

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

In the Matter of Accusation Against:

SKEETER'S AUTO
BRENDA KAYCEE HOWELL, Owner

Automotive Repair Dealer
Registration No. ARD 192102

Respondent.

Case No. 77/12-1

OAH No. 2012080941

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Irvine, California, on July 8 and 9, 2014.

Adrian R. Contreras, Deputy Attorney General, Department of Justice, represented complainant John Wallauch, Chief, Bureau of Automotive Repair, Department of Consumer Affairs.

Mary B. Erickson, Attorney at Law, represented respondent Brenda Kaycee Howell, the owner of Skeeter's Auto, who was present throughout the disciplinary proceeding.

The matter was submitted on July 9, 2010.

SUMMARY

Respondent Brenda Kaycee Howell owns and operates Skeeter's Auto. She has been a registered automotive repair dealer since 1996.

In late February 2011, Skeeter's Auto agreed to repair property damage sustained by a 2002 Nissan Altima belonging to JM according to a repair estimate prepared by State Farm Insurance. When Ms. Howell returned the Nissan to JM on April 6, 2011, she impliedly represented that repairs had been provided as agreed. However, required repairs were not provided, a matter that was known to Ms. Howell or which should have been known to her in

the exercise of ordinary care. Skeeter's Auto's misleading statements, fraud, departure from accepted trade standards, and inadequate documentation violated the Automotive Repair Act.

On November 7, 2011, the Bureau caused a specially prepared 2001 Toyota Corolla to be presented to Skeeter's Auto. In servicing the vehicle, Skeeter's Auto misrepresented facts, engaged in fraud, and improperly documented the transaction.

Ms. Howell denied deliberate wrongdoing and expressed no remorse. She claimed that she never intended to defraud anyone, that JM was a demanding customer, and that she was a victim of wrongdoing committed by two subcontractors to whom she sublet auto body repairs. She asserted that statements related to the servicing of the 2001 Toyota Corolla were truthful. She asserted that any documentation violations were minimal and technical.

Grounds exist to impose discipline upon Skeeter's Auto's automotive repair dealer registration, including (1) an actual 30-day suspension, (2) a five year period of probation. As an additional matter, Skeeter's Auto is directed to pay the Bureau's reasonable costs of investigation and enforcement in the amount of \$35,000. Imposing license discipline will protect the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 3, 2012, complainant signed the accusation. The accusation sought to revoke or suspend Ms. Howell's automotive repair dealer's registration. The accusation was served on Ms. Howell, who timely filed a notice of defense. Following several continuances, the matter was set for a three-day hearing to commence on July 8, 2014, in Irvine, California.

On July 8, 2014, the record in the disciplinary proceeding was opened. On July 8 and 9, 2014, sworn testimony and documentary evidence was received. On July 9, 2014, closing arguments were given; the record was closed; and the matter was submitted.

License History

2. On November 27, 1996, the Bureau issued Automotive Repair Dealer Registration No. ARD 192102 to Brenda Kaycee Howell, who currently conducts business under the name of Skeeter's Auto. There is no history of any administrative discipline having been previously imposed against ARD Registration No. 192102.

Respondent's Background, Education, Training and Experience

3. Ms. Howell is 58 years old. She was born in Kentucky. In 1976, she graduated from Eastern Kentucky University with a bachelor's degree in Industrial Arts. She

obtained a teaching credential and taught shop in Kentucky for one year. In 1977, she moved to Southern California.

Ms. Howell attended business college after settling in California. She became licensed by the Department of Motor Vehicles as a vehicle salesperson. She sold new and used motor vehicles for many years under that license, which was never suspended or revoked.

Ms. Howell began wholesaling motor vehicles that had been leased and returned to dealers or traded in to licensed motor vehicle dealers. She found it necessary to service, repair, and detail those vehicles. Skeeter's Auto, a registered automotive dealer, provided the kinds of services Ms. Howell needed. She learned that Skeeter's Auto was on the market. In 1996, Ms. Howell purchased Skeeter's Auto and became registered as an automotive repair dealer. Skeeter's Auto repaired and serviced Ms. Howell's fleet of vehicles and provided repairs and services to the general public.

Ms. Howell has never worked as an automotive mechanic. She has never worked as an auto body repair person.

Skeeter's Auto

4. Skeeter's Auto is located in a 3,000 square foot building in Santa Ana. Ms. Howell meets customers, prepares paperwork, telephones customers, orders parts, delivers customers' vehicles to independent subcontractors when necessary, supervises employees, writes checks, and maintains records. She does not do any mechanical work or perform auto body repairs. Ms. Howell described herself as "the face of Skeeter's."

5. There are four service bays at Skeeter's Auto. In order for a customer's vehicle to be inspected or repaired, it must be driven from the front of Skeeter's Auto to a service bay at the rear of the building. According to Ms. Howell, this movement requires a customer's vehicle to be driven a distance of three or four blocks. Ms. Howell often drives customers' vehicles from the front to the back of the building. After driving a customer's vehicle to the rear of the building, she speaks with a technician. The technician inspects the vehicle and communicates orally and/or in writing with Ms. Howell about what the technician has found and what service or repair is necessary. Ms. Howell sometimes telephones customers to relay what she has been told by the technician to obtain approval for service or repairs that were not included in the repair estimate provided to the customer.

6. General automotive service and repairs constitute about 90 percent of Skeeter's Auto's business. About ten percent of Skeeter's Auto's business involves the repair of automobile body damage. Skeeter's Auto does not perform smog tests. Skeeter's Auto does not provide frame straightening or painting. Skeeter's Auto contracts with independent subcontractors for these services. In-house automotive services and repairs are performed by Skeeter's Auto's technicians; for auto body repairs, a technician removes

damaged auto body parts, installs replacement parts, and prepares damaged surfaces for painting.

7. The background, training, experience and qualifications of the technicians who have worked and are working at Skeeter's Auto was not established, except that Ms. Howell claimed they were qualified technicians. She claimed that the technicians who work for Skeeter's Auto regularly receive continuing education through seminars and other trainings sponsored by organizations that sell parts, automotive products, and repair equipment. She testified that she sometimes pays for training received by Skeeter's Auto technicians, but she presented no evidence to corroborate that testimony.

The Repair of the 2002 Nissan Altima

8. Consumer JM and Ms. Howell had known one another for many years. In 2011, JM owned a 2002 Nissan Altima that she used in her employment as an outside salesperson.

9. On February 18, 2011, a State Farm insured rear-ended JM's Nissan. The collision resulted in substantial auto body damage. JM drove the Nissan to Skeeter's Auto, where a State Farm adjuster inspected the damage on February 23, 2011.

Following the inspection, the adjuster prepared a detailed five-page written repair estimate that included information related to the traffic collision, a general description of the 2002 Nissan, and 62 line entries that identified specific repairs to be completed. Each line entry described the kind of repair that was needed, whether the repair required the repair or replacement of a damaged part, whether the repair was going to be accomplished in-house or was going to be sublet, the value of replacement parts, and the "labor units" needed for each repair expressed in tenths of hours. The repair estimate contained a summary of estimated labor charges and the cost of replacement parts. Additional costs were included in the State Farm repair estimate, which totaled \$5,113.07.

The repair estimate contained the following caveat:

This is an estimate. Repair facilities must inspect the vehicle to determine if any repairs not listed are required, and to contact State Farm before making such repairs. Repairer also is responsible for conducting any necessary inspection and safety checks prior to and after completing repairs.

10. Ms. Howell received a copy of the State Farm repair estimate. She and JM agreed that Skeeter's Auto would repair JM's Nissan in the manner described in the State Farm repair estimate and that repairs would begin when JM provided Skeeter's Auto with payment.

11. On February 24, 2011, State Farm issued a \$5,113.07 check to JM, who deposited that check into her checking account. She obtained a cashier's check from her credit union in the amount of \$4,513.00 that was payable to Skeeter's Auto.

12. Sometime before March 4, 2011, JM asked Ms. Howell if, in addition to repairing her vehicle as agreed, Skeeter's Auto would provide her with an oil change and shock absorber repair at no charge. JM claimed Ms. Howell agreed to that proposal. Ms. Howell disagreed with that assertion, and claimed that she never agreed to provide an oil change and shock absorber repair for free.

A resolution of the conflict in the testimony concerning the "no charge" services is not necessary to resolve the matters at issue in this proceeding.

