side members in their entirety, only the repaired portions. Respondent did not bill CSAA or the insured to remove and refinish the side members in their entirety.

HILL VEHICLE - 2003 HONDA S2000

Estimate For Repairs

11. On October 19, 2004 David Hill's 2003 Honda S2000 was involved in a collision and sustained damage to the left front and the front and rear wheels. Mr. Hill was insured through CSAA. CSAA ascribed claim number 13J8956-8 to the claim and noted the date of loss as October 19, 2004. CSAA obtained an estimate for repair of the vehicle from Jose Rodriguez of Gibsons Appraisals (Gibsons). The Gibsons estimate was for a total of \$14,978.75 and was dated "10/24/04."

On October 19, 2004, Mr. Hill took the vehicle to Elk Grove Honda for repair. Elk Grove Honda prepared its own "Final Invoice for repair order 11731" referencing Mr. Hill's claim number, insurer, policy number, and date of loss. The invoice was dated "12/01/04" but contained a signature page signed by Hill on October 19, 2004. The signature page included an authorization Hill signed to release insurance payments to Elk Grove Honda. The invoice noted an "insurance net total" of \$15,328.70. An Elk Grove Honda representative told Mr. Hill that they had agreed with his insurance company as to what would be covered.

On December 15, 2004, CSAA issued a check to Elk Grove Honda as payee for \$14,728.75, which represented the amount on the Gibsons estimate minus Hill's \$250 deductible. Elk Grove Honda did not provide its Final Invoice to CSAA or advise CSAA that it was using its own estimate, rather than the Gibsons estimate, to perform the repairs.

Line 35 of the Gibsons estimate reads: replace LT inner panel with a parts cost of \$50.12, labor at 2.5 hours and .5 hour charge for labor for painting.

Line 36 of the Gibsons estimate reads: replace LT extension with a parts cost of \$45.23, labor at 1 hour and painting at .5 hour.

Line 111 of the Gibsons estimate reads: corrosion protection, with a parts cost of \$5 and labor at .3 hours.

Line 050 of the Elk Grove Honda Final Invoice notes that the insurer was the "payer" and that the description of services was "Rem/Repl L QUARTER UTER PA, at a price of \$474.43 and \$605 labor.

Complainant alleges that Elk Grove Honda did not replace and refinish the left inner panel or the left extension as itemized on lines 35 and 36 of the Gibson's estimate. Further, complainant alleges that Elk Grove Honda did not restore corrosion protection to the left quarter panel, as itemized on line 111 of the Gibson's estimate.

Restore Corrosion Protection to Left Quarter Panel

12. Randy Fiddler, a Bureau program representative, inspected the Hill vehicle. He observed that there was an open seal on the left quarter panel of the left quarter wheelhouse, close to the rear bumper. The area required seam sealer or caulking and water and corrosion protection. He could see light coming from outside into the trunk from the gap. He took photographs which clearly show the absence of seam sealer or caulking creating a gap in the trunk, exposing the trunk to light and debris. Respondent acknowledged that there was a gap in seam sealer/caulking of approximately one-half inch in length, but points out that the photographs show that the remaining three to four foot welded seam had been sealed and protected from corrosion.

Replace and Refinish Left Inner Panel and Extension

There is no dispute that Elk Grove Honda did not replace the left inner panel and extension. Respondent maintains that it determined that replacement was unnecessary and returned the left quarter panel and extension, crediting Hill's account for the parts. Respondent produced an invoice showing the parts were returned for credit. Respondent maintains that the Final Invoice it prepared for Hill did not include a charge for replacement of the left inner panel or extension.

Respondent argues that it was not obligated to adhere to the Gibson's estimate by replacing the left inner panel and extension. Respondent represents that the Final Invoice Elk Grove Honda prepared was the final estimate and contract with its customer, and was the only estimate which it had to follow. There was no charge for replacing the left inner panel and extension in that Final Invoice.¹⁷ Specifically, respondent argues that the automotive repair facility's contract is with the customer and not the insurer and that the insurer is not a party to the transaction.

Clearly, respondent is free to contract with its customer and is obligated to perform repairs at prices it agrees upon with its customer.¹⁸ The distinction here, however, is that the insurer was misled into paying for repairs that had not been done. The fact that an insurer is not the customer does not give a repair facility license to take money from the insurer on false pretenses. Respondents chose to collect monies from the insurer rather than the

¹⁷ The Final Invoice does not credit Hill with the price of the returned parts. Nor was a check issued to CSAA crediting it with the price of the returned parts. Interestingly, the total for the Elk Grove Honda Final Invoice was higher than the CSAA estimate, even though Elk Grove Honda did not have line items for replacing the left inner panel and extension.

¹⁸ There is no evidence here that the Elk Grove Honda ever gave Mr. Hill a written estimate or that he agreed to a written estimate. He was provided a Final Invoice upon completion of the work.

customer and thus had a duty to properly account for the monies collected. Instead of providing its Final Invoice to the insurer for payment, respondent led the insurer to believe that the Gibson's estimate was the operative estimate. Here, respondent did not advise CSAA that it was using its own estimate. Respondent collected the customer's insurance proceeds from CSAA by allowing CSAA to believe that respondent was performing the repairs CSAA estimated were necessary. CSAA unwittingly paid respondent for repairs respondent did not make and parts it did not replace.

The evidence also suggests that respondent misunderstood a "write it right" training program sponsored by the Bureau. That program stressed that the contract for repair of vehicles was between the vehicle owner/customer and the body repair facility, and that the consumer was free to obtain independent estimates for repair. Respondent apparently misinterpreted this information to mean that it was entitled to collect funds from the insurer and apply the funds to payment of its own Final Invoice.

DICH VEHICLE - 2003 HONDA CRV EX

Estimate For Repairs

13. On May 18, 2004, Kimberly Dich's 2003 Honda CRV EX was involved in a collision and sustained damage to the rear bumper, trunk, rear and passenger doors and floor. Ms. Dich was insured through CSAA. Ms. Dich took the vehicle to Elk Grove Honda for repair. Elk Grove Honda prepared a final estimate¹⁹ dated July 23, 2004, with a net total of \$9,576.28. On July 30, 2004, CSAA issued a check to Elk Grove Honda as payee for \$9,576.28, on behalf of Kimberly Dich and her husband.

Replace and Refinish Entire Rear Body Floor Pan

14. Line 48 of the Elk Grove Honda estimate states "remove/replace rear body floor pan." The part charge is listed as \$679.15 and the labor time as 18 hours. Line 49 states "refinish rear floor pan" at 1.5 hours labor. There is no dispute that Elk Grove Honda installed and refinished a new rear floor pan in the Dich vehicle. Elk Grove Honda obtained a new rear floor pan, cut it at the factory seam and installed only the rear portion of the floor pan. The point the floor pan was severed was at the rear seat area, while a complete floor pan is installed from the rear of the vehicle, under the trunk area and up to and beneath the rear seats. Complainant alleges that Elk Grove Honda billed CSAA and the customer for the labor and materials to install and refinish a complete rear floor pan, when it in fact replaced a sectioned floor pan and refinished only that section.

