

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

In the Matter of the Accusation Against:

NICHOLAS CARL GIBBONS dba LATHROP SMOG

15151 S. Harlan Road

Lathrop, CA 95330

Automotive Repair Dealer Registration No. ARD 289396

Smog Check Station License No. RC 289396

and

NICHOLAS CARL GIBBONS

16201 Julie Lane

Lathrop, CA 95330

Smog Check Inspector No. EO 631964

Smog Check Repair Technician License No. EI 631964

Respondents.

Case No. 79/19-15142

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DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective on April 15, 2021.

DATED: March 8, 2021

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

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Attorney General of California
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Supervising Deputy Attorney General
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9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:
14

15 **NICHOLAS CARL GIBBONS, DBA**
LATHROP SMOG
16 15151 S. Harlan Road
Lathrop, CA 95330
17

Automotive Repair Dealer Registration
18 **No. ARD 289396**
Smog Check Station License
19 **No. RC 289396**

20 **NICHOLAS CARL GIBBONS**
16201 Julie Lane
21 Lathrop, Ca 95330

22 **Smog Check Inspector License No. EO 631964**
Smog Check Repair License No. EI 631964,
23

24 Respondents.
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Case No. 79/19-15142

OAH No. 2020080093

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

27 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
28 entitled proceedings that the following matters are true:

1 **PARTIES**

2 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair
3 (Director). He brought this action solely in his official capacity and is represented in this matter
4 by Xavier Becerra, Attorney General of the State of California, by Anahita S. Crawford, Deputy
5 Attorney General.

6 2. Respondent Nicholas Carl Gibbons; dba Lathrop Smog (Respondent) is represented
7 in this proceeding by attorney Michael B. Levin, Esq., whose address is: 3727 Camino del Rio
8 South, Suite 200, San Diego, CA 92108.

9 **Automotive Repair Dealer Registration**

10 3. On or about January 23, 2018, the Bureau issued Automotive Repair Dealer
11 Registration Number ARD 289396 (registration) to Nicholas Carl Gibbons (Respondent), doing
12 business as Lathrop Smog. The registration was in full force and effect at all times relevant to the
13 charges brought herein and will expire on January 31, 2021, unless renewed.

14 **Smog Check Station License**

15 4. On or about February 20, 2018, the Bureau issued Smog Check Station License
16 Number RC 289396 (station license) to Respondent. The station license was in full force and
17 effect at all times relevant to the charges brought herein and will expire on January 31, 2021,
18 unless renewed.

19 **Smog Check Technician Licenses**

20 5. On or about August 4, 2010, the Bureau issued Advanced Emission Specialist
21 Technician License No. EA 631964 to Respondent. Effective March 12, 2014, the Bureau issued
22 Smog Check Inspector License Number EO 631964 and Smog Check Repair License Number EI
23 631964 to Respondent. The Smog Check Inspector and Smog Check Repair Licenses were in full
24 force and effect at all times relevant to the charges brought herein and will expire on April 30,
25 2022, unless renewed.

26 **JURISDICTION**

27 6. Accusation No. 79/19-15142 was filed before the Director of the Department of
28 Consumer Affairs (Director), for the Bureau of Automotive Repair, and is currently pending

1 against Respondent. The Accusation and all other statutorily required documents were properly
2 served on Respondent on May 5, 2020. Respondent timely filed his Notice of Defense contesting
3 the Accusation.

4 7. A copy of Accusation No. 79/19-15142 is attached as exhibit A and incorporated
5 herein by reference.

6 **ADVISEMENT AND WAIVERS**

7 8. Respondent has carefully read, fully discussed with counsel, and understands the
8 charges and allegations in Accusation No. 79/19-15142. Respondent has also carefully read, fully
9 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
10 Order.

11 9. Respondent is fully aware of his legal rights in this matter, including the right to a
12 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
13 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
14 to the issuance of subpoenas to compel the attendance of witnesses and the production of
15 documents; the right to reconsideration and court review of an adverse decision; and all other
16 rights accorded by the California Administrative Procedure Act and other applicable laws.

17 10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
18 every right set forth above.

19 **CULPABILITY**

20 11. Respondent admits the truth of each and every charge and allegation in Accusation
21 No. 79/19-15142.

22 12. Respondent agrees that his Automotive Repair Dealer Registration Number ARD
23 289396, Smog Check Station License Number RC 289396, Smog Check Inspector License
24 Number EO 631964, and Smog Check Repair License Number EI 631964 is subject to discipline
25 and he agrees to be bound by the Director's probationary terms as set forth in the Disciplinary
26 Order below.