13. On March 4, 2011, JM paid Skeeter's Auto \$4,513.00. JM testified she did not pay the full amount of the repair estimate because she believed it was prudent to maintain a reserve to ensure that all repair work was completed before final payment was made. JM testified that Ms. Howell "was very open that the repairs would take some time," and she recalled Ms. Howell telling her that Skeeter's Auto would sublet some repair work.

Ms. Howell agreed that the repairs identified in the State Farm repair estimate were supposed to be provided. She specifically recalled telling JM that the frame work and painting would be done by others.

A resolution of the conflict in the testimony related to what repairs were going to be performed in-house is not necessary to resolve the matters at issue in this proceeding.

14. Around March 4, 2011, Ms. Howell delivered the Nissan and the State Farm repair estimate to Patrick Shane, an auto body repair person with whom she had previously done business. Mr. Shane had just opened a new auto body repair business. Mr. Shane told Ms. Howell that he would give her a "special deal" if she provided him with additional auto body repair business. Ms. Howell said she expected that Mr. Shane would complete all of the repairs listed in the State Farm repair estimate.

15. Mr. Shane undertook repairs and returned the Nissan to Skeeter's Auto. He did not provide Skeeter's Auto with a repair invoice. After the Nissan was returned to Skeeter's Auto, neither Ms. Howell nor her technicians closely examined the vehicle to confirm Mr. Shane had repaired it in the manner identified in the State Farm repair estimate. Ms. Howell assumed Mr. Shane had done so.

16. On March 31, 2011, after Mr. Shane returned the Nissan to Skeeter's Auto, Ms. Howell telephoned JM and told JM that the repairs had been completed and she could pick up her car.

17. On March 31, 2011, JM arrived at Skeeter's Auto to take delivery of her Nissan. JM believed, at that time, based upon what Ms. Howell had told her, that repairs had been completed in accordance with the State Farm repair estimate.

When JM examined the Nissan, she observed that the rear trunk lid was "wobbly," the rear spoiler was misaligned, and the rear taillights were broken. Ms. Howell examined the Nissan and determined that Mr. Shane's repairs were "not right." She saw damage to the trunk lid and broken rear taillights. She testified, "It appeared to me that the frame was not straight." Ms. Howell promised JM that all problems would be fixed. JM left without her car.

18. Ms. Howell drove the Nissan to One Day Paint and asked whether additional repairs were needed. After visiting One Day Paint, Ms. Howell drove the Nissan to L.A. Auto, with whom she had previously done business, to obtain further repairs. Ms. Howell testified that she provided L.A. Auto with the State Farm repair estimate and directed L.A. Auto to repair the Nissan as specified in the repair estimate. At that point, according to Ms. Howell, "cost was no object." L.A. Auto telephoned Ms. Howell several days later and told her that the repairs were completed.

Ms. Howell went to L.A. Auto and took delivery of the Nissan. She drove it back to Skeeter's Auto. She testified, "It looked absolutely fine and drove absolutely fine." She did not obtain an invoice from L. A. Auto. She did not closely inspect the repair work herself. She did not have a technician inspect the Nissan.

19. On April 6, 2011, Ms. Howell called JM and told her that she could pick up her car. JM arrived at Skeeter's Auto shortly thereafter. When JM arrived at Skeeter's Auto, she was given Repair Order 09308; she had not been given a repair estimate previously. The State Farm repair invoice was not attached to the repair order. The repair order did not include a description of the repair work done by Skeeter's Auto; the repair work done by others; the parts supplied; or whether the replacement parts were new, used, rebuilt or reconditioned. The repair order stated there was a balance due of \$600.07.

JM inspected her car. She observed that the rear spoiler was loose and the taillights were not the same color as original manufacturer equipment. JM testified, "At that point I was done." She drove off. She was extremely upset.

20. Before JM arrived at Skeeter's Auto, Ms. Howell told JM that the Nissan had been repaired and was ready to be picked up. In doing so, Ms. Howell impliedly represented to JM that the repairs to the Nissan were consistent with the State Farm repair invoice and as agreed. Skeeter's Auto's failure to provide appropriate repairs to the Nissan was known to Ms. Howell, or should have been known to her in the exercise of reasonable care, because Ms. Howell knew Mr. Shane had not provided proper repairs and that additional repairs were necessary. The improper repair work that existed on April 6, 2011, when JM arrived to pick up her Nissan, was open and obvious. Ms. Howell either knew about the repair defects or she should have discovered them in the exercise of ordinary care.

21. Ms. Howell testified that JM telephoned Ms. Howell shortly after she left and threatened, "I will sue and someone will pay." Ms. Howell believed that JM had no intention of ever paying the \$600.07 balance that was owed.

22. In this disciplinary proceeding, Ms. Howell complained that she never had the opportunity to inspect the Nissan after JM took delivery of it on April 6, 2011. It was suggested that Ms. Howell and Skeeter's Auto's inability to inspect the Nissan was unfair and violated due process.

23. In a demand letter dated April 8, 2011, Will Congdon, Manager of Skeeter's Auto, advised Mr. Shane: "It was evident from the condition of the automobile that you continued to try to force the trunk lid upon the damaged frame and returned the car with a one inch gap between the left side of the trunk lid and the trunk compartment" and "the specific work we requested was not performed on this car" The demand letter represented, "[I]t cost us another \$1,500 in costs to repair your faulty work and get the vehicle acceptable to the owner."

The demand letter established that the Nissan was inspected after Mr. Shane's repairs. The demand letter represented that Skeeter's Auto had the Nissan repaired as required (i.e., in accordance with the State Farm repair estimate) and that JM found the repair work acceptable. The letter was written two days after JM left the lot, when she was clearly unhappy with the repair work. Skeeter's Auto's inability to inspect the Nissan after JM took delivery of it did not result in prejudice. Skeeter's Auto had the duty to inspect the Nissan upon its return from Mr. Shane's facility and from L.A. Auto.

24. JM filed a complaint with the Bureau.

25. After JM filed a consumer complaint, the Bureau assigned Program Representative David Drucker to investigate.

26. Mr. Drucker is a highly trained, experienced, credentialed automotive mechanic who has some familiarity with auto body repair. Mr. Drucker contacted State Farm; he obtained State Farm's photographs of the damage to the 2002 Nissan; he obtained a copy of State Farm's repair estimate; he obtained a copy of Repair Order 09308 (to which JM had affixed several comments and had forged Ms. Howell's initials in at least one place); he requested Program Representative Philip Baker, a Bureau employee who was more familiar than Mr. Drucker with accepted trade standards in the area of auto body repair, to assist in his inspection of the Nissan.

27. On June 2, 2011, Mr. Drucker and Mr. Baker inspected the Nissan. Mr. Drucker and Mr. Baker used the State Farm repair invoice to guide them in that inspection. They found parts were not provided and labor had not been performed as follows: frame repair; roping the rear window before painting to prevent overspray; replacing the right and left rear luggage hinges; refinishing the underside of the luggage lid; replacing the rear luggage lid; refinishing the rear floor pan; and replacing the upper trim panel insert. The cost

of the parts and services that were not provided in accordance with the State Farm repair estimate totaled \$1,190.

They took photographs that depicted improper repair work including wide gaps between the rear body panel and inner wheel house; rusted welds in the right corner quarter panel; an improper fit of the left quarter panel; an improper fit of the left taillight assembly; a hole in the left rear quarter panel; hammer marks and torn metal on the underside of the luggage lid; a missing center attachment for the spoiler; misrouted electrical wiring in the taillight assembly; a cut in the rear body panel to allow the luggage lid to close; damage over the right rear trunk floor panel; and a missing right rear mudguard. While Mr. Baker did not testify about accepted trade standards, the conditions depicted in the photographs (such as rusted welds, improper fits, hammer marks, torn metal, missing attachments, and missing mudguards) demonstrated auto body repair work that clearly did not meet accepted trade standards.

28. The departure from accepted trade standards for good and workmanlike repair of the Nissan included substandard installation of the rear quarter panels, the rear body panel, the rear bumper, the spoiler, and the rear taillight assembly. This substandard work should have been evident to any lay person and certainly to Ms. Howell in the exercise of reasonable care.