Respondent produced persuasive evidence that Honda manufactures one rear floor pan for sport utility vehicles like the Dich vehicle. The rear floor pan extends from the area where a rear passenger places his/her feet, all the way to the end of the car in the trunk area.

¹⁹Estimate version 1, supplement 1.

The Honda factory body repair manual for the CRV EX (OEM manual) contains installation instructions for the rear floor pan. It instructs that the part should be trimmed along the factory seam, approximately 18 inches discarded, and the remaining pan installed.

Complainant argues that Elk Grove Honda's final estimate was based upon the replacement and refinishing of the entire rear floor pan, rather than a pan that was 18 inches shorter due to sectioning. The evidence is persuasive that the price of the pan was properly charged and that 18 hours was an appropriate charge for installation of the trimmed pan. Perhaps the estimate should have charged a bit less for refinishing the pan, since 18 inches was trimmed before refinishing, but this charge was de minimis.

Restoration of Corrosion Protection to Welds

15. Jaime Ramos, a Bureau program representative, inspected the vehicle on February 24, 2005 and observed bare welds on the underside of the rear floor pan section area. He also observed bare welds on the backside of the area where the right and left corner pillar was welded near the roof line. He took photographs of the bare welds.

Respondent's experts testified that Elk Grove Honda restored corrosion protection by using weld thru primer on these welds, and that painting was not required by the OEM or trade standards. Moreover, the welds Ramos identified were a small number of the more than 150 welds required to install the rear floor pan.

Complainant's photographs and the testimony of its experts was persuasive. Corrosion protection had not been restored on a small number of welds used to install the rear floor pan and near the roof line.

AGUILAR VEHICLE - 2000 HONDA ACCORD EX

Estimates For Repairs

16. On November 7, 2004, Rita and Carlos Aguilar's 2000 Honda Accord EX was involved in a collision and sustained damage to the rear of the vehicle. The Aguilars were insured through CSAA. CSAA prepared an estimate, dated November 19, 2004. Line 22 of the estimate states "Remove/Install Back Window Glass" at a charge of \$135.00. Line 23 of the estimate states "Remove/Replace Back Window Reveal MLDG Quarter Panel" at a cost of \$22.95. The total CSAA estimate was \$5,543.50. The Aguilars took the vehicle to Elk Grove Honda for repair. On November 8, 2004, Ms. Aguilar signed an authorization for tear down of the vehicle and authorized Elk Grove Honda to endorse checks from the insurer as settlement of her claims. On November 20, 2004, CSAA paid Elk Grove Honda \$5,543.50, on behalf of the Aguilars, to make the repairs estimated in the CSAA estimate. Elk Grove Honda prepared a Final Invoice dated December 1, 2004, with an "Insurance Net Total" of \$5,543.60. On December 9, 2004, Ms. Aguilar signed the authorization attached to the Elk Grove Honda Estimate.

The Elk Grove Honda Final Invoice includes the insurance claim number and other relevant data assigned by CSAA to the Aguilar's claim. The Final Invoice indicates under each item estimated that the "Payer" is "Ins." The Final Invoice does not include removal and installation of the back window glass and removal and replacement of the back window reveal molding. Elk Grove Honda did not advise CSAA that it had performed repairs according to its own estimate, rather than CSAA's. Elk Grove Honda did not provide CSAA with its Final Invoice.

Removal and Re-Installation of Back Window

17. There is no question that Elk Grove Honda did not remove the back window glass of the Aguilar vehicle. CSAA had estimated that removal and re-installation of the back window would be necessary in order to prevent damage to the glass during repairs and to prevent overspray or a paint edge on the vehicle. Respondent maintains that it determined that removal and reinstallation of the rear window was unnecessary to complete repairs. After it determined that it was not necessary to remove and reinstall the rear window glass Elk Grove Honda did not alert CSAA or the consumer. Elk Grove Honda did not refund the \$155.95 for these repairs from the \$5,543.50 it had collected from CSAA.

THAO VEHICLE - 2000 HONDA CIVIC

Estimates For Repairs

18. On December 14, 2004 Gia Thao's 2000 Honda Civic was involved in an accident and sustained damage to the front and rear of the vehicle. Ms. Thao was insured through CSAA. CSAA secured an estimate for repairs from Le Appraisal Services, dated January 14, 2005. The estimate itemized parts and labor totaling \$5,915.00, with a possible supplement of \$703.36 for possible hidden inner structure damage. Line 24 of the estimate stated "Refinish Upper Tie Bar" at a paint labor charge of 0.5 hour. Line 45 of the estimate stated "Refinish Rear Bumper Reinforcement" with a paint labor charge of 1 hour. The estimated amounts for refinishing of these two areas, including labor, paint and tax was \$137.54.

Ms. Thao brought her vehicle to Elk Grove Honda for repairs. On December 18, 2004, CSAA paid Elk Grove Honda \$5,915.00 for collision repairs. The check was issued to Elk Grove Honda and Gia Thao. On January 19, 2005, CSAA paid Elk Grove Honda \$703.36 for supplemental repairs. The check was issued to Elk Grove Honda.

On January 26, 2005, after it had collected \$6,618.36 from CSAA for repairs of the Thao vehicle, Elk Grove Honda prepared its own estimate²⁰ for \$5,915.00, with a

²⁰ Estimate version 0, supplement 1.

supplement of \$703.36.²¹ Ms. Thao picked up the vehicle on February 2, 2005, and signed an authorization for repair work in the amount of \$6,618.36.

Refinishing Upper Tie Bar

19. Bureau representative Randy Fiddler conducted a post repair inspection of the vehicle on March 23, 2005. Mr. Fiddler inspected the upper tie bar (the top of the tie bar) and concluded that it had not been refinished. There was dirt residue on the upper tie bar that would not be consistent with a freshly painted surface. The interior of the front bumper cover, which had been replaced and refinished, was clean and debris free. Fiddler compared the two surfaces, and the upper tie bar did not look finished. He used an Electronic Mil Thickness (EMT) Gauge to measure the thickness of the paint of the upper tie bar at various locations. He also measured the undamaged adjacent areas in the engine compartment that had not been estimated to be refinished. The paint thickness of the upper tie bar was consistent with that of the areas that had not been refinished and which had original factory paint.²² The paint thickness of the upper tie bar at the hood latch was consistent with the areas of original factory paint.²³ Fiddler took photographs of the upper tie bar, the dirt and residue and the parts used for comparison of paint thickness.

