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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff,)
vs.)
CALIBER BODYWORKS, INC., a California)
Corporation, doing business as CALIBER)
COLLISION CENTERS; D.R. LONG, LTD, doing)
business as CALIBER COLLISION CENTERS;)
CHAPPARONE AUTO BODY OF MIRAMAR,)
INC.; SAN MARCOS AUTO BODY, INC.; F & R)
VENTURES, INC.; RICHARD J. KELLEJIAN,)
INC.; CORWIN INDUSTRIES CORPORATION;)
MATTHEW OHRNSTEIN, an individual; BILL)
LAWRENCE, an individual; DAVID C. RIGGAN,)
an individual; DEBRA L. MORRIS, an individual;)
TOM COLEMAN, an individual;)
Defendants.)

CASE NO.: 04CC04374
FINAL JUDGMENT AND
PERMANENT INJUNCTION
Dept.: C15
Trial Date: None
Assigned for all Purposes
to The Hon. John Watson

1 Plaintiff, the People of the State of California (“the People” or “Plaintiff”), having filed
2 its complaint and appearing through Bill Lockyer, Attorney General of the State of California, by
3 Deputy Attorneys General Christina V. Tusan and Catherine Z. Ysrael, and through Elizabeth A.
4 Egan, Fresno County District Attorney, by Senior Deputy District Attorney James R. Luppino,
5 and defendants Caliber Bodyworks, Inc. (doing business as Caliber Collision Centers), D.R.
6 Long, Ltd. (doing business as Caliber Collision Centers), Chapparone Auto Body of Miramar,
7 Inc. (doing business as Caliber Collision Centers), San Marcos Auto Body, Inc. (doing business
8 as Caliber Collision Centers), F & R Ventures, Inc. (doing business as Caliber Collision
9 Centers), Richard J. Kellejian, Inc. (doing business as Caliber Collision Centers), Corwin
10 Industries Corporation (doing business as Caliber Collision Centers) (collectively “Caliber”) and
11 Matthew Ohrnstein, Bill Lawrence, David C. Riggan, Debra L. Morris and Tom Coleman
12 (collectively “Defendants”), appearing individually and through their attorneys Stroock &
13 Stroock & Lavan LLP, by Julia B. Strickland and Stephen J. Newman, having stipulated that this
14 Final Judgment and Permanent Injunction (hereafter “Judgment”) may be signed by a judge,
15 commissioner or judge pro tem of the Orange County Superior Court,

16 The parties have consented to the entry of this Judgment for the purposes of settlement
17 only, without this Judgment constituting evidence against or any admission by any party, and
18 without trial of any issue of fact or law, and without this Judgment constituting any admission of
19 liability or wrongdoing by Defendants or any other party.

20 The Court having considered the Stipulation for Entry of Final Judgment executed by the
21 parties and filed herewith, and good cause appearing,

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- 23 1. This Court has jurisdiction of the subject matter of this action and of the parties.
- 24 2. Venue as to all matters between the parties relating hereto lies in this Court.
- 25 3. This Judgment is intended to address all disputes between the People of the State
26 of California, on the one hand, and Caliber, Matthew Ohrnstein, Bill Lawrence, David C.
27 Riggan, Debra L. Morris and Tom Coleman, on the other, alleged in the Complaint on file
28 herein.

1 ///

2 **INJUNCTION**

3 4. The injunctive provisions of this Judgment are entered pursuant to Business and
4 Professions Code sections 17203 and 17535. The injunctive provisions of this Judgment apply
5 to the California activities of Caliber and the directors, officers, employees, representatives,
6 agents, subsidiaries (regardless of the form of business organization), companies in which
7 Caliber has an ownership interest, successors-in-interest, and assigns thereof; and also apply to
8 any person or entity acting by, through, under, on behalf of, or in concert with any of them. Not
9 until Caliber has satisfied all financial obligations set forth in this Judgment may any party
10 hereto file a motion with the Court requesting modification of the injunction provisions of this
11 Judgment, or that they be relieved from the injunctive provisions of the Judgment or any other
12 provisions. Nothing in the preceding sentence shall, however, imply that any party is entitled to
13 have the terms of the permanent injunction modified even after full satisfaction of the financial
14 obligations. The injunctive provisions of this Judgment shall also apply to any individuals who
15 were serving as directors and officers of Caliber as of May 2003, for the time period that and
16 such individual is serving as a director or officer or has an ownership interest in or management
17 responsibilities for any business that is a licensee of the California Bureau of Automotive Repair
18 (“Bureau”).