Factual Conclusions – The Repair of the 2002 Nissan Altima

29. First Cause for Discipline: On April 6, 2011, Ms. Howell made statements to JM that she knew, or in the exercise of reasonable care should have known, were misleading and untrue. She told JM that the Nissan had been repaired and that JM could take delivery of it. In making these statements, Ms. Howell implied that the Nissan was repaired in a manner consistent with the repair work detailed in the State Farm invoice when that was not the case. Many damaged parts that should have been replaced were simply repaired, and much of the repair work identified in the State Farm repair invoice was not performed.

30. Second Cause for Discipline: Ms. Howell engaged in conduct that constituted fraud. Skeeter's Auto had a duty to repair the Nissan in accordance with the State Farm repair invoice and to provide invoices and other documents detailing the repairs performed. Ms. Howell accepted JM's check in the amount of \$4,513.00 in connection with this agreement. Ms. Howell returned the Nissan on April 6, 2011, impliedly representing that it was repaired as agreed. That representation was untrue, and JM relied on it to her prejudice. Ms. Howell's conduct constituted constructive fraud, whether or not she had an actual intent to defraud.

31. Third Cause for Discipline: Skeeter's Auto wilfully departed from accepted trade standards for good and workmanlike repair of the Nissan in a material respect by providing substandard installation of both rear quarter panels, the rear body panel, the rear bumper, the spoiler, and the rear taillight assembly.

32. Fourth Cause for Discipline: Between March 4, 2011, and April 6, 2011, Skeeter's Auto failed to provide JM with a repair estimate and repair order that met the requirements of the Automotive Repair Act. JM was not given documentation that described the parts to be provided and the work to be performed; an identification of new parts, used parts, rebuilt parts, or reconditioned parts; a subtotal for those parts; or what work was not performed in-house. In addition, respondent failed to provide JM with invoices for the rear quarter panels, the luggage lid, the luggage lid hinges, the luggage lid adhesive name latches, the rear body panel, or the upper rear body trim panel insert as required under the Automotive Repair Act.

The Repair of the 2001 Toyota Corolla

33. As a result of the investigation, Mr. Drucker initiated an undercover operation to determine whether Skeeter's Auto was engaging in other misconduct. He requested the Bureau's vehicle documentation lab prepare a vehicle with known defects to conduct that undercover operation.

34. Michelle Oberg is a highly trained, experienced, credentialed automotive mechanic. She is employed in the Bureau's vehicle documentation lab in Anaheim. Between September 9 and November 1, 2011, Ms. Oberg carefully inspected a 2001 Toyota Corolla belonging to the Bureau. She made certain that all the vehicle's systems were in good working order and met factory specifications. Among other matters, she determined that the fuel injectors were clean and did not need service. She determined the left and right front brake rotors were "smooth" and met minimum factory specifications. She deployed tamper indicators that would enable her to determine whether another person inspected or made repairs to any part of any system after her documentation. She took photographs to confirm the presence of the tamper indicators.

Before November 1, 2011, Ms. Oberg induced certain conditions and defects that justified service and repair of the 2001 Toyota Corolla. She removed two and one-half quarts of existing (clean) motor oil from the engine and replaced it with two and one-half quarts of dirty engine oil. Because of this, an oil and air filter change was justified. She installed tamper indicators on each spark plug that would enable her to determine whether the spark plugs had been inspected. She machined four front brake pads so that replacement of the front brake pads was an acceptable service. In her opinion, the front brake rotors were smooth and did not need to be machined. Ms. Oberg road tested the 2001 Toyota. During road testing, she observed nothing that suggested the vehicle was not running properly.

Ms. Oberg took several weeks to document the 2001 Toyota and to induce the conditions and defects that justified service and repair. On November 7, 2011, when her documentation was complete, Ms. Oberg transported the Toyota to Mr. Drucker in Santa Ana. The odometer reading at that time was 72,747 miles.

35. On November 7, 2011, Mr. Drucker delivered custody of the specially prepared Toyota to KS, an undercover operative, and directed KS to drive the vehicle to Skeeter's Auto and request an engine oil and filter change and a brake inspection.

KS drove to Skeeter's Auto, where Ms. Howell greeted KS at around 9:45 a.m. KS, who was using the alias Sandy Collins, asked Ms. Howell to provide an oil and filter change. KS forgot to ask about a brake inspection. Ms. Howell said she would have the technician check the oil, check the vehicle over, and check the brakes.

Ms. Howell provided KS with a repair order that had the words "oil change" written on it, with the additional notations "✓ over" and "✓ brakes." There was an estimate for the oil change, but no estimates were set forth for the other services because they were going to be provided for free. The original invoice did not set forth the kind of oil that was going to be used if an oil change was performed.

KS gave Ms. Howell her telephone number. Ms. Howell offered to drive KS home. KS declined, and said she would remain in the area. Ms. Howell said she would call KS when she had further information. KS left Skeeter's Auto and met with Mr. Drucker.

36. Ms. Howell testified she drove the Toyota from the front of Skeeter's Auto to a service bay at the rear of the building, a distance of several blocks. She claimed she noticed the engine was not "peppy" that "There was not much 'oomph.'" She provided the technician, Lauro, with a copy of the repair invoice and told him of her experience when driving the Toyota. She asked the technician to contact her and let her know what service was recommended after he conducted the inspections. She went back to the office.

Ms. Howell said the technician contacted her a few minutes later. He told her that there was no need for an oil change, that there was an oil change sticker on the window that indicated the oil was recently changed, that the brake pads needed to be serviced, that the spark plugs were clean, but the fuel injectors needed cleaning.

37. The technician who inspected and serviced the 2001 Toyota did not testify in this matter, although Ms. Howell knew his identity and whereabouts. Ms. Howell's testimony about what she was told by the technician was hearsay. The technician's reasons for cleaning the fuel injectors is unknown. It was established that the technician did not remove and inspect any spark plug because the spark plug tamper indicators were intact when the Toyota was returned to Ms. Oberg after the undercover operation. There was no oil change sticker on the 2001 Toyota's window before or after the 2001 Toyota Corolla was sent on the undercover run.

38. Ms. Howell telephoned KS at approximately 10:00 a.m. Ms. Howell told KS that the engine oil looked clean and did not need to be changed; the oil filter did not need to be replaced; and the brake pads needed to be replaced and the rotors needed to be resurfaced. Ms. Howell also told KS that the Corolla needed a fuel injection cleaning and that having the fuel injectors cleaned would result in the Corolla getting better gas mileage. KS asked how

much the recommended service and repair would cost. Ms. Howell said the labor would be \$267; the parts would be \$124; and the total cost, including tax, would be \$402.61. KS authorized the recommended service and repairs.

At approximately 12:25 p.m., Ms. Howell telephoned KS and told her she could pick up her Toyota.

At approximately 1:15 p.m., KS returned to Skeeter's Auto. Ms. Howell greeted KS and asked her to initial the repair order in two places. KS did so. Ms. Howell presented KS with a bill for \$402.61, but Ms. Howell said she would settle for payment of \$400. KS paid Ms. Howell \$400 in cash.

KS asked why the rotors needed to be resurfaced. Ms. Howell said the rotors had been machined 1/8" to make them smooth. KS asked why the fuel injectors needed cleaning. Ms. Howell told her that the Toyota would "be peppier and get better gas mileage." KS left Skeeter's Auto and drove to Halladay Street and Central Avenue in Santa Ana, where she returned the Toyota to Mr. Drucker. KS provided Mr. Drucker with the documentation Ms. Howell gave her.³⁹ On October 7, 2011, Mr. Drucker returned custody of the specially prepared Toyota to Ms. Oberg at Halladay Street and Central Avenue in Santa Ana. The odometer reading at that time was 72,752. Ms. Oberg transported the Toyota back to the Anaheim documentation lab on a truck.

39. On October 8, 2011, Ms. Oberg began another inspection of the Toyota. She found a broken tamper indicator on the engine oil dipstick, indicating an inspection of the engine oil. She found broken tamper indicators on the front brakes, reflecting a brake inspection. She inspected the front brake system and determined new brake pads had been installed and the rotors were machined. She found that tamper indicators on the fuel lines and fuel cap were broken, a finding that was consistent with the fuel injectors having been cleaned. However, the tamper indicators for the spark plugs had not been removed, which established they had not been inspected; inspection of the spark plugs is, according to Ms. Oberg, a customary diagnostic procedure that should be performed before cleaning the fuel injectors because that diagnostic procedure is less expensive than cleaning fuel injectors and can rule out the need to clean the fuel injectors.