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CONTINGENCY

13. This stipulation shall be subject to approval by the Director or the Director's designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

17. The parties *also* recognize that the STAR certification will be subject to invalidation and wish to resolve the matter concurrently with the current accusation:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration Number ARD 289396, Smog Check Station License Number RC 289396, Smog Check Inspector License

1 Number EO 631964, and Smog Check Repair License Number EI 631964, issued to Respondent
2 Nicholas Carl Gibbons; dba Lathrop Smog are revoked. However, the revocations are stayed and
3 Respondent is placed on probation for five (5) years on the following terms and conditions:

4 1. **Obey All Laws.** During the period of probation, Respondent shall comply with all
5 federal and state statutes, regulations and rules governing all BAR registrations and licenses held
6 by Respondent.

7 2. **Actual Suspension.** Smog Check Repair License No. EI 631964 issued to
8 Respondent Nicholas Carl Gibbons is suspended for 30 consecutive days beginning on the
9 effective date of the Decision and Order. Automotive Repair Dealer Registration No. ARD
10 289396 issued to Respondent Nicholas Carl Gibbons; dba Lathrop Smog is suspended for 30
11 consecutive days beginning on the effective date of the Decision and Order. Smog Check Station
12 License No. RC 289396 issued to Respondent Nicholas Carl Gibbons; dba Lathrop Smog is
13 suspended for 30 consecutive days beginning on the effective date of the Decision and Order.
14 Smog Check Inspector License Number EO 631964 issued to Respondent Nicholas Carl Gibbons;
15 is suspended for 30 consecutive days beginning on the effective date of the Decision and Order.

16 3. **Posting of Sign.** During the period of suspension, Respondent shall prominently post
17 a sign or signs, provided by BAR, indicating the beginning and ending dates of the suspension
18 and indicating the reason for the suspension. The sign or signs shall be conspicuously displayed
19 in a location or locations open to and frequented by customers. The location(s) of the sign(s) shall
20 be approved by BAR and shall remain posted during the entire period of actual suspension.

21 4. **Quarterly Reporting.** During the period of probation, Respondent shall report either
22 by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no
23 more frequently than once each calendar quarter, on the methods used and success achieved in
24 maintaining compliance with the terms and conditions of probation.

25 5. **Report Financial Interests.** Respondent shall, within 30 days of the effective date
26 of the decision and within 30 days from the date of any request by BAR during the period of
27 probation, report any financial interest which any Respondent or any partners, officers, or owners

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1 of any Respondent facility may have in any other business required to be registered pursuant to
2 Section 9884.6 of the Business and Professions Code.

3 **6. Access to Examine Vehicles and Records.** Respondent shall provide BAR
4 representatives unrestricted access to examine all vehicles (including parts) undergoing service,
5 inspection, or repairs, up to and including the point of completion. Respondent shall also provide
6 BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

7 **7. Tolling of Probation.** If, during probation, Respondent leaves the jurisdiction of
8 California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction
9 of California, Respondent shall notify BAR in writing within 10 days of the dates of departure
10 and return, and of the dates of cessation and resumption of business in California. All provisions
11 of probation other than cost reimbursement requirements, restitution requirements, training
12 requirements, and that Respondent obey all laws, shall be held in abeyance during any period of
13 time of 30 days or more in which Respondent is not residing or engaging in business within the
14 jurisdiction of California. All provisions of probation shall recommence on the effective date of
15 resumption of business in California. Any period of time of 30 days or more in which Respondent
16 is not residing or engaging in business within the jurisdiction of California shall not apply to the
17 reduction of this probationary period or to any period of actual suspension not previously
18 completed. Tolling is not available if business or work relevant to the probationary license or
19 registration is conducted or performed during the tolling period.

20 **8. Violation of Probation.** If Respondent violates or fails to comply with the terms and
21 conditions of probation in any respect, the Director, after giving notice and opportunity to be
22 heard may set aside the stay order and carry out the disciplinary order provided in the decision.
23 Once Respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain
24 jurisdiction, and the period of probation shall be extended until final resolution of the matter.

25 **9. Maintain Valid License.** Respondent shall, at all times while on probation, maintain
26 a current and active registration and/or license(s) with BAR, including any period during which
27 suspension or probation is tolled. If Respondent's registration or license is expired at the time the
28 decision becomes effective, the registration or license must be renewed by Respondent within 30

1 days of that date. If Respondent's registration or license expires during a term of probation, by
2 operation of law or otherwise, then upon renewal Respondent's registration or license shall be
3 subject to any and all terms and conditions of probation not previously satisfied. Failure to
4 maintain a current and active registration and/or license during the period of probation shall also
5 constitute a violation of probation.