19 5. All entities and persons described above in Paragraph 4 are permanently enjoined
20 and restrained from engaging in any of the following:

- 21 A. Invoicing and accepting payment from consumers and/or their insurance
22 companies for goods and/or services that are not provided or performed.
- 23 B. Violating Business and Professions Code section 9884.8’s requirements in
24 regard to customer invoices.
- 25 C. Violating Business and Professions Code section 9884.9(a) by: (1)
26 performing work and/or allowing charges to accrue before the customer gives
27 authorization to proceed; (2) charging for work done or parts supplied in excess
28 of the estimated price without the oral or written consent of the customer obtained

1 at some time after it is determined that the estimated price is insufficient and
2 before the work not estimated is done or the parts not estimated are supplied; or
3 (3) failing to properly document the oral consent required by this statute.

4 D. Violating 16 California Code of Regulations section 3353 by engaging in
5 work without proper prior customer authorization including: (1) performing work
6 prior to providing the customer with a written estimate for parts or labor; (2)
7 failing to document oral authorizations; or (3) failing to provide an estimate for
8 repairs after a teardown has been performed.

9 E. Violating 16 California Code of Regulations section 3371 by publishing,
10 uttering, making or causing to be published, uttered or made any false or
11 misleading statement or advertising which is known to be false or misleading or
12 which by the exercise of reasonable care should be known to be false or
13 misleading.

14 F. Violating 16 California Code of Regulations section 3373 by withholding
15 therefrom or inserting therein any statement or information that will cause any
16 estimate, invoice, work order or record required to be maintained pursuant to 16
17 California Code of Regulations section 3373 to be false or misleading, and or
18 where the tendency or effect thereby will be to mislead or deceive customers,
19 prospective customers or the public.

20 G. Willfully departing from or disregarding accepted trade standards for
21 goods and workmanlike repair without the consent of the customer or the
22 customer's duly authorized agent.

23 H. Representing on invoices and final bills that specific services have been
24 rendered, and demanding and accepting payment for those services, when
25 Defendants have not performed those services.

26 I. Representing on invoices and final bills that specific parts or products
27 have been installed or replaced in consumers' automobiles, and demanding and
28

1 accepting payment for those products or parts, when those parts or products have
2 not been installed or replaced.

3 J. Representing that Defendants will charge consumers the amounts set forth
4 on estimates provided and approved by consumers and then charging consumers
5 for unauthorized services or parts.

6 K. Violating Civil Code section 1770(a)(5) by representing that goods or
7 services have sponsorship, approval, characteristics, ingredients, uses, benefits or
8 quantities which they do not have.

9 L. Violating Civil Code section 1770(a)(6) by representing that goods are
10 original or new if they are altered, reconditioned, reclaimed, used or secondhand.

11 M. Violating Civil Code section 1770(a)(7) by representing that goods or
12 services are of a particular standard, quality or grade, or that goods are of a
13 particular style or model, if they are of another.

14 N. Violating Civil Code section 1770(a)(15) by representing that a part,
15 replacement, or repair service is needed when it is not.

16 O. Violating Civil Code section 1770(a)(16) by representing that the subject
17 of a transaction has been supplied in accordance with a previous representation
18 when it has not.

19 P. Engaging in the repair or servicing of motor vehicles unless Defendants
20 maintain a program that is reasonably calculated to prevent misrepresentations
21 and/or unfair and/or deceptive practices from being perpetrated by their “Agents”
22 (defined for purposes of this subdivision only to include directors, officers,
23 salespeople, repair people, employees, general sales managers, general managers)
24 on any consumer in connection with the repair or servicing of a vehicle by
25 Defendants. As part of such program, Defendants, at a minimum, shall:

- 26 (1) instruct their Agents not to engage in, and prohibit their Agents
27 from engaging in, the practices prohibited by this Judgment;