40. Ms. Oberg testified that it is not uncommon in the auto repair industry to machine front brake rotors when replacing front brake pads, even when the rotors are already smooth. About half of the licensed automotive repair dealers will do so because machining the rotors may be necessary to maintain the warranty for replacement brake pads.

Ms. Oberg testified that there was absolutely no need to clean the fuel injectors, that doing so was unnecessary, and that there was no evidence the spark plugs were removed for inspection before the fuel injectors were cleaned.

41. Ms. Howell, who is not an automotive expert, said she told KS that the Toyota needed to have the fuel injectors cleaned based upon what the technician told her. Ms.

Howell did not subpoena the technician, Lauro, to testify, even though she knew his identity and whereabouts. Ms. Howell personally lacked the expertise to determine whether the fuel injectors needed cleaning, and her conclusion that might be the case based on her having driven the Toyota for a distance of three or four blocks does not support providing that unnecessary service.

42. Richard Moser, an expert in the field of automotive design, testified on behalf of respondent. Mr. Moser has known Ms. Howell for many years. Mr. Moser agreed to provide Ms. Howell with expert testimony at no cost before he knew what Skeeter's Auto was charged with. Mr. Moser began his review the weekend before the hearing.

43. Mr. Moser's expert testimony established that many brake pad manufacturers do not guarantee their product unless the corresponding rotor is "turned," the industry expression for being machined. No other part of Mr. Moser's testimony was persuasive on any other issue. His testimony that the fuel injectors may have needed cleaning due to the possibility of some kind of contamination in the gasoline was sheer speculation.

Factual Conclusions

44. Fifth Cause for Discipline: On November 7, 2011, Ms. Howell made statements to KS that were misleading and untrue by representing that the Toyota's fuel injectors needed cleaning. The fuel injectors did not need cleaning. An appropriate diagnostic inspection would have disclosed that. The spark plugs were never inspected, as Ms. Howell asserted the technician represented. A preponderance of the evidence does not support a finding of any misrepresentation related to the machining of the front brake rotors.

45. Sixth Cause for Discipline: Skeeter's Auto engaged in conduct that constituted actual fraud. According to Ms. Howell, a technician told her that he had inspected the Toyota's spark plugs when the evidence established that he had not done so; that mechanic also told Ms. Howell that the Toyota's fuel injectors needed cleaning when that was not the case. A good faith error was not established. Ms. Howell told KS that the fuel injectors needed to be cleaned; by means of this misrepresentation, Skeeter's Auto gained advantage over KS, who accepted the recommendation and authorized the recommended repair.

46. Seventh Cause for Discipline: A preponderance of the evidence did not establish that Ms. Howell's representation to KS that her car would have better gas mileage after the fuel injectors were cleaned was untruthful. No testing was performed to establish this allegation.

47. Eight Cause for Discipline: On the work order that Ms. Howell gave to KS before KS left Skeeter's Auto, the inspections preceded by a checkmark did not require an estimated price because they were being performed for free. The failure to set forth the Toyota's odometer reading, the disposal charge for the oil change, the brand of oil that was

going to use for the proposed oil change, and other allegations in that regard constituted *de minimis* violations of the Automotive Repair Act under the circumstances.

Respondent's Testimony

48. Respondent testified Skeeter's Auto provides licensed automotive repair dealer services to about 20 customers a week.

49. When asked what changes she has made in her business practices since the accusation was filed, Ms. Howell said she no longer does business with problem customers. She said she should have washed her hands of JM immediately when JM began complaining. She said she should have required Mr. Shane and L. A. Auto to provide her with invoices that described the auto body repair work they performed. She said she should have been more thorough in writing up the estimate related to the oil change for the Toyota. She admitted Mr. Drucker gave her a Bureau pamphlet entitled "Write It Right" before the undercover operation, and that the pamphlet discussed how different kinds of paperwork should be completed. Ms. Howell expressed no remorse.

50. Ms. Howell said she taught English to Japanese students six hours each Sunday.

51. Ms. Howell wanted the administrative law judge to know that she has signs at Skeeter's Auto that state:

I slept and dreamt that life was joy.

I awoke and saw that life was joy.

I acted and behold, service was joy.

- Rabindranath Tagore

and

If you are unhappy with the service tell me.

If you are Happy with the service, tell Everybody.

52. The Bureau has not issued prior warnings, adverse inspection reports, or notices of violation to Skeeter's Auto. Ms. Howell has not been directed to appear for an office conference with Bureau representatives. Skeeter's Auto has no formal record of incompetence. The Bureau has not cited Skeeter's Auto, and there is no other history of formal discipline. No evidence established that Skeeter's Auto abused a mechanic's lien or intimidated a consumer. A final small claims court judgment in JM's favor was filed with the Superior Court a couple of days before the disciplinary hearing began. Ms. Howell said she was going to pay that judgment.

Disciplinary Guidelines

53. The Bureau's disciplinary guidelines provide in part:

To foster uniformity of penalties and to make sure our licensees and registrants understand the consequences of violations of the Automotive Repair Act . . . , the Bureau of Automotive Repair has established these guidelines. The guidelines provide a range of penalties for each section of law found to have been violated. The Bureau requests that Administrative Law Judges take into account the “Factors in Aggravation and in Mitigation” listed below, when deciding the severity of the penalty within the range.

[¶] . . . [¶]

1. FACTORS IN AGGRAVATION

[¶] . . . [¶]

1. Evidence that the unlawful act was part of a pattern of practice.

[¶] . . . [¶]

- r. Any other conduct which constitutes fraud or gross negligence.

2. FACTORS IN MITIGATION

- a. Evidence that respondent accepted BAR’s suggested resolution to consumer complaint.

- b. Evidence of voluntary participation in retraining for self or employees.

- c. Evidence of voluntary purchase of proper diagnostic equipment and manuals.

- d. Evidence of temporary medical condition that prevented respondent from exercising supervision and control over employees or others, which led to wrongdoing.

- e. No loss to consumer and no damage to consumer’s property

- f. Evidence that shop has taken specific steps for retraining and has initiated steps to minimize recurrence.
- g. Evidence of resolution of all consumer complaints with a subsequent change in business practice.
- h. Evidence of internal control or audit designed to eliminate errors.

The absence of any new allegations or amendments to the accusation as originally filed, during the period between the filing of the accusation and the date the matter comes to hearing, in itself, shall not be regarded as evidence of mitigation.

54. The recommended range of discipline for fraud is as follows:

Conduct Constituting Fraud: Minimum:
Revocation, stayed, 30 day suspension, 5 year
probation; Maximum: Revocation.

Disciplinary Recommendations

55. Complainant argued that protection of the public is the Bureau's highest priority; that a preponderance of the evidence established respondent's fraud and other wrongdoing in connection with the repair of the 2002 Nissan Altima; that a preponderance of the evidence established respondent's fraud and other wrongdoing in connection with the servicing of the 2001 Toyota Corolla; that a pattern of misconduct was established; and that respondent did not provide compelling evidence of rehabilitation. Complainant recommended that a minimum level of discipline be imposed including a revocation, stayed, with a 30-day actual suspension and a five year period of probation. Complainant requested that respondent be directed to pay the Bureau \$56,000 in costs.

56. Respondent argued that a finding of fraud requires proof of intent to defraud, and that Ms. Howell's intent to defraud was not established. Respondent argued that Skeeter's Auto was always ready, willing, and able to provide further repairs to the 2002 Nissan Altima and that JM unfairly deprived respondent of the right to make such repairs by not returning the vehicle for further repairs. Respondent argued that the failure to provide proper documentation in the two transactions at issue, if any, involved minor and technical violations of law. Respondent claimed that Skeeter's Auto's payment of professional education for employees demonstrated rehabilitation. Respondent argued that if discipline were imposed, it should not exceed a 10-day actual suspension and two years' probation, and that an award of costs should be in a reasonable amount.

Evaluation of the Evidence

57. In connection with the repair of the 2002 Nissan, Ms. Howell made statements that she knew, or in the exercise of reasonable care should have known, were misleading and untrue. She implied that the 2002 Nissan had been repaired in a manner consistent with the repairs detailed in the State Farm invoice when that was not the case. Repair invoices were not provided as required by statute. Ms. Howell's conduct involved constructive fraud. Further, some repairs to the 2002 Nissan did not meet accepted trade standards for good and workmanlike repair. Finally, the repair estimate and repair order related to the 2002 Nissan violated requirements contained in the Automotive Repair Act.