Mr. Stickle and Mr. Watson testified that the electronic gauge would have come up with close readings between the factory painted areas and the refinished areas, because if filler and bondo are used the newly painted area would be thicker than the original factory painted area. However, if the refinishing did not require these materials, the measurements between the areas would be very close. Mr. Watson testified that there can be between 1 and 2 mils between painting measurements on new and original painted areas because parts are sanded, primed and sealed and sanded again before repainting. Additionally, they testified that dirt and debris on a part are normal even shortly after refinishing.

The photographic evidence and the observations of Mr. Fiddler were persuasive evidence that the upper tie bar was not repainted. The mil gauge readings were not conclusive, but did support the visual evidence and Fiddler's conclusions. While dirt and debris, in and of itself is not evidence that a part was not refinished, the fact that adjoining areas of the vehicle did not have dirt and debris supports Mr. Fiddler's conclusion that the upper tie bar was not refinished.

²¹ Both the estimates charged the same for time and paint materials to refinish the rear bumper reinforcement. The evidence is unclear whether the Elk Grove Honda estimate charges to refinish the upper tie bar. However, respondent did not assert that it did not estimate or charge for refinishing the upper tie bar, instead maintaining that it was refinished.

²² Paint thickness on the left side of the radiator support near the headlamp was measured at 2.5. Paint thickness on the right side of the radiator support near the headlamp was measured at 2.6 and the right strut tower was measured at 2.7.

²³ This area was measured at 2.3.

Refinishing Rear Bumper Reinforcement

20. During his inspection, Mr. Fiddler learned that the Thao vehicle had been in another collision after the Elk Grove Honda repairs. The rear bumper and reinforcement had been replaced by Florin Road Toyota. On March 23, 2005, Mr. Fiddler called Florin Road Toyota and asked the manger if he still had the rear bumper and rear bumper reinforcement from the Thao vehicle. Kevin Wohl, the technician at Florin Road Toyota who repaired the Thao vehicle, testified that roughly two weeks passed between the time that he worked on the Thao vehicle to the time Mr. Fiddler picked up the parts. He remembers that he had worked on the Thao vehicle in another technician's station while that technician (Pulley) was on vacation. When his manager asked him to hold the parts for Fiddler, he walked over to Pulley's station and found the parts outside Pulley's station near a trash bin. He testified that "that is the area where I keep all my stuff." He testified that Pulley was still on vacation and as far as he knew, the parts had remained in Pulley's area. When Mr. Fiddler arrived to pick up the rear bumper reinforcement he placed a tag on the rear bumper reinforcement and Mr. Wohl signed the tag. At this point, two years later, he does not recall the Thao vehicle, but recognized his signature on the tag on the rear bumper reinforcement. The rear bumper Mr. Fiddler secured from Mr. Wohl was dark green metallic and matched the Thao vehicle. The rear bumper reinforcement Mr. Fiddler secured from Mr. Wohl was not refinished.

Respondent argues that the "chain of custody" was broken after Mr. Wohl removed the bumper and rear bumper reinforcement from the Thao vehicle. Respondent argues that someone could have come into the Pulley area and removed the Thao parts or placed other parts in the area. Further, respondent argues that because the Pulley area was near a trash area, Mr. Wohl simply picked up parts from the trash area, parts which could have come from another Honda Civic. Respondent's arguments are not persuasive. There is no legal requirement that complainant establish a chain of custody on a par with that required in a criminal proceeding. At the time the parts were collected from Mr. Wohl, he had direction from his manager to find and save the parts he took from the Thao vehicle. There is no evidence that he did not recognize the parts he had recently removed from the vehicle and no evidence that they had been removed from Pulley's station before they were turned over to Fiddler. In the absence of any such evidence, respondent's arguments are speculative.

LEGAL CONCLUSIONS

DULLANTY VEHICLE - 1988 HONDA ACCORD

Failure to Comply With Code

1. Business and Professions Code section 9884.7, subdivision (a)(6), provides as follows:

(a)The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the

registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

¶...¶

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

¶...¶

Business and Professions Code section 9884.9, subdivision (a), provides in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied... If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs, and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price." ...

As set forth in Factual Finding 4, respondent's registration is subject to discipline under Business and Professions Code sections 9884.7, subdivision (a)(6) and section 9884.9., subdivision (a), due to its failure to document Invoice Number 435909 to show the consumer's authorization for an increase in the original estimate price.

CHEUNG VEHICLE - 2001 HONDA ODYSSEY

Departure from Trade Standards-Failure to Comply with Regulations

2. Business and Professions Code section 9884.7, subdivision (a)(7), provides as follows:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

¶...¶

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

¶...¶

California Code of Regulations, title 16, section 3365, subdivision (b), provides in pertinent part:

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

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

As set forth in Factual Findings 5 through 7, respondent violated Business and Professions Code section 9884.7, subdivision (a)(7), and California Code of Regulations, title 16, section 3365, subdivision (b), by failing to completely restore corrosion protection after replacing the right front apron, and by failing to mask the vehicle completely to protect it from over spray. Respondent maintains that its violations, if any, were not "material" pursuant to Business and Professions Code section 9884.7, subdivision (a)(7). However, even though the areas of overspray were small and there were a few areas which had not been painted for corrosion protection, respondent's violations of these sections were not immaterial. The overspray and areas of corrosion were unsightly and likely to reduce the value of the vehicle. Moreover, areas which lack corrosion protection may ultimately fail.

Misleading Statements

3. Business and Professions Code section 9884.7, subdivision (a)(1), provides:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner,

officer, or member of the automotive repair dealer.

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

Complainant charged that respondent “made statements which it knew or by exercise of reasonable care it should have known to be untrue or misleading when it represented to CSAA and the consumer that the vehicle had been repaired pursuant to the estimate prepared by Le Appraisal Services, dated December 7, 2004. In fact, Respondent failed to perform the services or repairs, as more particularly set forth ...[failure to restore corrosion protection, failure to mask the vehicle to protect from over spray].”

As set forth in Factual Findings 5 through 7, Ms. Cheung gave respondent Le Appraisal Service’s estimate. Respondent advised CSAA that it had the estimate and collected the total amount estimated, minus Ms. Cheung’s deductible, before it prepared its own estimate. At no time did respondent advise CSAA that it had prepared its own estimate. At no time did respondent advise Ms. Cheung that it was repairing the vehicle pursuant to its own estimate. Thus, by omitting this information, respondent led CSAA and the consumer to believe it was proceeding to repair the vehicle under the Le Appraisal Service’s estimate. Nevertheless, in respect to Ms. Cheung’s vehicle, respondent’s omissions were not material. The Le Appraisal Service and Elk Grove Honda estimates were for the same amount, and there is no evidence that the parts and labor provided under respondent’s estimate differed from those itemized in the Le Appraisal Service’s estimate.