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- 1 (2) provide all senior management employees, officers, directors,
2 Regional Managers, Center Managers and those who write or prepare
3 repair orders with a copy of the Injunction contained in this Judgment;
4 (3) implement, and make known to their Agents, a policy of discipline,
5 including termination, of any Agent who engages in practices prohibited
6 by this Judgment. The disciplinary policy should be as severe as those
7 that Defendants take against Agents who violate other rules that expose
8 Defendants to loss or liability (including but not limited to improper
9 handling of payments, lapses in security precautions, failure to report for
10 work or other attendance problems);
11 (4) investigate all complaints from consumers concerning repairs
12 made by Defendants. This investigation must include interviewing the
13 consumer, reviewing all documents related to the transaction, and
14 inspecting the automobile that is the subject of the complaint when
15 consumers allege that improper or inappropriate repair work was
16 performed or that work that was supposed to be performed or parts that
17 were supposed to be installed were not; and
18 (5) keep records that allow them to substantiate that the statements
19 that Defendants and their Agents make regarding Defendants' repairs or
20 services are true and not misleading, which records shall be supplied to
21 the Attorney General's Office and the Fresno County District Attorney's
22 Office upon five (5) business days notice.

23 **CONSUMER REDRESS AND FINANCIAL TERMS**

24 6. Caliber shall fully financially compensate those consumers who are identified
25 by the Bureau as customers who have been subject to any of the violations alleged in
26 administrative proceedings the Bureau brought against Caliber ("Administrative Proceedings")
27 as follows:
28

1 A. Caliber shall repair the vehicles that are the subject of the violations
2 alleged in Administrative Proceedings as follows, at the option of the consumer:

3 (1) Caliber shall repair the vehicle consistent with its initial estimate,
4 supplemental work orders, and final invoices, and consistent with
5 accepted trade standards for good and workmanlike repair, at no charge;
6 or

7 (2) Caliber shall pay for the consumer to have the vehicle repaired
8 consistent with its initial estimate, supplemental work orders, and final
9 invoices, and consistent with accepted trade standards for good and
10 workmanlike repair, at the repair shop of the consumer's choice.

11 B. For those consumers identified in the Administrative Proceedings who
12 brought their vehicle to a repair shop other than Caliber prior to the entry of this
13 Judgment, Caliber shall reimburse the consumer for the repair or service charges
14 required to conform the repair to Caliber's initial estimate, supplemental work
15 orders, and final invoices.

16 C. Caliber shall mail written notice to all consumers identified in this
17 paragraph no later than five (5) business days after the date of entry of this
18 Judgment informing them of their options under this paragraph. The notice,
19 whose form and content must be approved by Plaintiff before Caliber mails it,
20 shall first be presented by Caliber to Plaintiff for approval. Caliber shall attempt
21 other reasonable means, including telephonic contact, to contact consumers
22 whose notices are returned to them by the post office as undelivered. Within 30
23 days after the mailing of such notice, Caliber shall provide Plaintiff with a report
24 that details Caliber's contacts with such consumers including details regarding
25 any consumers who Caliber was unable to contact.

26 D. Consumers whose vehicles were purchased by the Bureau are not subject
27 to this paragraph.
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1 7. A. In addition to any amounts paid pursuant to Paragraph 6 of this Judgment,
2 Caliber, at its sole expense, shall mail notices to those consumers who had their
3 vehicles repaired by Caliber between August 1, 2002 and July 31, 2004, where
4 the total amount on the final invoice exceeded one thousand dollars (\$1,000)
5 (defined hereafter as “Eligible Consumers”). For purposes of this paragraph, the
6 date of repair shall be the date Caliber completed the repairs to the vehicle.
7 Caliber shall mail these notices as follows: Within 50 days after entry of this
8 Judgment, Caliber shall mail notices to 15 percent (15%) of the Eligible
9 Consumers, commencing with those Eligible Consumers whose vehicles were
10 repaired earliest in time. During each succeeding month, Caliber shall mail
11 notices to the remaining Eligible Consumers, commencing with those Eligible
12 Consumers whose vehicles were repaired earliest in time, until all Eligible
13 Consumers have been notified, on the following schedule: 20 percent (20%)
14 within 80 days following entry of this Judgment, 25 percent (25%) within 110
15 days following entry of this Judgment, 20 percent (20%) within 140 days
16 following entry of this Judgment and 20 percent (20%) within 170 days following
17 entry of this Judgment.