In connection with the 2001 Toyota, Skeeter's Auto made misleading and untrue statements by representing that the fuel injectors needed cleaning. The technician reported he inspected the spark plugs when that was not the case and said the fuel injectors needed cleaning. A proper inspection would have disclosed that the fuel injectors did not need to be cleaned as Ms. Howell recommended. The representations involved actual fraud. The record-keeping violations were de minimis.

Ms. Howell demonstrated no remorse, and blamed her subcontractors and customer for the situation involving the 2002 Nissan. Ms. Howell's testimony in explanation, mitigation and rehabilitation was not persuasive.

While it could be argued that the only measure of discipline that will ensure public protection is the outright revocation of Skeeter's Auto's automotive repair dealer registration, imposing a lesser measure of discipline that is consistent with complainant's recommendation squarely falls within the Bureau's disciplinary guidelines. Conditions of probation will include requirements that Skeeter's Auto obey all laws, post signs during the period of suspension, file quarterly reports, provide BAR representatives with unrestricted access to records and vehicles, and pay costs.

Costs of Investigation and Prosecution

58. The Bureau produced a declaration signed by William D. Thomas, dated November 20, 2013, to which there was a one page attachment that stated 255 hours of services were provided by program representatives. Investigative costs of \$18,852.37 were claimed for those services. The attachment did not set forth the general tasks performed, the dates the tasks were performed, or the time spent on each task. Some of the missing information was established through the testimony of the program representatives in this proceeding, but their testimony did not support a total of 255 hours of investigative services.

Complainant produced a declaration signed by Jon Bilotta, dated November 21, 2013, to which there was a one page attachment that related to forensic documentation. The attachment totaled \$14,091.40, representing 197 hours of program representative services. The attachment did not set forth the general tasks performed, the dates the tasks were

performed, or the time spent on each task, but Ms. Oberg's testimony supported the amount of costs claimed.

Complainant established \$20,000 in reasonable investigation costs.

59. A certification of costs was signed by the deputy attorney general who prosecuted this disciplinary action. A schedule was attached to his declaration that described the legal services provided, the dates legal services were performed, who provided the services, the amount of work that was performed on specific dates, and the professionals' hourly rates. The declaration and schedule met the requirements of California Code of Regulations, title 1, section 1042. Prosecution costs in the amount of \$23,800.00 were established.

60. Following several continuances, the case took two days to try. The hearing involved several complicated factual and legal issues. Counsel for complainant was well prepared and professional. Complainant established \$20,000 in reasonable prosecution costs.

61. Consistent with the *Zuckerman* criteria¹, it is found: (1) Skeeter's Auto used the hearing process to obtain a dismissal or a reduction in the severity of the proposed discipline; (2) Skeeter's Auto had a subjective good faith belief in the merits of its position related to the machining of the brakes and some documentation violations, although its good faith was not as evident with respect to the repair of the 2002 Nissan and the cleaning of the 2001 Toyota's fuel injectors; (3) Skeeter's Auto raised a "colorable challenge" to the imposition of an outright revocation; and (4) Skeeter's Auto offered no evidence relating to its inability to make payments related to cost recovery.

62. The Bureau's reasonable costs of investigation and enforcement total \$35,000.00.

LEGAL CONCLUSIONS

Purpose of Administrative Disciplinary Proceedings

1. Administrative proceedings to revoke, suspend, or impose discipline on a licensee are noncriminal and nonpenal; they are not intended to punish the licensee, but to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

2. Business and Professions Code section 9880.3 provides that protection of the public is the highest priority for the Bureau of Automotive Repair in exercising its licensing, regulatory, and disciplinary functions, and that whenever the protection of the public is

¹ *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 and its application in this proceeding is discussed at Legal Conclusion 21.

inconsistent with other interests sought to be promoted, protection of the public is paramount.

Burden and Standard of Proof

3. In administrative disciplinary proceedings, the burden of proving the charges rests upon the party making the charges. The obligation of a party to sustain the burden of proof requires the production of evidence. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 175.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

4. Courts draw a distinction between professional licenses (such as those held by doctors, lawyers, and real estate brokers) and nonprofessional or occupational licenses (such as those held by food processors and vehicle salespersons). In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies, while in proceedings to revoke nonprofessional or occupational licenses, the preponderance of the evidence standard applies. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.)

5. The preponderance of the evidence standard applies in this disciplinary proceeding.

6. An individual does not need to demonstrate education, training or experience to hold an automotive repair dealer registration. An individual seeking registration simply must complete a form and pay a fee (Bus. & Prof. Code, § 9984), after which the director must issue the registration. (Bus. & Prof. Code, § 9984.2)

Disciplinary Statutes

7. Business and Professions Code section 9884.7 provides in part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may . . . suspend, revoke, or place on probation 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.

[¶] . . . [¶]

(4) Any other conduct that constitutes fraud.

[¶] . . . [¶]

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

(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.

(8) Making false promises of a character likely to . . . induce a customer to authorize the repair, service or maintenance of automobiles.

8. Business and Professions Code section 9884.8 provides:

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

9. Business and Professions Code section 9884.9 provides in 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.

(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.

(b) The automotive repair dealer shall include with the written estimated price a statement of any automotive repair service that, if required to be done, will be done by someone other than the dealer or his or her employees. No service shall be done by other than the dealer or his or her employees without the consent of the customer, unless the customer cannot reasonably be notified. The

dealer shall be responsible, in any case, for any service in the same manner as if the dealer or his or her employees had done the service.

(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto body or collision repairs, shall provide an itemized written estimate for all parts and labor to the customer. The estimate shall describe labor and parts separately and shall identify each part, indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part shall be identified on the written estimate and the written estimate shall indicate whether the crash part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer aftermarket crash part

10. Business and Professions Code section 9884.11 provides:

Each automotive repair dealer shall maintain any records that are required by regulations adopted to carry out this chapter. Those records shall be open for reasonable inspection by the chief or other law enforcement officials. All of those records shall be maintained for at least three years.

Regulatory Authority

11. California Code of Regulations, title 16, section 3356, subdivision (a)(1) provides:

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

(1) The invoice shall show the automotive repair dealer's registration number and the corresponding business name and address as shown in the Bureau's records. If the automotive repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b) of Section 3371 of this chapter.

The Meaning of "Fraud"

12. Business and Professions Code section 9884.7 authorizes the imposition of administrative discipline upon an automotive repair dealer registration for "Any other conduct that constitutes fraud." (Bus. & Prof. Code § 9884.7, subd. (a)(4).)

Respondent argues that "fraud" requires a showing of fraudulent intent in this matter. It is concluded that such a showing is not required.

The task when interpreting statutes is to ascertain and effectuate the legislative intent. Because statutory language generally provides the most reliable indicator of legislative intent, the words themselves must be examined, giving them their usual and ordinary meanings and construing them in context. If the statutory language contains no ambiguity, courts presume the Legislature meant what it said, and the plain meaning of the statute governs. To the extent the examination of the statutory language leaves uncertainty, it is appropriate to consider the consequences that will flow from a particular interpretation. Where more than one statutory construction is possible, the policy has long been to favor the construction that leads to the more reasonable result. This policy derives largely from the presumption that the Legislature intends reasonable results consistent with the statute's apparent purpose. Thus, the task is to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statute's general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results. (*Witt Home Ranch, Inc. v. County of Sonoma* (2008) 165 Cal.App.4th 543, 555-556.)

Civil Code section 1571 states: "Fraud is either actual or constructive."

Actual fraud is defined in Civil Code section 1572 to include "an intent to deceive another party . . ."

Constructive fraud is defined in Civil Code section 1573 to include "any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault . . . by misleading another to his prejudice . . ."

A fraudulent business practice under consumer protection laws is distinct from common law fraud. None of these elements is required under consumer protection laws. This distinction reflects a focus on a wrongdoer's conduct, rather than the consumer's damage, in service of the larger purpose of protecting the general public from unscrupulous business practices. (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 252-253.)

The Automotive Repair Act does not limit the term "fraud" to actual fraud, and the limitation of that term, as suggested by respondent, would defeat the legislative purpose of the Act, which is to protect consumers.