Respondent’s representations that it had restored corrosion protection and protected from overspray are not misrepresentations. Respondent performed the work estimated and billed for, but failed in its duty to complete the work in a good and workmanlike manner.

HOFFMAN VEHICLE - 2001 HONDA ACCORD LX

Misleading Statements

4. Complainant charged that respondent’s registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(1). Complainant charged that respondent “made statements which it knew or by exercise of reasonable care it should have known to be untrue or misleading when it represented to CSAA and the consumer that the vehicle had been repaired pursuant to the estimate it prepared, dated December 8, 2004. In fact, Respondent failed to perform services or repairs, as more particularly set forth ...[failure to refinish right and left side members, charging for paint materials for refinishing right and left side members, failure to repair the right front fender].”

As set forth in Factual Findings 8 through 10, respondent refinished the repaired portions of the right and left side members, as specified in the CSAA and Elk Grove Honda estimates. Respondent did not repair the edge of the right front fender. Complainant did not charge that respondents departed from trade standards in violation of Business and Professions Code section 9884.7, subdivision (a)(7). Yet, the extent of respondent's deviation from trade standards must be considered in determining whether respondent "knew or should have known" that it did not perform the refinishing and repair work billed for. Unlike the Cheung vehicle, this omission in the Hoffman vehicle repair was not de minimis. The right front fender lip was not repaired at all. The omission was substantial and respondent "should have known" that the repair bill it submitted to CSAA and the insured was not accurate in that the right front fender had not been completely repaired.

The obligation of the automotive repair facility is honesty and disclosure in its business dealings with customers and with the public. An automotive repair facility cannot induce the customer's insurer to pay a bill by misrepresenting that it is payment for the insurer's own estimate. Further, an automotive repair facility cannot lead a customer to believe that it is performing repairs in accordance with the insurer's estimate, when it is not. If an automotive repair facility declines to use an insurance estimate and prepares its own estimate, it is obliged to inform the insurer and consumer. The consumer should be advised of any differences in the estimates and should knowingly authorize use of the "in-house" estimate.

Fraud

5. Complainant charged that respondent's registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(4), in that it accepted payment from CSAA for refinishing the right and left side members and repairing the right fender. That section provides that a registration may be disciplined for any conduct which constitutes fraud. As set forth above, respondent refinished the repaired portions of the right and left side members, as specified in the CSAA and Elk Grove Honda estimates. Respondent did not repair the edge of the right front fender. This poor workmanship and concomitant misrepresentation of the extent of repair on the estimate do not rise to the level of fraudulent conduct. This cause of action was not substantiated by the evidence.

HILL VEHICLE - 2003 HONDA S2000

Departure from Trade Standards-Failure to Comply with Regulations

6. Respondent's registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(7), for willfully departing from or disregarding accepted trade standards for good and workmanlike repair. Respondent failed to comply with California Code of regulations, title 16, section 3365, subdivision (d), "All corrosion protection shall be applied in accordance with manufacturers' specifications or nationally distributed and periodically updated service specifications that are generally accepted by the auto body repair industry." As set forth in Factual Finding 12, respondent

disregarded and willfully departed from trade standards by failing to restore corrosion protection to the left quarter panel by leaving a gap in the seam sealing, exposing the vehicle and the trunk to the elements.

Misleading Statements

7. Complainant charged that respondent's registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(1). Complainant charged that respondent "made statements which it knew or by exercise of reasonable care it should have known to be untrue or misleading when it represented to CSAA and the consumer that the vehicle had been repaired pursuant to the estimate prepared by Gibsons Appraisals, dated October 24, 2004...[replace and refinish the left inner panel and the left extension and restore corrosion protection to the left quarter panel]." This charge was substantiated.

As set forth in Factual Findings 11 and 12, respondent failed to restore corrosion protection on a small portion of the left inside quarter panel. This failure created a gap in the trunk seam and compromised the integrity of the vehicle. And, it is undisputed that respondent did not replace the left inner panel and extension. Respondent argues that it did not place these items on its Final Invoice, and thus could not have misrepresented its work to the customer. Respondent alleges it did not make misrepresentations to CSAA or the consumer, because it collected payment for its work under its Final Invoice. As set forth in Factual Findings 11 through 12, this argument was not persuasive. Respondent accepted funds from CSAA on Mr. Hill's behalf, knowing that CSAA was unaware that respondent was using another estimate. Respondent led CSAA to believe it was repairing Hill's vehicle pursuant to the CSAA estimate. Respondent collected \$14,728.75 from CSAA, on the customer's behalf, and without notifying CSAA that it had chosen not to replace the left inner panel and extension. Respondent did not refund the returned parts proceeds to CSAA or to the consumer. The consumer was unaware that CSAA's estimate had been abandoned and that the Final Invoice he signed was different from the CSAA estimate. Respondent by exercise of reasonable care should have known that CSAA released funds directly to it with the understanding that the vehicle was repaired pursuant to the CSAA estimate.

Fraud

8. Complainant charged that respondent's registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(4), (other fraudulent conduct) in that it accepted payment from CSAA for services it did not perform and parts it did not supply. This cause of action was not substantiated by the evidence.

Section 9884.7 does not define fraud. However, the Courts have found that fraud requires the following elements: (1) misrepresentation of a material fact; (2) knowledge of falsity; (3) intent to deceive and induce reliance; (4) justifiable reliance on the misrepresentation; and (5) resulting damages. (*City of Atascadero v. Merrill, Lynch, Pierce,*

Fenner & Smith, Inc. (1998) 68 Cal. App. 4th 445, 481.) (cited in Century Surety Co. v. Crosby Ins., inc. (2004) 124 Cal. App. 4th 116, 122.)

There was little evidence of intent to deceive CSAA and induce reliance. Rather, the evidence indicated that respondent felt it had no duty to keep the customer's insurer apprised of its decision to use another estimate.

DICH VEHICLE - 2003 HONDA CRV EX

Departure from Trade Standards-Failure to Comply with Regulations

9. Respondent's registration is subject to discipline under Business and Professions Code section 9844.7, subdivision (a) (7), for willfully departing from or disregarding accepted trade standards for good and workmanlike repair. Respondent failed to comply with California Code of regulations, title 16, section 3365, subdivision (d), "All corrosion protection shall be applied in accordance with manufacturers' specifications or nationally distributed and periodically updated service specifications that are generally accepted by the auto body repair industry." As set forth in Factual Finding 15, respondent disregarded and willfully departed from trade standards by failing to restore corrosion protection to welds on the underside of the rear floor pan section area, and to welds on the backside of the area where the right and left corner pillar was welded near the roof line.