18 B. The notice, whose form and content must be approved by Plaintiff before
19 Caliber mails it, shall first be presented by Caliber to Plaintiff for approval no
20 later than fifteen (15) days after entry of this Judgment.

21 C. The notice shall contain only the following information:

22 (1) Eligible Consumers may contact Caliber within ninety (90) days
23 following the date they receive their notice at the toll-free number listed
24 on the letter. Each Eligible Consumer is entitled to an inspection of his or
25 her vehicle by Caliber at no cost to the consumer. The notice shall
26 provide a toll-free number with which to contact Caliber.

27 (2) The notice must provide that Eligible Consumers will be entitled to
28 have their vehicles repaired by Caliber, should it be determined that the

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initial repairs were not done in a manner consistent with Caliber’s initial estimate, supplemental work orders, and final invoices, and consistent with accepted trade standards for good and workmanlike repair.

(3) The notice must provide that, following Caliber’s inspection and, where deemed necessary, repair of their vehicles, consumers are entitled to contact the Bureau to seek a reinspection of their vehicle to determine whether Caliber’s inspection and/or repair was satisfactory. If the Bureau inspects such vehicles, and if the vehicles are deemed to have been unsatisfactorily repaired by Caliber, Caliber will repair the vehicle again, at no cost to the consumer.

8. Caliber shall provide the Bureau with five (5) business days advance notice of any inspections to be conducted by Caliber pursuant to this Judgment, including detailed information regarding the repairs set forth in Caliber’s initial estimate, supplemental work orders, and final invoices, and the Bureau shall be permitted to attend any or all such inspections.

9. Caliber shall establish a separate toll-free number for Eligible Consumers to call to set up inspections pursuant to the terms of this Judgment. Caliber shall instruct those answering calls made to that toll-free number to follow written guidelines to be approved by Plaintiff. Caliber shall keep a detailed log of the names, telephone numbers, addresses and nature of any issues raised in calls made to the toll-free line.

10. In the event that any dispute arises as to repairs requested or performed, or money to be paid to consumers, pursuant to Paragraphs 6 and 7 of this Judgment, the parties agree to submit all such disputes, to the extent unresolved by Caliber and the consumer, to an independent third party selected by Plaintiff with relevant experience in the collision repair business, who is neither an employee of either of the parties to the Judgment or the Bureau (the “Referee”), for a binding determination as to Caliber’s obligations under this Judgment for the particular repair in question. Caliber shall pay all reasonable fees and expenses incurred by the Referee.

1 11. Caliber shall supply Plaintiff with a report beginning eight months after the date
2 of entry of the Judgment , and every six months thereafter, regarding the customer redress
3 program set forth in this section. The report shall set forth the following information in separate
4 categories: a) detailed information about Eligible Consumers to whom Caliber has sent the
5 notices required by Paragraphs 6 and 7; b) detailed information about those consumers who
6 responded to such notice; c) detailed information about those consumers Caliber was unable to
7 contact and the reason Caliber was unable to contact those consumers; d) detailed information
8 about those consumers who brought their vehicle in for repair; and e) detailed information about
9 the repairs made, and detailed information about the resolution of any disputed claims. The final
10 report shall be submitted to Plaintiff no later than 26 months after the date of entry of Judgment.
11 The consumer information provided by Caliber to Plaintiff pursuant to this paragraph shall be
12 considered proprietary to Caliber.

13 12. Pursuant to Business and Professions Code sections 17206 and 17536, Caliber
14 shall pay Plaintiff the sum of three million three hundred thousand dollars (\$3,300,000), as
15 payment for civil penalties. Further, Caliber shall pay two million dollars (\$2,000,000) as
16 payment for attorneys’ fees and costs, costs of investigation, and cost of implementing and
17 monitoring the Judgment (hereafter “attorneys’ fees and costs”). These sums shall be paid as
18 follows:

19 (A) Concurrent with execution of the Stipulation for Entry of this Judgment,
20 Caliber shall pay Plaintiff five hundred thousand dollars (\$500,000) as civil
21 penalties and five hundred thousand dollars (\$500,000) as attorneys’ fees and
22 costs.

23 (B) Within 12 months of entry of this Judgment, Caliber shall pay Plaintiff
24 two hundred fifty thousand dollars (\$250,000) as civil penalties and two hundred
25 fifty thousand dollars (\$250,000) as attorneys’ fees and costs.