Fraud Was Established

13. Skeeter's Auto had the statutory duty to provide documentation to JM that described the service that was performed and the parts that were supplied; to provide documentation that clearly stated whether used, rebuilt, or reconditioned parts were supplied; and to advise JM of the repair work that was done by someone other than Skeeter's Auto, even though Skeeter's Auto was responsible for a subcontractors services in the same manner as if Skeeter's Auto had done the service itself.

Skeeter's Auto breached its statutory duty of disclosure by failing to provide JM with appropriate documentation and by implying that repair work had been performed as agreed. In making these representations and by failing to provide JM with appropriate documentation, Skeeter's Auto gained an advantage over JM and misled her. Skeeter's Auto engaged in constructive fraud.

14. In the servicing of the 2001 Toyota, there was actual fraud. A Skeeter's Auto technician reported that he had checked the spark plugs when that was not the case, and he represented the fuel injectors needed cleaning when that was not the case. He did so to justify an unnecessary service. Ms. Howell repeated this untruth to obtain KS's consent to have the fuel injectors cleaned. Skeeter's Auto did not establish that the technician made a bona fide error in making these misrepresentations, and by statute, Skeeter's Auto is responsible for the technician's fraudulent conduct.

Skeeter's Auto's Responsibility for Employee and Subcontractor Conduct

15. The owner of a license is obligated to see that the license is not used in violation of the law. If a licensee elects to operate through employees, he or she is responsible to the licensing authority for their conduct in the exercise of his license and he is responsible for the acts of the agents or employees. A licensee may not insulate himself or herself from regulation by electing to function through employees or independent contractors. (*Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797.)

Cause Exists to Impose Discipline on Respondent's Registration

16. First, Second, Third and Fourth Causes for Discipline (2002 Nissan): Cause exists to impose discipline upon respondent's registration under Business and Professions Code section 9884.7, subdivisions (a)(1), (a)(4), (a)(6), and (a)(7). A preponderance of the evidence established the following: respondent was responsible for the repair of JM's 2002 Nissan in accordance with the State Farm Insurance repair estimate; respondent did not provide JM with a written estimate before repairs began; respondent did not provide all auto body repairs; respondent represented to JM that all required repairs, as agreed and as set forth in the State Farm Insurance repair estimate had been performed; some of the repairs that were provided did not meet accepted trade standards for good and workmanlike repair in a material respect; not all required auto body repairs were performed and not all the required

parts were provided; the documents provided to JM did not describe all service work done and parts supplied, state whether used, rebuilt, or reconditioned parts were supplied, or advise JM of the repair work done by someone other than respondent.

17. Fifth, Sixth, Seventh and Eighth Causes for Discipline (2001 Toyota): Cause exists to impose discipline upon respondent's registration under Business and Professions Code section 9884.7, subdivisions (a)(1), (a)(4), (a)(6), and (a)(7). A preponderance of the evidence established the following: Respondent agreed to provide service for a specially prepared 2001 Toyota; respondent's technician said he checked the spark plugs, when that was not the case; respondent's technician said the fuel injectors needed cleaning, when that was not the case; the technician engaged in actual fraud; Ms. Howell told the undercover operative that the fuel injectors needed to be cleaned, when that was not the case; the undercover operative authorized the unnecessary fuel injector service based upon Ms. Howell's representation.

The Measure of Discipline

18. The appropriate discipline is a stayed revocation with five years' probation on appropriate terms and conditions.

Costs of Investigation and Enforcement

19. Business and Professions Code section 125.3 provides in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a)

20. California Administrative Code, title 1, section 1042, provides in part:

(b) Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

[¶] . . . [¶]

(4) The ALJ may permit a party to present testimony relevant to the amount and reasonableness of costs.

(c) The proposed decision shall include a factual finding and legal conclusion on the request for costs and shall state the reasons for denying a request or awarding less than the amount requested. Any award of costs shall be specified in the order.

21. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that the imposition of costs for investigation and enforcement of a regulation that is almost identical to Business and Professions Code section 125.3 did not violate due process, but it was incumbent upon the State Board of Chiropractic Examiners to exercise its discretion to reduce or eliminate cost awards in a manner that ensured that the application of the regulation did not “deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.”

The Supreme Court set forth four factors that the licensing agency was required to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of the charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a “subjective” good faith belief in the

merits of his position; (3) whether the licensee raised a “colorable challenge” to the proposed discipline; and (4) whether the licensee had the financial ability to make payments.

22. The *Zuckerman* criteria were applied in this proceeding (Factual Finding 65.) Directing Skeeter’s Auto to pay \$35,000.00 to the Board for investigation and enforcement costs is justified under the circumstances.

ORDER

Automotive Repair Dealer Registration No. ARD No. 192102 issued to respondent Brenda Kaycee Howell, is revoked; however, the order of revocation is stayed, and respondent’s registration is placed on five (5) years’ probation subject to the following terms and conditions.

1. **Period of Probation:** Probation shall be imposed upon respondent’s automotive repair dealer license for a period of five (5) years beginning from the effective date of this Decision. The following terms and conditions of probation shall apply for the entire period of probation unless otherwise specified.

2. **30-Day Actual Suspension:** Respondent’s automotive repair dealer registration shall be suspended for a period of 30 days. During the period of suspension, respondent’s automotive repair facility shall be closed and respondent shall not engage in any kind of activity that requires an automotive repair dealer registration and shall not solicit any business that requires an automotive repair dealer registration. The Bureau shall determine the date the suspension begins and ends, provided the suspension commences after the Decision has become effective and occurs within the first 90 days of probation.

3. **Posting of Notice of Suspension:** During the period of suspension, respondent shall post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers, and the sign shall remain posted during the entire period of suspension.

4. **Obey All Laws:** During the period of probation, respondent shall obey all federal and state laws and shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

5. **Quarterly Reporting to the Bureau:** Respondent or respondent’s authorized representative shall report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, regarding the methods used and success achieved in maintaining compliance with the terms and conditions of probation. The quarterly reports shall be signed under penalty of perjury.

6. **Report of Financial Interest:** Within 30 days of the effective date of this action, respondent shall report any financial interest which she has in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

7. **Unrestricted Access to Vehicles and Records:** Respondent shall provide Bureau representatives with unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion, and all business records maintained by respondent related to licensed activities and the ownership of the licensed facility.

8. **Direct Supervision – Notification of Subcontracting:** Respondent shall not delegate her supervisory duties to another person during the period of probation as those duties relate to the business activities of Skeeter's Auto. Any person employed to carry out licensed activities shall be directly supervised by respondent. In the event respondent subcontracts some repair services, she shall obtain written authorization from the customer for that subcontracted repair work, and the authorization shall include the nature and extent of the subcontracted repair work and the name and the address of the subcontractor providing those services. In the event a bona fide medical condition arises during the period of probation that temporarily prevents respondent from providing direct supervision, written notice of that medical condition and written substantiation of it shall be provided to the Bureau within 10 days of the inception of that temporary medical condition.

9. **Maintain a Valid License:** During the period of probation, respondent shall maintain a valid, current and active registration with the Bureau, including any period in which suspension or probation is tolled. Should respondent's registration expire during probation, the registration shall be renewed and shall be subject to all terms and conditions of probation that have not been satisfied. The failure to maintain a valid, current and active registration constitutes a violation of probation.

10. **Payment of Investigation and Enforcement Costs:** Respondent shall pay to the Bureau \$35,000.00 for its investigation and enforcement costs in Case No. 77/12-1. Respondent shall be permitted to make payments on an installment basis for the entire period of probation. Monthly payments shall be in the amount of \$585.00 or more per month. Respondent shall make monthly payments by check or money order payable to the Bureau of Automotive Repair. Each check or money order shall indicate that payment is being made for cost recovery in Case No. 77/12-1. Payments shall continue to be made on a monthly basis even though probation is otherwise tolled. Failure to make a monthly payment as directed in this order constitutes a violation of probation. The Bureau reserves the right to pursue any other lawful means of collection of unpaid costs of investigation and enforcement in addition to taking action based on a violation of probation.

11. **Violation of Probation:** Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, seek to temporarily or permanently invalidate respondent's registration based upon a violation of probation. The

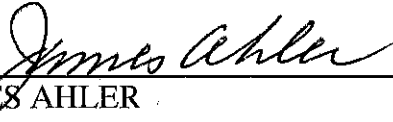
filing of action related to respondent's alleged violation of probation shall not preclude the Bureau from seeking an interim suspension order or any other legal remedy authorized by law.

