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

In the Matter of the Accusation Against:
**OSCAR H. PACHECO, DBA XTREME
PAINTWORX**
7998 Miramar Rd. #B
San Diego, CA 92126
321 Worthington St.
Spring Valley, CA 91977
Automotive Repair Dealer Registration No.
ARD 278849
Respondent.

Case No. 77/18-1125
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 14, 2019, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, filed Accusation No. 77/18-1125 against Oscar H. Pacheco, dba Xtreme Paintworx (Respondent) before the Director of Consumer Affairs. (A copy of the Accusation is attached as Exhibit A.)

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1 2. On or about December 23, 2014, the Bureau issued Automotive Repair Dealer
2 Registration No. ARD 278849 to Respondent. The Automotive Repair Dealer Registration
3 expired on December 31, 2018, and has not been renewed.

4 3. On or about February 19, 2019, Respondent was served by Certified and First Class
5 Mail copies of the Accusation No. 77/18-1125, Statement to Respondent, Notice of Defense,
6 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
7 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
8 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
9 addresses of record were and are: 321 Worthington St., Spring Valley, CA 91977, and 7998
10 Miramar Rd. #B, San Diego, CA 92126.

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

13 5. Government Code section 11506(c) states, in pertinent part:

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

19 6. The Bureau takes official notice of its records and the fact that Respondent failed to
20 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
21 waived his right to a hearing on the merits of Accusation No. 77/18-1125.

22 7. California Government Code section 11520(a) states, in pertinent part:

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

27 8. Pursuant to its authority under Government Code section 11520, the Director after
28 having reviewed the proof of service dated February 19, 2019, signed by A. Patrick, finds
Respondent is in default. The Director will take action without further hearing and, based on
evidence provided by Complainant, finds that the charges and allegations against Respondent in

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1 Accusation No. 77/18-1125 are separately and severally found to be true and correct by a
2 preponderance of evidence.

3 **DETERMINATION OF ISSUES**

4 1. Based on the foregoing findings of fact, Respondent Oscar H. Pacheco, dba Xtreme
5 Paintworx has subjected his Automotive Repair Dealer Registration No. ARD 278849 to
6 discipline.

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

8 3. The Director of Consumer Affairs is authorized to revoke Respondent's Automotive
9 Repair Dealer Registration based upon the following violations alleged in the Accusation which
10 are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in
11 this case:

12 a. Respondent is subject to disciplinary action pursuant to Code section 9884.6
13 subsection (a) in that he failed to maintain a current registration.

14 b. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
15 subdivision (a)(4), in that Respondent committed acts constituting fraud by obtaining a payment
16 for repairs, but failing to make any repairs.

17 c. Respondent is subject to disciplinary action pursuant to Code sections 9884.7,
18 subdivision (a)(6), 9884.7 subdivision (a) and subdivision (c), and California Code of
19 Regulations, Title 16, section 3353, subsection (b) in that Respondent failed to prepare an
20 itemized estimate for an auto body repair.

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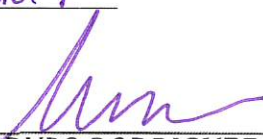
ORDER

IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 278849, issued to Respondent Oscar H. Pacheco, dba Xtreme Paintworx, is revoked.

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

This Decision shall become effective on June 7, 2019.

It is so ORDERED April 30, 2019



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Division of Legal Affairs
Department of Consumer Affairs

71787110.DOCX
SD2018702339

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(OSCAR H. PACHECO, DBA XTREME PAINTWORX)

1 XAVIER BECERRA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DIONNE MOCHON
Deputy Attorney General
4 State Bar No. 203092
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9012
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

13
14 In the Matter of the Accusation Against:

Case No. 77/18-1125

15 **OSCAR H. PACHECO, DBA XTREME**
16 **PAINTWORX**

ACCUSATION

17 **7998 Miramar Rd. #B**
San Diego, CA 92126

18 **321 Worthington St**
19 **Spring Valley, CA 91977**

20 **Automotive Repair Dealer Registration No.**
21 **ARD 278849**

22 Respondent.

23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about December 23, 2014, the Bureau of Automotive Repair issued
Automotive Repair Dealer Registration Number ARD 278849 to Oscar H. Pacheco, dba Xtreme

1 Paintworx (Respondent). The Automotive Repair Dealer Registration expired on
2 December 31, 2018, and has not been renewed.

3 **JURISDICTION**

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

7 **STATUTORY PROVISIONS**

8 4. Section 9884.6 of the Code states:

9 (a) It is unlawful for any person to be an automotive repair dealer unless that
10 person has registered in accordance with this chapter [the Automotive Repair Act]
and unless that registration is currently valid.

11 ...

12 5. Section 9884.7 of the Code states:

13 (a) The director, where the automotive repair dealer cannot show there
14 was a bona fide error, may deny, suspend, revoke, or place on probation the
15 registration of an automotive repair dealer for any of the following acts or omissions
16 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.

17 ...

18 (4) Any other conduct which constitutes fraud.

19 ...

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

21 ...