Misleading Statements

10. Complainant charged that respondent's registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(1). Complainant charged that respondent "made statements which it knew or by exercise of reasonable care it should have known to be untrue or misleading when it represented to CSAA and the consumer that the vehicle had been repaired pursuant to its final estimate, dated July 23, 2004 [failure to replace and refinish the rear floor pan in its entirety, charging for paint materials for services not performed and failing to restore corrosion protection to welds]. As set forth in Factual Findings 13 through 15, these charges were not substantiated. Although Elk Grove Honda failed to restore corrosion protection on several welds, this was negligence and did not rise to the level of misrepresentation. When presenting its bill to CSAA, there was no indication that respondent knew or should have know in the exercise of reasonable care that it had failed to provide corrosion protection to a small number of the 150 welds it had installed.

Fraud

11. Complainant charged that respondent's registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(4), (other fraudulent conduct) in that it accepted payment from CSAA for services it did not perform and materials it did not supply. This allegation was not substantiated by the evidence.

AGUILAR VEHICLE - 2000 HONDA ACCORD EX

Misleading Statements

12. Complainant charged that respondent's registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(1). Complainant charged that respondent "made statements which it knew or by exercise of reasonable care it should have known to be untrue or misleading when it represented to CSAA and the consumer that the vehicle had been repaired pursuant to its final estimate, dated November 19, 2004 [remove/install back window glass and replace back window reveal molding].²⁴ As set forth in Factual Findings 16 and 17, these charges were substantiated. It is undisputed that respondent did not remove/install the back window glass and failed to replace back window reveal molding in the Aguilar vehicle. Respondent argues that it did not place these unnecessary repairs on its Final Invoice, and thus could not have misrepresented its work to the customer. Respondent alleges it did not make misrepresentations to CSAA, because it collected payment for its work under its Final Invoice. As set forth in Legal Conclusion 7, this argument was not persuasive. Respondent accepted funds from CSAA on the Aguilar's behalf and with knowledge that CSAA was unaware that respondent would use another estimate. Respondent led CSAA to believe it was repairing Aguilar's vehicle pursuant to the CSAA estimate. Respondent collected \$5,543.50, on behalf of the Aguilar, to make the repairs estimated in the CSAA estimate. Respondent did not notify CSAA or the customer that it had chosen not to remove the rear window. Respondent did not refund the amount it collected from CSAA for these repairs, to either CSAA or the consumer. The consumer was unaware that CSAA's estimate had been abandoned and that the Final Invoice she signed was different from the CSAA estimate. Respondent, by exercise of reasonable care, should have known that CSAA released funds directly to it with the understanding that the vehicle was repaired pursuant to the CSAA estimate.

Fraud

13. Complainant charged that respondent's registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(4), (other fraudulent conduct) in that respondent accepted payment from CSAA for services it did not perform. This cause of action was not substantiated by the evidence.

Although respondent committed misrepresentation, there was little evidence of intent to deceive CSAA and induce reliance. As noted in Legal Conclusion 8, the evidence indicated that respondent believed it had no duty to keep the customer's insurer apprised of its decision not to follow the CSAA estimate.

²⁴ Complainant did not allege that respondent departed from trade standards in failing to remove and reinstall the rear window.

THAO VEHICLE - 2000 HONDA CIVIC

Misleading Statements

14. Complainant charged that respondent's registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(1). Complainant charged that respondent "made statements which it knew or by exercise of reasonable care it should have known to be untrue or misleading when it represented to CSAA and the consumer that the vehicle had been repaired pursuant to its final estimate, dated January 14, 2005, prepared by Le Appraisal Services [refinish upper tie bar, refinish the rear bumper reinforcement, charging for paint materials for these refinishing services]." As set forth in Factual Findings 18 through 20, respondent failed to perform these services.²⁵

Respondent, by exercise of reasonable care, should have known that it did not refinish the upper tie bar and rear bumper reinforcement, as it represented to CSAA. CSAA released funds directly to respondent with the understanding that the vehicle was repaired pursuant to the Le Appraisal estimate. As set forth in Legal Conclusion 7, respondent's arguments otherwise were not persuasive.

Fraud

15. Complainant charged that respondent's registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(4), (other fraudulent conduct) in that it accepted payment from CSAA for services it did not perform. As set forth in Legal Conclusion 8, this allegation was not substantiated by the evidence.

Although respondent committed misrepresentation, there was little evidence of intent to deceive CSAA and induce reliance. Rather, respondent's employees neglected to perform a small portion of the overall work estimated.

DISHONESTY/FRAUD/DECEIT

16. Complainant alleges that respondent's smog station license is subject to discipline under Health and Safety Code section 44072.2, subdivision (d). That section provides in pertinent part :

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

¶...¶

²⁵ Complainant did not allege that respondent departed from trade standards in failing to refinish these parts.

(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

¶...¶

As set forth in the Factual Findings and Legal Conclusions, respondent's misrepresentations were the product of negligence, not intentional dishonesty, fraud or deceit. Accordingly, this charge was not substantiated.

COSTS

17. Pursuant to Business and Professions Code section 125.3, the Bureau provided certifications of the costs of investigation and enforcement of the case. The certifications show Attorney General costs of \$19,026.50, and Bureau costs of \$63,163, which include Attorney General's costs. Thus, the total costs requested for the investigation and enforcement of this matter are \$63,163.00. The Attorney General's cost certification breaks down the tasks and dates performed since the matter was referred to that office for prosecution on November 4, 2005. The Bureau's cost certification contains summaries of time spent by Bureau employees on the investigation of Elk Grove Honda. The accounting is broken down by employee name and position, month and year of activity and total numbers of hours that employee spent on the investigation during that month and year.

18. The evidence at hearing was that the Bureau began its investigation of Elk Grove Honda in approximately March 2004, with a request to CSAA and Elk Grove Honda for documentation on multiple transactions. Of those transactions, approximately 26 transactions were selected for closer inspection. The evidence is vague on the number of vehicles which the Bureau ultimately inspected. However, at least nine were inspected and of those nine, six vehicles were included in the Accusation. Thus, at the outset, the Bureau's costs of investigation should have been narrowed to the costs of investigating the six vehicles included in the Accusation. The Bureau's records do not address only the six vehicles, and indeed its billing system cannot separate time on matters not prosecuted from time on matters prosecuted. Thus, the \$63,163.00 figure includes unknown amounts of time spent on investigation and inspection of vehicles which were not at issue in the Accusation.

It is clear that Bureau personnel inspected the six vehicles at issue in the Accusation and investigated the estimates and payments at issue for these six vehicles. However, complainant did not provide evidence of the time spent on just these vehicles. The Administrative Law Judge is left to speculate on how much time was spent on charges related to each vehicle, and declines to do so. The Bureau's cost certification does not reflect the reasonable costs of investigation of this matter and does not establish prima facie evidence of its reasonable costs under Business and Professions Code section 125.3. Likewise, the Bureau's supporting documents, consisting of general summary entries of time ascribed to the overall Elk Grove Honda investigation, do not substantiate its cost certification.

19. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay and whether the scope of the investigation was appropriate to the alleged misconduct. Here the most serious allegation was a violation of Business and Professions Code section 9884.7, subdivision (a) (4) (conduct which constitutes fraud). Respondent was charged with fraud in respect to five of the six vehicles (all but Dullanty). The evidence did not support the fraud charges and respondent prevailed on these charges. Respondent was charged with misrepresentation in respect to five vehicles and prevailed in respect to two vehicles (Cheung and Dich). Respondent was charged with departure from trade standards in respect to three vehicles and did not prevail in defending these charges. Thus, complainant prevailed on three charges of misrepresentation and three charges of departure from trade standards. As a penalty, complainant sought temporary or permanent invalidation of respondent's Automotive Repair Dealer Registration, revocation or suspension of respondent's Smog Check License and payment of \$63, 163 in costs.

20. After application of the Zuckerman factors, it is apparent that respondent was successful at hearing in getting several charges dismissed, had a good faith belief in the merits of its position in respect to the fraud allegations, and raised a colorable challenge to the proposed discipline. The attorney's fees of \$19,026.50 are therefore reduced to \$10,000, to reflect application of these factors and to reflect the fact that plaintiffs prevailed on six allegations. The Zuckerman factors were not applied to the Bureau's costs, because, as noted above, these costs were not supported by the evidence.

PENALTY

21. Respondent's three acts of misrepresentation warrant imposition of discipline, particularly because respondent continues to maintain that it has no responsibility for disclosure to an insurer who has paid respondent for repairs on a customer's behalf.

Respondent's three acts of departure from trade standards warrant imposition of discipline in order to protect the public from continued instances of poor workmanship.

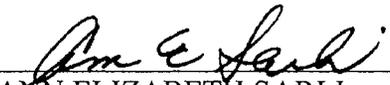
ORDER

Automotive Repair Dealer Registration Number AE 058496 issued to F. Radich Motors, Inc. Doing Business as Elk Grove Honda, is suspended for one business day.

Respondent shall pay the Bureau, or the Department's designee, the total amount of \$10,000 as reimbursement for the reasonable costs to investigate and enforce this action against respondent. The \$10,000 shall be paid in full within 30 days from the effective date of the decision in this matter unless other arrangements are made, in writing, with the Bureau or the Department's designee.

The Accusation against Smog Check Station License No. RE 058496 is dismissed.

Dated: January 21, 2008



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

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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. 77/06-115

13 **F. RADICH MOTORS, INC.,**
14 **DOING BUSINESS AS**
15 **ELK GROVE HONDA**
8550 Laguna Grove Boulevard
16 Elk Grove, California 95758

A C C U S A T I O N

17 Automotive Repair Dealer Registration
No. AE 058496
18 Smog Check Station License No. RE 058496

Respondent.

19 Sherry Mehl ("Complainant") alleges:

20 **PARTIES**

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

23 **Automotive Repair Dealer Registration**

24 2. On or about May 10, 1977, the Bureau issued Automotive Repair Dealer
25 Registration Number AE 058496 ("registration") to F. Radich Motors, Inc., doing business as
26 Elk Grove Honda ("Respondent"). The registration was in full force and effect at all times
27 relevant to the charges brought herein and will expire on May 31, 2007, unless renewed.

28 ///

1 business operated in this state by an automotive repair dealer upon a finding that
2 the automotive repair dealer has, or is, engaged in a course of repeated and willful
violations of this chapter, or regulations adopted pursuant to it."

3 5. Code section 9884.8 states:

4 All work done by an automotive repair dealer, including all warranty
5 work, shall be recorded on an invoice and shall describe all service work done and
6 parts supplied. Service work and parts shall be listed separately on the invoice,
7 which shall also state separately the subtotal prices for service work and for parts,
8 not including sales tax, and shall state separately the sales tax, if any, applicable to
9 each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall
10 clearly state that fact. If a part of a component system is composed of new and
11 used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The
12 invoice shall include a statement indicating whether any crash parts are original
13 equipment manufacturer crash parts or nonoriginal equipment manufacturer
14 aftermarket crash parts. One copy of the invoice shall be given to the customer
15 and one copy shall be retained by the automotive repair dealer.

16 6. Section 9884.9 of the Code states, in pertinent part:

17 (a) The automotive repair dealer shall give to the customer a written
18 estimated price for labor and parts necessary for a specific job. No work shall be
19 done and no charges shall accrue before authorization to proceed is obtained from
20 the customer. No charge shall be made for work done or parts supplied in excess
21 of the estimated price without the oral or written consent of the customer that
22 shall be obtained at some time after it is determined that the estimated price is
23 insufficient and before the work not estimated is done or the parts not estimated
24 are supplied. Written consent or authorization for an increase in the original
25 estimated price may be provided by electronic mail or facsimile transmission from
26 the customer. The bureau may specify in regulation the procedures to be followed
27 by an automotive repair dealer if an authorization or consent for an increase in the
28 original estimated price is provided by electronic mail or facsimile transmission.
If that consent is oral, the dealer shall make a notation on the work order of the
date, time, name of person authorizing the additional repairs and telephone
number called, if any, together with a specification of the additional parts and
labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the
notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or
initials to an acknowledgment of notice and consent, if there is an oral consent of
the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated
price.

(signature or initials)"

Nothing in this section shall be construed as requiring an automotive
repair dealer to give a written estimated price if the dealer does not agree to
perform the requested repair.

1 **COST RECOVERY**

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

6 **CONSUMER COMPLAINT - (DULLANTY) 1988 HONDA ACCORD**

7 14. On or about December 17, 2004, the Bureau received a Consumer
8 Complaint from Mary Dullanty ("consumer") regarding air conditioning repairs performed by
9 Respondent on her 1988 Honda Accord in or about July 2004. Respondent failed to properly
10 document Invoice No. 435909 to show the consumer's authorization for an evaporator core.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Code)**

13 15. Respondent's registration is subject to discipline under Code section
14 9884.7, subdivision (a)(6), in that on or about July 28, 2004, it failed to comply with Code
15 section 9884.9, subdivision (a), by failing to document Invoice No. 435909 to show the
16 consumer's authorization for an evaporator core.

17 **VEHICLE INSPECTION NO. 1 - (CHEUNG) 2001 HONDA ODYSSEY**

18 16. On or about December 3, 2004, Betty Cheung ("consumer") had her 2001
19 Honda Odyssey taken to Respondent's facility for repair following a collision. Respondent was
20 to repair the vehicle pursuant to the estimate prepared by Le Appraisal Services, dated
21 December 7, 2004. California State Automobile Association ("CSAA") paid Respondent
22 \$6,177.98 for the repairs.