12. **Tolling of Probation:** If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision becomes final.

13. **License Surrender:** Following the effective date of the Decision, if respondent ceases to engage in licensed activities or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request that the stay of the revocation be vacated. The request shall be made in writing and shall be directed to the Director of the Department of Consumer Affairs and the Chief of the Bureau of Automotive Repair, who shall evaluate respondent's request and exercise discretion to grant that request or take other action as is determined necessary. Within 30 days of formal the acceptance of the request, respondent shall deliver to the Bureau or its designees all registrations, licenses, or certifications issued by the Bureau. Thereafter, respondent shall not engage in any activities that require an automotive dealer registration for the period probation was scheduled to be in effect. Respondent shall not be permitted to reinstate the registration that was voluntarily surrendered, and she shall not be permitted to seek the issuance of a new registration until the period of probation imposed herein would have run. As a condition precedent to the issuance of any new registration, respondent shall pay any costs of investigation and enforcement that have not yet been paid.

14. **Completion of Probation:** Upon respondent's successful completion of probation, she shall be entitled to the issuance of an unrestricted automotive repair dealer registration.

DATED: August 7, 2014



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
4 State Bar No. 267200
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2634
7 Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

JUL 30 2012

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

12 In the Matter of the Accusation Against:
13 **SKEETERS AUTO;**
14 **BRENDA KAYCEE HOWELL,**
15 **AKA BRENDA KAY NIMOTA, OWNER**
16 **1943 Deere Avenue**
17 **Santa Ana, CA 92705-5715**
18 **Automotive Repair Dealer Registration No.**
ARD 192102

Respondent.

Case No. 77/12-1

ACCUSATION

19 Complainant alleges:

20 **PARTIES**

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

23 **Automotive Repair Dealer Registration**

24 2. On a date uncertain in 1996, the Bureau issued Automotive Repair Dealer
25 Registration Number ARD 192102 ("Registration") to Brenda Kaycee Howell, also known as
26 Brenda Kay Nimota, owner of Skeeters Auto ("Respondent"). The Registration was in full force
27 and effect at all times relevant to the charges brought herein and will expire on November 30,
28 2012, unless renewed.

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JURISDICTION

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3. This Accusation is brought before the Director for the Bureau under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 9884.13 of the "Code provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

6. Section 9884.20 of the Code states:

"All accusations against automotive repair dealers shall be filed within three years after the performance of the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action, the accusation may be filed within two years after the discovery, by the bureau, of the alleged facts constituting the fraud or misrepresentation."

STATUTORY PROVISIONS

7. Section 22 of the Code states:

"(a) 'Board' as used in any provisions of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

"(b) Whenever the regulatory program of a board that is subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a 'bureau.'"

1 8. Section 477 of the Code states:

2 As used in this division:

3 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
4 'examining committee,' 'program,' and 'agency.'

5 "(b) 'License' includes certificate, registration or other means to engage in a
6 business or profession regulated by this code."

7 9. Section 9884.7 of the Code states:

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

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

16 “(2) Causing or allowing a customer to sign any work order that does not state the repairs
17 requested by the customer or the automobile's odometer reading at the time of repair.

18 “... ”

19 “(4) Any other conduct that constitutes fraud.

20 “... ”

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

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

26 “(8) Making false promises of a character likely to influence, persuade, or induce a
27 customer to authorize the repair, service, or maintenance of automobiles.

28 “... ”

1 "(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
2 than one place of business in this state, the director pursuant to subdivision (a) shall only suspend,
3 revoke, or place on probation the registration of the specific place of business which has violated
4 any of the provisions of this chapter. This violation, or action by the director, shall not affect in
5 any manner the right of the automotive repair dealer to operate his or her other places of business.

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

10 10. Section 9884.8 of the Code states:

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

21 11. Section 9884.9 of the Code states:

22 "(a) The automotive repair dealer shall give to the customer a written estimated price for
23 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
24 before authorization to proceed is obtained from the customer. No charge shall be made for work
25 done or parts supplied in excess of the estimated price without the oral or written consent of the
26 customer that shall be obtained at some time after it is determined that the estimated price is
27 insufficient and before the work not estimated is done or the parts not estimated are supplied.
28 Written consent or authorization for an increase in the original estimated price may be provided

1 by electronic mail or facsimile transmission from the customer. The bureau may specify in
2 regulation the procedures to be followed by an automotive repair dealer if an authorization or
3 consent for an increase in the original estimated price is provided by electronic mail or facsimile
4 transmission. If that consent is oral, the dealer shall make a notation on the work order of the date,
5 time, name of person authorizing the additional repairs and telephone number called, if any,
6 together with a specification of the additional parts and labor and the total additional cost, and
7 shall do either of the following:

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

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

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

14 _____
15 "(signature or initials)"

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

18 "...

19 "(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto
20 body or collision repairs, shall provide an itemized written estimate for all parts and labor to the
21 customer. The estimate shall describe labor and parts separately and shall identify each part,
22 indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part
23 shall be identified on the written estimate and the written estimate shall indicate whether the crash
24 part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer
25 aftermarket crash part.

26 "..."

27 12. Section 9884.11 of the Code states that "[e]ach automotive repair dealer shall
28 maintain any records that are required by regulations adopted to carry out this chapter [the

1 Automotive Repair Act]. Those records shall be open for reasonable inspection by the chief or
2 other law enforcement officials. All of those records shall be maintained for at least three years."

3 13. Section 9889.9 of the Code states that "[w]hen any license has been revoked or
4 suspended following a hearing under the provisions of [Article 7 of the Automotive Repair Act],
5 any additional license issued under Articles 5 and 6 . . . in the name of the licensee may be
6 likewise revoked or suspended by the director."

7 COSTS

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

12 CONSUMER COMPLAINT – 2002 NISSAN ALTIMA (MURRAY)

13 15. On or about February 18, 2011, Janet Murray ("Consumer") took her 2002 Nissan
14 Altima to Respondent's facility, Skeeter's Auto, to repair the damage to her car sustained in a
15 collision. When the Consumer left her car at Respondent's facility, the Consumer also asked to
16 have the engine oil and filter replaced and to replace the rear shock absorbers. Respondent had
17 the Consumer sign a document, but did not provide the Consumer with a copy of the signed
18 document. On or about March 1, 2011, the Consumer received from State Farm Insurance
19 Company a check for \$5,113.07 and a repair estimate, ID: 75-7170-86802. The Consumer got a
20 cashier's check from her credit union in the amount of \$4,513.00 made payable to Respondent.

21 16. On or about March 4, 2011, the Consumer gave Respondent this cashier's check.
22 Respondent told the Consumer she would repair the collision damage per the State Farm repair
23 estimate. The Consumer planned to pay Respondent the remaining \$600.00 when the repairs
24 were completed.

25 17. In late March 2011, when the Consumer spoke with Respondent about the status of
26 the repairs, Respondent told her they were not yet completed. On or about March 31, 2011, the
27 Consumer returned to Respondent's facility and demanded that Respondent return the car to her.
28

1 The Consumer saw that the trunk lid would not close properly. Respondent told the Consumer
2 she would have a separate auto body shop repair the trunk lid.

3 18. On or about April 6, 2011, Respondent informed the Consumer that the car was ready
4 to be picked up. The Consumer went to Respondent's facility and Respondent gave the
5 Consumer a repair order, number 09308. This repair order did not have a detailed description of
6 the repairs Respondent performed. After the Consumer got her car from Respondent's facility,
7 she noticed the rear spoiler on the trunk lid was loose and the top rear taillight lenses were red
8 instead of yellow.

9 19. On or about April 11, 2011, the Consumer filed a complaint with the Bureau. On or
10 about June 2, 2011, Bureau representatives inspected and photographed the Consumer's car,
11 referencing State Farm's estimate and related documents from State Farm. The Consumer told
12 the Bureau representatives that the trunk lid was not water-tight, the trunk opened spontaneously
13 while driving on the freeway, the rear spoiler was loose, and the top rear taillight lenses were red
14 instead of yellow. The Bureau representatives' inspection revealed that the following parts were
15 not provided and labor not done by Respondent, totaling \$1,190.86 of the State Farm estimate:

- 16 a. The luggage lid was not replaced or the underside refinished;
- 17 b. Both luggage lid hinges were not replaced or refinished;
- 18 c. The upper rear body trim panel insert was not replaced;
- 19 d. The right rear frame rail was not repaired;
- 20 e. The rear window was not roped; and
- 21 f. The rear floor pan was not repair and refinished;

22 20. The representatives' inspection identified willful departure from accepted trade
23 standards for good and workmanlike repair for the installation of the following, totaling \$697.20
24 for labor:

- 25 a: Both rear quarter corner panels;
- 26 b: The rear body panel;
- 27 c: The rear bumper;
- 28 d: The spoiler; and

1 e: The left rear taillight assembly.