22 6. Section 9884.9 of the Code states:

23 (a) The automotive repair dealer shall give to the customer a written
24 estimated price for labor and parts necessary for a specific job. No work shall be done
25 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
26 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
27 before the work not estimated is done or the parts not estimated are supplied. Written
consent or authorization for an increase in the original estimated price may be
provided by electronic mail or facsimile transmission from the customer. The bureau
28 may specify in regulation the procedures to be followed by an automotive repair
dealer if an authorization or consent for an increase in the original estimated price is

1 provided by electronic mail or facsimile transmission. If that consent is oral, the
2 dealer shall make a notation on the work order of the date, time, name of person
3 authorizing the additional repairs and telephone number called, if any, together with a
4 specification of the additional parts and labor and the total additional cost, and shall
5 do either of the following:

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

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

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

13 _____
14 (signature or initials)"

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

18 ...

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

27 ...

28 7. Section 9884.9 of the Code provides, in pertinent part, that unfair competition shall
mean and include...or fraudulent business act or practice...or any act prohibited by Chapter 1
(commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

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

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 3353, states:

No work for compensation shall be commenced and no charges shall

1 accrue without specific authorization from the customer in accordance with the
2 following requirements:

3 (a) Estimate for Parts and Labor. Every dealer shall give to each
4 customer a written estimated price for labor and parts for a specific job.

5 (b) Estimate for Auto Body or Collision Repairs. Every dealer, when
6 doing auto body or collision repairs, shall give to each customer a written estimated
7 price for parts and labor for a specific job. Parts and labor shall be described
8 separately and each part shall be identified, indicating whether the replacement part is
9 new, used, rebuilt or reconditioned. The estimate shall also describe replacement
10 crash parts as original equipment manufacturer (OEM) crash parts or non-OEM
11 aftermarket crash parts.

12 (1) If the authorization from the customer for additional repairs, parts, or
13 labor in excess of the written estimated price is obtained orally, the dealer shall also
14 make a notation on the work order and on the invoice of the date, time, name of the
15 person authorizing the additional repairs, and the telephone number called, if any,
16 together with the specification of the additional repairs, parts, labor and the total
17 additional costs.

18 (2) If the authorization from the customer for additional repairs, parts, or
19 labor in excess of the written estimated price is obtained by facsimile transmission
20 (fax), the dealer shall also attach to the work order and the invoice, a faxed document
21 that is signed and dated by the customer and shows the date and time of transmission
22 and describes the additional repairs, parts, labor and the total additional cost.

23 (3) If the authorization from the customer for additional repairs, parts, or
24 labor in excess of the written estimated price is obtained by electronic mail (e-mail),
25 the dealer shall print and attach to the work order and invoice, the e-mail
26 authorization which shows the date and time of transmission and describes the
27 additional repairs, parts, labor, and the total additional costs.

28 (4) The additional repairs, parts, labor, total additional cost, and a
statement that the additional repairs were authorized either orally, or by fax, or by e-
mail shall be recorded on the final invoice to Section 9884.9 of the Business and
Professions Code. All documentation must be retained pursuant to Section 9884.11
of the Business and Professions Code.

...

COST RECOVERY

10. Code section 125.3 provides, in pertinent part, that the Board may request the
administrative law judge to 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, with failure of the licentiate to comply subjecting the license to not being
renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
included in a stipulated settlement.

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CONSUMER COMPLAINT (2008 CHEVROLET SILVERADO C 1500)

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11. On or about July 22, 2017, RM's 2008 Chevrolet Silverado C 1500 (Silverado) was vandalized and sustained damage on all sides of the vehicle. RM made a claim for the damage with National General (National Insurance), who subsequently authorized and provided an estimate for repairs.

12. On or about July 28, 2017, RM went to Xtreme Paintworx to discuss completing the work set forth in the estimate provided by National Insurance. RM met with JR, Respondent's shop manager. JR informed RM that he would perform the repairs. JR asked that RM request National Insurance send an estimate and check to the business directly so that he could purchase the parts. On that date, RM notified National that he chose Xtreme Paintworx for repairs. National Insurance issued an estimate to Respondent and a check in the amount of \$2,549.90 payable to the order of Xtreme Paintworx.

13. On or about August 22, 2017, RM delivered the Silverado to Xtreme Paintworx for repairs to begin. RM met with JR and entered into a verbal agreement that repairs would be completed according to the National Insurance estimate. RM did not receive any written estimate or contract from JR.

14. RM returned to Xtreme Paintworx several times throughout the week to check the progress of repairs. No repairs had begun.

15. On or about September 8, 2017, RM returned to Xtreme Paintworx and noticed that no work had commenced on the Silverado. RM obtained the keys to the Silverado and removed the Silverado from the property.

16. On or about September 20, 2017, RM contacted National Insurance to request a stop payment on the check issued to Xtreme Paintworx. A claims representative informed RM that Xtreme Paintworx cashed the check issued in the amount of \$2,549.90 and that National Insurance could not issue another check until Respondent refunded the money previously issued.

17. On or about September 26, 2017, RM contacted Respondent. Respondent acknowledged that he was the owner of Xtreme Paintworx and admitted that he cashed the check

1 to repair other vehicles. Respondent offered to "work with" RM, however, RM requested
2 immediate reimbursement and declined the offer.