23 17. On or about February 24, 2005, the Bureau conducted a post repair
24 inspection of the consumer's vehicle. The inspection revealed that Respondent failed to perform
25 the following services or repairs:

- 26 a. Respondent failed to restore corrosion protection to the right front apron
27 panel.
- 28 b. Respondent failed to mask the vehicle to protect it from overspray.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 18. Respondent's registration is subject to discipline under Code section
4 9884.7, subdivision (a)(1), in that on or about December 7, 2004, it made statements which it
5 knew or which by exercise of reasonable care it should have known to be untrue or misleading
6 when it represented to CSAA and the consumer that the vehicle had been repaired pursuant to the
7 estimate prepared by Le Appraisal Services, dated December 7, 2004. In fact, Respondent failed
8 to perform services or repairs, as more particularly set forth in paragraph 17, subparagraphs a and
9 b, above.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Departure from Trade Standards - Failure to Comply with Regulations)**

12 19. Respondent's registration is subject to discipline under Code section
13 9884.7, subdivision (a)(7), in that on or about December 7, 2004, Respondent willfully departed
14 from or disregarded accepted trade standards for good and workmanlike repair by failing to
15 comply with California Code of Regulations, title 16, section 3365, subdivision (b). Respondent
16 failed to restore corrosion protection after replacing the right front apron on the consumer's
17 vehicle and to mask the vehicle to protect it from overspray.

18 **VEHICLE INSPECTION NO. 2 - (HOFFMAN) 2001 HONDA ACCORD LX**

19 20. On or about November 12, 2004, Ruby Hoffman ("consumer") had her
20 2001 Honda Accord LX taken to Respondent's facility for repair following a collision.
21 Respondent was to repair the vehicle pursuant to its estimate dated December 8, 2004.
22 California State Automobile Association ("CSAA") paid Respondent \$8,311.10 for the repairs.

23 21. On or about February 24, 2005, the Bureau conducted a post repair
24 inspection of the consumer's vehicle. The inspection revealed that Respondent failed to perform
25 the following services or repairs:

- 26 a. Respondent failed to refinish the right sidemember.
27 b. Respondent failed to refinish the left sidemember.

28 ///

1 c. Respondent charged for paint materials for the above-referenced services,
2 which had not been performed.

3 d. Respondent failed to repair the right fender.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Misleading Statements)**

6 22. Respondent's registration is subject to discipline under Code section
7 9884.7, subdivision (a)(1), in that on or about December 8, 2004, it made statements which it
8 knew or which by exercise of reasonable care it should have known to be untrue or misleading
9 when it represented to CSAA and the consumer that the vehicle had been repaired pursuant to the
10 estimate it prepared, dated December 8, 2004. In fact, Respondent failed to perform services or
11 repairs, as more particularly set forth in paragraph 21, subparagraphs a through d, above.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 23. Respondent's registration is subject to discipline under Code section
15 9884.7, subdivision (a)(4), in that on or about December 8, 2004, it committed fraud when it
16 accepted payment from CSAA for services it failed to perform or materials it failed to provide, as
17 more particularly set forth in paragraph 21, subparagraphs a through c, above.

18 **VEHICLE INSPECTION NO. 3 - (HILL) 2003 HONDA S2000**

19 24. On or about October 24, 2004, David Hill ("consumer") had his 2003
20 Honda S2000 taken to Respondent's facility for repair following a collision. Respondent was to
21 repair the vehicle pursuant to the estimate prepared by Gibsons Appraisals, dated October 24,
22 2004, on behalf of California State Automobile Association ("CSAA"). CSAA paid Respondent
23 \$14,928.75 for the repairs.

24 25. On or about March 9, 2005, the Bureau conducted a post repair inspection
25 of the consumer's vehicle. The inspection revealed that Respondent failed to perform the
26 following services or repairs:

27 a. Respondent failed to replace the left inner panel.

28 b. Respondent failed to refinish the left inner panel.

- c. Respondent failed to replace the left extension.
- d. Respondent failed to refinish the left extension.
- e. Respondent failed to restore corrosion protection to the left quarter panel.

SIXTH CAUSE FOR DISCIPLINE

(Misleading Statements)

26. Respondent's registration is subject to discipline under Code section 9884.7, subdivision (a)(1), in that on or about October 24, 2004, it made statements which it knew or which by exercise of reasonable care it should have known to be untrue or misleading when it represented to CSAA and the consumer that the vehicle had been repaired pursuant to the estimate prepared by Gibsons Appraisals, dated October 24, 2004. In fact, Respondent failed to perform services or repairs, as more particularly set forth in paragraph 25, subparagraphs a through e, above.

SEVENTH CAUSE FOR DISCIPLINE

(Fraud)

27. Respondent's registration is subject to discipline under Code section 9884.7, subdivision (a)(4), in that on or about October 24, 2004, it committed fraud when it accepted payment from CSAA for services it failed to perform, as more particularly set forth in paragraph 25, subparagraphs a through d, above.

EIGHTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards - Failure to Comply with Regulations)

28. Respondent's registration is subject to discipline under Code section 9884.7, subdivision (a)(7), in that on or about October 24, 2004, Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair by failing to comply with California Code of Regulations, title 16, section 3365, subdivision (b). Respondent failed to restore corrosion protection to the left quarter panel on the consumer's vehicle.

VEHICLE INSPECTION NO. 4 - (DICH) 2003 HONDA CRV EX

29. On or about May 18, 2004, Kimberly Dich ("consumer") had her 2003 Honda CRV EX taken to Respondent's facility for repair following a collision. Respondent was

1 to repair the vehicle pursuant to its final estimate dated July 23, 2004. California State
2 Automobile Association paid Respondent \$9,576.28 for the repairs.

3 30. On or about February 24, 2005, the Bureau conducted a post repair
4 inspection of the consumer's vehicle. The inspection revealed that Respondent failed to perform
5 the following services or repairs:

6 a. Respondent failed to replace the rear body floor pan in its entirety.
7 Instead, the part was sectioned.

8 b. Respondent failed to refinish the rear body floor pan.

9 c. Respondent charged for paint materials for the above-referenced service
10 that had not been performed.

11 d. Respondent failed to restore corrosion protection to the bare welds at the
12 backside of where the right and left quarter rear corner pillar were welded, near the roof line.

13 **NINTH CAUSE FOR DISCIPLINE**

14 **(Misleading Statements)**

15 31. Respondent's registration is subject to discipline under Code section
16 9884.7, subdivision (a)(1), in that on or about May 18, 2004, it made statements which it knew or
17 which by exercise of reasonable care it should have known to be untrue or misleading when it
18 represented to CSAA and the consumer that the vehicle had been repaired pursuant to its final
19 estimate dated July 23, 2004. In fact, Respondent failed to perform services or provide materials,
20 as more particularly set forth in paragraph 30, subparagraphs a through d, above.