2 21. On or about July 8, 2011, the Bureau representatives spoke with Respondent. She
3 told them she sublet some of the repairs to an individual named Patrick Shane, and also an
4 automobile repair dealer called Lauto Body. Later, the representatives spoke with Patrick Shane
5 and employees at Lauto Body, and they learned that Respondent had instructed both Patrick
6 Shane and Lauto Body to do less work and fewer repairs on the Consumer's car than those called
7 for in the State Farm estimate.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Misleading Statements)**

10 22. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(1),
11 in that between February and April 2011, Respondent made statements which Respondent knew
12 or which by exercise of reasonable care should have known were untrue or misleading, by
13 representing to the Consumer that the Consumer's car had been repaired consistent with the repair
14 estimate. In fact, Respondent failed to repair the vehicle pursuant to the repair estimate, as more
15 particularly set forth in paragraph 19, subparagraphs a through f, above.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 23. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(4),
19 in that between February and April 2011, Respondent committed acts which constitute fraud by
20 accepting payment of \$4,513.00 from the Consumer for replacement of parts and the performance
21 of labor when, in fact, Respondent failed to perform repairs including labor in the amount of
22 \$1,190.86, as more particularly set forth in paragraph 19, subparagraphs a through f, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Departure from Accepted Trade Standards)**

25 24. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(7),
26 in that between February and April 2011, Respondent willfully departed from or disregarded
27 accepted trade standards for good and workmanlike repair in a material respect when Respondent
28 performed substandard installation of both rear quarter corner panels, rear body panel, rear

1 bumper, spoiler, and rear taillight assembly as more particularly described above in paragraph 20,
2 subparagraph a through e, totaling \$697.20 in labor.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 25. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
6 (a)(6), in that between February and April 2011, Respondent failed to comply with the Code
7 sections 9884.8 and 9884.9, subdivisions (a) and (c), in that Respondent's repair order 09308
8 includes the statements "oil change," "rear shocks," and "rear trunk lights-light Bumper Body
9 Work," but does not include a description of the parts to be provided or the work to be performed;
10 a separate itemization of all parts and labor; identification of each part indicating whether the
11 replacement part is new, used, rebuilt, or reconditioned; indication of whether the crash parts
12 were original equipment manufacturer crash parts or non-original equipment manufacturer
13 aftermarket crash parts; identification of the oil filter, synthetic blend oil, or rear shock absorbers
14 as new, used, rebuilt, or reconditioned; identification of parts supplied for the collision damage
15 repairs; and the subtotal prices for parts supplied.

16 26. Respondent failed to comply with Code section 9884.11 in that Respondent failed to
17 provide parts purchase invoices for the right and left rear quarter corner panels, the luggage lid,
18 both luggage lid hinges, luggage lid adhesive name plates, rear body panel, and the upper rear
19 body trim panel insert.

20 **UNDERCOVER OPERATION – NOVEMBER 7, 2011**

21 27. On or about November 7, 2011, a Bureau undercover operator drove a Bureau
22 documented 2001 Toyota Corolla to Respondent's facility for repairs. The only repairs necessary
23 were replacement of the front brake pads and an engine oil and filter change. The operator spoke
24 with Respondent and asked her to check the brakes and replace the engine oil and filter. The
25 operator left the car at Respondent's facility and left. Later, Respondent called the operator and
26 told her that the brake pads need to be replaced, the car needed a fuel injection cleaning, and that
27 the brake rotors needed to be resurfaced. Respondent told the operator the fuel injection cleaning
28 would give the car better gas mileage. Respondent told the operator these repairs would cost

1 \$267.00 for labor and \$124.00 for parts, for a total bill of \$402.61. The operator authorized the
2 repairs.

3 28. About two hours later, Respondent called the operator and told her the car was ready
4 to be picked up and the operator returned to Respondent's facility. After paying for the repairs,
5 the operator asked Respondent why the brake rotors needed to be resurfaced. Respondent replied
6 that they "machine 1/8th of an inch off of the rotor and make them smooth." She asked
7 Respondent why the car needed a fuel injection cleaning and Respondent answered it would "get
8 better gas mileage." The operator then drove the car out of Respondent's facility and gave
9 custody of it to a Bureau representative.

10 29. Afterwards, the Bureau reinspected the vehicle. That inspection revealed that the two
11 front brake rotors were machined unnecessarily and that the fuel injection cleaning was
12 unnecessary. These vehicle components were in good serviceable condition and not in need of
13 service or repair.

14 FIFTH CAUSE FOR DISCIPLINE

15 (Misleading Statements)

16 30. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
17 (a)(1), in that on November 7, 2011, Respondent made statements which Respondent knew or by
18 exercise of reasonable care should have known to be untrue or misleading, as follows:

19 a. Respondent told the operator that the brake rotors needed to be resurfaced. In fact,
20 the brake rotor repair was unnecessary because the rotors were in good serviceable condition and
21 not in need of service or repair; and

22 b. Respondent told the operator that the car needed a fuel injection cleaning. In fact, the
23 fuel injection cleaning was unnecessary because the fuel injection system was in good serviceable
24 condition and not in need of service or repair.

25 SIXTH CAUSE FOR DISCIPLINE

26 (Fraud)

27 31. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
28 (a)(4), in that on November 7, 2011, Respondent committed acts which constitute fraud by

1 accepting payment from the operator for repairs and/or services she performed needlessly. In
2 fact, the only repairs necessary were replacement of the front brake pads and an engine oil and
3 filter change.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(False Promise)**

6 32. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
7 (a)(8), in that on November 7, 2011, Respondent made a false promise of a character likely to
8 influence, persuade, or induce a customer to authorize the repair, service, or maintenance of an
9 automobile in that Respondent told the operator that the brake rotors needed to be resurfaced and
10 that Respondent would machine 1/8th of an inch off of the rotor and make them smooth, when in
11 fact, the brake rotor repair was unnecessary because the rotors were in good serviceable condition
12 and not in need of service or repair. Respondent also told the operator that the car needed a fuel
13 injection cleaning and that it would give the car better gas mileage, when in fact, the fuel injection
14 cleaning was unnecessary because the fuel injection system was in good serviceable condition
15 and not in need of service or repair.

16 **EIGHTH CAUSE FOR DISCIPLINE**

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

18 33. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
19 (a)(6), in that on November 7, 2011, Respondent failed to comply with Code sections 9884.7,
20 subdivision (a)(2), 9884.8, and 9884.9, subdivision (a), in that the estimate listed an "oil change,"
21 a check mark next to an illegible word, and a check mark next to the word, "brakes," but did not
22 include a description of a specific job to be performed; an estimate price for the \$2.00 disposal
23 fee charge; or the odometer reading.

24 34. Additionally, the invoice did not include Respondent's Environmental Protection
25 Agency number while charging a \$2.00 waste fee; the date, time, and repairs to be performed for
26 the additional authorization for the \$402.61 charge; a description of diagnostic and service work
27 performed for the brake work and fuel injection service; or a description of the parts supplied and
28 the price for each described part.

1 **OTHER MATTERS**


2 35. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily
3 or permanently or refuse to validate, the registrations for all places of business operated in this
4 state by Respondent upon a finding that Respondent has engaged in a course of repeated and
5 willful violations of the laws and regulations pertaining to an automotive repair dealer.

6 **PRAYER**

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

- 9 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
10 192102, issued to Brenda Kaycee Howell, also known as Brenda Kay Nimota, owner of Skeeters
11 Auto;
- 12 2. Ordering Brenda Kaycee Howell, also known as Brenda Kay Nimota, owner of
13 Skeeters Auto, to pay the Bureau of Automotive Repair the reasonable costs of the investigation
14 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: July 3, 2012

17 
18 JOHN WALLAUCH
19 Chief
20 Bureau of Automotive Repair
21 Department of Consumer Affairs
22 State of California
23 Complainant

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