3 18. On or about December 6, 2017, Inspector JK met with RM. JK inspected the
4 Silverado and determined that no repairs listed on the National insurance estimate were
5 performed.

6 19. On or about January 5, 2017, JK went to Respondent's address of record, 1507
7 Skyline Drive, Lemon Grove, CA. JK did not see any business being conducted on the premises.
8 JK telephoned the business number. Respondent answered and confirmed that he moved the
9 business to 7998 Miramar Rd. #B, San Diego, CA. JK subsequently met with Respondent at the
10 Miramar address, where Respondent confirmed that he did not notify the Bureau of his change of
11 address. Respondent completed a change of address form and provided JK with a check to bring
12 his registration status current.

13 20. On or about January 9, 2018, JK met with Respondent to discuss RM's consumer
14 complaint. Respondent admitted that he received the check from National Insurance in the
15 amount of \$2,549.90 and cashed the check. Respondent then used the money to repair other
16 vehicles. Respondent stated he did not have the funds to reimburse RM, but would make
17 payment arrangements with National Insurance.

18 21. On or about September 5, 2018, JK contacted National Insurance. A claims
19 representative verified that National Insurance had not received payment for the \$2,549.90
20 previously disbursed.

21 22. On or about September 24, 2018, JK received a call from RM. RM stated he had not
22 received any reimbursement from Respondent.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Failure to Maintain Valid Registration)**

25 23. Respondent is subject to disciplinary action pursuant to Code section 9884.6
26 subsection (a) in that he failed to maintain current registration as more particularly alleged and
27 fully set forth above in paragraph 18.

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PRAAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 278849, issued to Oscar H. Pacheco, dba Xtreme Paintworx;

2. Ordering Oscar H. Pacheco to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: February 14, 2019 Patrick Dorais

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SD2018702339
71699778.docx

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: **In the Matter of Accusation Against Oscar H. Pacheco, dba Xtreme
Paintworx**

Case No.: **77/18-1125**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On February 19, 2019, I served the attached **STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; NOTICE OF DEFENSE (2 Copies); and GOVERNMENT CODE SECTION 11507.5, 11507.6 and 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; NOTICE OF DEFENSE (2 Copies); and GOVERNMENT CODE SECTION 11507.5, 11507.6 and 11507.7** was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Oscar H. Pacheco
321 Worthington St.
Spring Valley, CA 91977
Respondent (In Pro Per)

Certified Article Number
7414 7266 7904 2335 2515 74
SENDER'S RECORD

Xtreme Paintworx
Attn: Oscar H. Pacheco
7998 Miramar Rd. #B
San Diego, CA 92126
Respondent (In Pro Per)

Certified Article Number
7414 7266 7904 2335 2515 67
SENDER'S RECORD

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 19, 2019, at San Diego, California.

A. Patrick
Declarant

P
Signature

U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

USPS® ARTICLE NUMBER

9414 7266 9904 2135 2515 67

Certified Mail Fee	\$
Return Receipt (Hardcopy)	\$
Return Receipt (Electronic)	\$
Certified Mail Restricted Delivery	\$
Postage	\$
Total Postage and Fees	\$

Postmark
Here

Sent to:

Xtreme Paintworx
Attn: Oscar H. Pacheco
7998 Miramar Rd. #B
San Diego, CA 92126

Reference Information

Dionne Mochon
SD2018702339

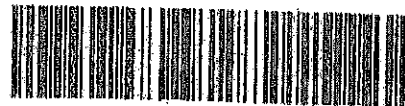
Please do not write on this receipt. It is for postal use only.

US Form 3800, Facsimile, July 2015



9590 9266 9904 2135 2515 67

U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
Domestic Mail Only



9390 9266 9904 2135 2515 77

USPS® ARTICLE NUMBER

9404 7266 9904 2135 2515 74

Certified Mail Fee	\$	Postmark Here
Return Receipt (Hardcopy)	\$	
Return Receipt (Electronic)	\$	
Certified Mail Restricted Delivery	\$	
Postage	\$	
Total Postage and Fees	\$	

Sent to:
Oscar H. Pacheco
321 Worthington St.
Spring Valley, CA 91977

Reference Information

Dianne Mochon
SD2018702339

TEAR THIS WAY

Return Receipt (Form 3811) Barcode



9590 9266 9904 2135 2515 77

1. Article Addressed to:
Oscar H. Pacheco
321 Worthington St
Spring Valley, CA 91977

2. Certified Mail (Form 3800) Article Number
9414 7266 9904 2135 2515 74

PS Form 3811, Facsimile, July 2015

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
X *[Signature]*

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from Item 1? Yes No
If YES, enter delivery address below

3. Service Type:
 Certified Mail
 Certified Mail Restricted Delivery

Reference Information
*SD2018702339-Pacheco
Accusation Packet
Dionne Mochon/A. Patrick*

Domestic Return Receipt

RETURN RECEIPT REQUESTED
USPS MAIL CARRIER
DETACH ALONG PERFORATION

Thank you for using Return Receipt Service