21 **TENTH CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 32. Respondent's registration is subject to discipline under Code section
24 9884.7, subdivision (a)(4), in that on or about May 18, 2004, it committed fraud when it accepted
25 payment from CSAA for services it failed to perform or materials it failed to provide, as more
26 particularly set forth in paragraph 30, subparagraphs a through c, above.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards - Failure to Comply with Regulations)**

3 33. Respondent's registration is subject to discipline under Code section
4 9884.7, subdivision (a)(7), in that on or about May 18, 2004, Respondent willfully departed from
5 or disregarded accepted trade standards for good and workmanlike repair by failing to comply
6 with California Code of Regulations, title 16, section 3365, subdivision (b). Respondent failed to
7 restore corrosion protection to the bare welds at the backside of where the right and left quarter
8 rear corner pillar were welded near the roof line on the consumer's vehicle.

9 **VEHICLE INSPECTION NO. 5 - (AGUILAR) 2000 HONDA ACCORD EX**

10 34. In or about November 2004, Carlos Aguilar ("consumer") had taken his
11 2000 Honda Accord EX to Respondent's facility for repair following a collision. Respondent
12 was to repair the vehicle pursuant to the final estimate dated November 19, 2004, prepared by
13 California State Automobile Association ("CSAA"). CSAA paid Respondent \$5,543.57 for the
14 repairs.

15 35. On or about March 23, 2005, the Bureau conducted a post repair
16 inspection of the consumer's vehicle. The inspection revealed that Respondent failed to perform
17 the following services or repairs:

- 18 a. Respondent failed to remove/install the back window glass.
19 b. Respondent failed to replace the back window reveal molding.

20 **TWELFTH CAUSE FOR DISCIPLINE**

21 **(Misleading Statements)**

22 36. Respondent's registration is subject to discipline under Code section
23 9884.7, subdivision (a)(1), in that in or about November 2004, it made statements which it knew
24 or which by exercise of reasonable care it should have known to be untrue or misleading when it
25 represented to CSAA and the consumer that the vehicle had been repaired pursuant to the final
26 estimate dated November 19, 2004, prepared by CSAA. In fact, Respondent failed to perform
27 services or repairs, as more particularly set forth in paragraph 35, subparagraphs a and b, above.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 37. Respondent's registration is subject to discipline under Code section
4 9884.7, subdivision (a)(4), in that in or about November 2004, it committed fraud when it
5 accepted payment from CSAA for services it failed to perform, as more particularly set forth in
6 paragraph 35, subparagraphs a and b, above.

7 **VEHICLE INSPECTION NO. 6 - (THAO) 2000 HONDA CIVIC**

8 38. On or about December 16, 2004, Gia Thao ("consumer") had her 2000
9 Honda Civic taken to Respondent's facility for repair following a collision. Respondent was to
10 repair the vehicle pursuant to the final estimate dated January 14, 2005, prepared by Le Appraisal
11 Services on behalf of California State Automobile Association ("CSAA"). CSAA paid
12 Respondent \$6,618.36 for the repairs.

13 39. On or about March 23, 2005, the Bureau conducted a post repair
14 inspection of the consumer's vehicle. The inspection revealed that Respondent failed to perform
15 the following services or repairs:

- 16 a. Respondent failed to refinish the upper tie bar.
17 b. Respondent failed to refinish the rear bumper reinforcement.
18 c. Respondent charged for paint materials for the above-referenced services
19 that had not been performed.

20 **FOURTEENTH CAUSE FOR DISCIPLINE**

21 **(Misleading Statements)**

22 40. Respondent's registration is subject to discipline under Code section
23 9884.7, subdivision (a)(1), in that on or about December 16, 2004, it made statements which it
24 knew or which by exercise of reasonable care it should have known to be untrue or misleading
25 when it represented to CSAA and the consumer that the vehicle had been repaired pursuant to the
26 final estimate dated January 14, 2005, prepared by Le Appraisal Services. In fact, Respondent
27 failed to perform services or provide materials, as more particularly set forth in paragraph 39,
28 subparagraphs a through c, above.

1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 41. Respondent's registration is subject to discipline under Code section
4 9884.7, subdivision (a)(4), in that on or about December 16, 2004, it committed fraud when it
5 accepted payment from CSAA for services it failed to perform, as more particularly set forth in
6 paragraph 39, subparagraphs a through c, above.

7 **SIXTEENTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud or Deceit)**

9 42. Respondent's smog station license is subject to discipline under Health &
10 Saf. Code section 44072.2, subdivision (d), in that it committed dishonest, fraudulent or deceitful
11 acts whereby another is injured, as more particularly set forth in paragraphs 23, 27, 32, 37, and
12 41, above.

13 **OTHER MATTERS**

14 43. Pursuant to Code section 9884.7, subdivision (c), the Director may
15 invalidate or refuse to validate, temporarily or permanently, the registrations for all places of
16 business operated in this state by F. Radich Motors, Inc., doing business as Elk Grove Honda,
17 upon a finding that said Respondent has, or is, engaged in a course of repeated and willful
18 violations of the laws and regulations pertaining to an automotive repair dealer.

19 44. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station
20 License Number RE 058496, issued to Respondent F. Radich Motors, Inc., doing business as Elk
21 Grove Honda, is revoked or suspended, any additional license issued under this chapter in the
22 name of said licensee may be likewise revoked or suspended by the director.

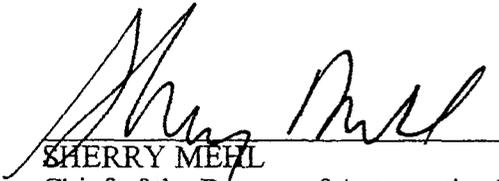
23 **PRAYER**

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

26 1. Temporarily or permanently invalidating Automotive Repair Dealer
27 Registration Number AE 058496, issued to F. Radich Motors, Inc., doing business as Elk Grove
28 Honda;

- 1 2. Temporarily or permanently invalidating any other automotive repair
2 dealer registration issued to F. Radich Motors, Inc., doing business as Elk Grove Honda;
3 3. Revoking or suspending Smog Check Station License Number
4 RE 058496, issued to F. Radich Motors, Inc., doing business as Elk Grove Honda;
5 4. Revoking or suspending any additional license issued under Chapter 5 of
6 the Health and Safety Code in the name of F. Radich Motors, Inc., doing business as Elk Grove
7 Honda;
8 5. Ordering F. Radich Motors, Inc., to pay the Bureau of Automotive Repair
9 the reasonable costs of the investigation and enforcement of this case, pursuant to Code section
10 125.3; and,
11 6. Taking such other and further action as deemed necessary and proper.

12 DATED: 4-5-07

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16 SHERRY MEHL
17 Chief of the Bureau of Automotive Repair
18 Department of Consumer Affairs
19 State of California
20 Complainant
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