26 (C) Within 24 months of entry of this Judgment, Caliber shall pay five
27 hundred fifty thousand dollars (\$550,000) as civil penalties and four hundred
28 thousand dollars (\$400,000) as attorneys’ fees and costs.

1 (D) Within 36 months of entry of this Judgment, Caliber shall pay five
2 hundred fifty thousand dollars (\$550,000) as civil penalties and four hundred
3 thousand dollars (\$400,000) as attorneys' fees and costs.

4 (E) Within 48 months of entry of this Judgment, Caliber shall pay five
5 hundred fifty thousand dollars (\$550,000) as civil penalties and four hundred
6 thousand dollars (\$400,000) as attorneys' fees and costs.

7 (F) Within 60 months of entry of this Judgment, Caliber shall pay nine
8 hundred thousand dollars (\$900,000) as civil penalties and fifty thousand dollars
9 (\$50,000) as attorneys' fees and costs.

10 13. All payments referenced in this paragraph shall be made by check payable to the
11 Office of the Attorney General, 300 South Spring Street, Suite 1702, Los Angeles, CA 90013,
12 sent to the attention of Christina Tusan in the Consumer Law Section. Pursuant to Government
13 Code section 26506, of the payments Caliber makes to the Attorney General's Office pursuant to
14 Paragraph 12, one million one hundred fifty thousand dollars (\$1,150,000) of the amount due
15 pursuant to Business and Professions Code sections 17206 and 17536 shall be forwarded to the
16 Fresno County District Attorney's Office in the manner agreed to by the Attorney General's
17 Office and the Fresno County District Attorney's Office.

18 14. To secure payment of future amounts due pursuant to Paragraph 12 of
19 this Judgment, concurrent with execution of the Stipulation for Entry of Judgment, Caliber shall
20 execute and deliver to Plaintiff a Senior Secured Term Promissory Note in the face amount of
21 four million, three hundred thousand dollars (\$4,300,000) and a Security Agreement (together,
22 the "Security Documents").

23 **OTHER SETTLEMENT TERMS AND OBLIGATIONS**

24 15. The payments required pursuant to this Judgment are not dischargeable in
25 bankruptcy.

26 16. As the parties have stipulated, Plaintiff has determined that this Judgment,
27 including the payment provisions, is a fair, equitable, and final resolution and disposition of all
28 and only those matters pleaded in the Complaint.

1 17. Defendants shall provide the Attorney General’s Office and the Fresno County
2 District Attorney’s Office with quarterly reports detailing: (a) all written complaints Defendants
3 have received from customers regarding any of the matters that are the subject of this Judgment
4 or the underlying Complaint; (b) any other complaints received through its customer care center
5 which Defendants have received from customers regarding any of the matters that are the subject
6 of this Judgment or the underlying Complaint; and/or (c) any complaints after completion of a
7 repair that resulted in the opening of a work order pursuant to Bureau regulations that
8 Defendants have received from customers regarding any of the matters that are the subject of this
9 Judgment or the underlying Complaint. The report shall provide a summary of the complaints
10 received, designated by type of complaint, and indicate the number of complaints of each type
11 received.

12 18. Caliber will, annually, provide Plaintiff with a copy of its audited financial
13 statements.

14 19. Upon reasonable notice, any duly authorized representative of the California
15 Attorney General or the Fresno District Attorney shall be permitted to inspect and copy such
16 records as may be reasonably necessary to determine whether Defendants are in compliance with
17 this Judgment.

18 20. The Court retains jurisdiction as the ends of justice may require for the purpose of
19 enabling any party to this Judgment to apply to the Court at any time for such further orders and
20 directions as may be necessary or appropriate: (a) for the construction or carrying out of this
21 Judgment; (b) for Plaintiff to apply at any time for enforcement of any provision of this
22 Judgment; (c) for modification of the injunctive provisions of this Judgment; (d) for appropriate
23 action if any violation of this Judgment occurs; and (e) to enforce the terms of the Security
24 Documents.

25 21. Except as otherwise provided herein, each party shall bear its own costs,
26 including
27 attorneys’ fees.

28 22. The Clerk is ordered to enter this Judgment forthwith.

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Dated: August 19, 2004

Michael Brenner
JUDGE OF THE SUPERIOR COURT