6 **10. Cost Recovery.** Respondent shall pay the Bureau of Automotive Repair \$7,145.84
7 for the reasonable costs of the investigation and enforcement of case No. 79/19-15142.
8 Respondent shall make such payment as follows: 52 equal payments in the amount of \$137.42,
9 beginning at the effective date of the Decision and Order. Respondent shall make payment by
10 check or money order payable to the Bureau of Automotive Repair and shall indicate on the
11 check or money order that it is for cost recovery payment for case No. 79/19-15142. Any order
12 for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation
13 shall not terminate until full cost recovery payment has been made. BAR reserves the right to
14 pursue any other lawful measures in collecting on the costs ordered and past due, in addition to
15 taking action based upon the violation of probation.

16 **11. Completion of Probation.** Upon successful completion of probation, Respondent's
17 affected registration and/or license will be fully restored or issued without restriction, if
18 Respondent meets all current requirements for registration or licensure and has paid all
19 outstanding fees, monetary penalties, or cost recovery owed to BAR.

20 **12. License Surrender.** Following the effective date of a decision that orders a stay of
21 invalidation or revocation, if Respondent ceases business operations or is otherwise unable to
22 satisfy the terms and conditions of probation, Respondent may request that the stay be vacated.
23 Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right
24 to evaluate the Respondent's request and to exercise discretion whether to grant the request or
25 take any other action deemed appropriate or reasonable under the circumstances. Upon formal
26 granting of the request, the Director will vacate the stay order and carry out the disciplinary order
27 provided in the decision. Respondent may not petition the Director for reinstatement of the
28 surrendered registration and/or license, or apply for a new registration or license under the

jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If Respondent applies to BAR for a registration or license at any time after that date, Respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

13. **Training Course**

During the period of probation, Respondent shall attend and successfully complete 68 hours of a BAR specified and approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by the Respondent. Respondent shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. Failure to provide proof of enrollment and/or successful course completion to the Bureau within the timeframes specified shall constitute a violation of probation, and Respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

14. **Notification to Employer** When performing services that fall within the scope of his license, Respondent shall provide each of his current or future employers a copy of the decision and the underlying Accusation or Statement of Issues before commencing employment. Notification to Respondent's current employer shall occur no later than the effective date of the decision. Respondent shall submit to BAR, upon request, satisfactory evidence of compliance with this term of probation.

IT IS HEREBY FURTHER ORDERED: STAR Certification of Station License No. RC 289396 issued to Respondent is invalidated under the following terms and conditions:

1. **Invalidation.** Respondent's STAR certification shall be temporarily invalidated for a period of 90 consecutive days beginning 180 days after the effective date of the decision. During the period of invalidation, Respondent shall cease advertising as a STAR station and shall cover or remove all STAR signage. During the period of invalidation, Respondent shall not perform any repairs under the Consumer Assistance Program.

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2. **Automatic Reinstatement.** Upon successful completion of the 90-day invalidation, Respondent's STAR Certification shall be fully restored without reapplication for STAR certification.

3. **Violation of Order.** If Respondent violates any term or condition of this Order, then the violation shall constitute cause to discipline Respondent's Smog Check Station License, Automotive Repair Dealer Registration, and any other Bureau issued licenses or registrations.

4. **Posting a Sign.** During the period of STAR invalidation, Respondent shall prominently post a sign or signs, provided by BAR, indicating the beginning and ending dates of STAR invalidation. The sign or signs shall be conspicuously displayed in a location or locations open to and frequented by customers. The location(s) of the sign(s) shall be approved by BAR and shall remain posted during the entire period of STAR invalidation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael B. Levin, Esq. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration Number ARD 289396, Smog Check Station License Number RC 289396, Smog Check Inspector License Number EO 631964, and Smog Check Repair License Number EI 631964. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of the Department of Consumer Affairs.

DATED: 1/27/2021

Copy of Signature on File

NICHOLAS CARL GIBBONS; DBA LATHROP
SMOG
Respondent

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I have read and fully discussed with Respondent Nicholas Carl Gibbons; dba Lathrop Smog the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1/27/2021

Copy of Signature on File

MICHAEL B. LEVIN, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of the Department of Consumer Affairs.

DATED: 2/18/2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
KAREN R. DENVIR
Supervising Deputy Attorney General

Copy of Signature on File

ANAHITA S. CRAWFORD
Deputy Attorney General
Attorneys for Complainant

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