

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

In the Matter of the Petition to Revoke Probation Against:

FERNANDO ZUNIGA

1005 Saturn Blvd. #B

San Diego, CA 92154

Brake Adjuster License No. BA 638563, Class C

Lamp Adjuster License No. LA 638563, Class A

Smog Check Inspector License No. EO 638563

Respondent.

Case No. 77/19-7469

OAH No. 2020020313

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 September 18, 2020.

DATED: August 14, 2020

Signature on File

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

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

12 In the Matter of the Petition to Revoke
13 Probation Against:

Case No. 77/19-7469

OAH No. 2020020313

14 **FERNANDO ZUNIGA**
15 **1005 Saturn Blvd. #B**
San Diego, CA 92154

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 **Brake Adjuster License No. BA 638563,**
17 **Class C**
Lamp Adjuster License No. LA 638563,
18 **Class A**
Smog Check Inspector License No.
19 **EO 638563**

20 Respondent.
21

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

24 **PARTIES**

25 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair
26 (Bureau), Department of Consumer Affairs. He brought this action solely in his official capacity
27 and is represented in this matter by Xavier Becerra, Attorney General of the State of California,
28 by Alvaro Mejia, Deputy Attorney General.

2. Respondent Fernando Zuniga (Respondent) is represented in this proceeding by attorney Michael B. Levin, Esq., whose address is: 3727 Camino del Rio South, Suite 200, San Diego, CA 92108.

3. On or about September 14, 2015, the Bureau issued Brake Adjuster License No. BA 638563, Class C, to Respondent Zuniga. The Brake Adjuster License was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. 77/19-7469, and will expire on June 30, 2023, unless renewed.

4. On or about November 20, 2015, the Bureau issued Lamp Adjuster License No. LA 638563, Class A, to Respondent Zuniga. The Lamp Adjuster License was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. 77/19-7469, and will expire on June 30, 2023, unless renewed.

5. On or about October 5, 2016, the Bureau issued Smog Check Inspector License No. EO 638563 to Respondent Zuniga. The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. 77/19-7469, and will expire on June 30, 2022, unless renewed.

JURISDICTION

6. Petition to Revoke Probation No. 77/19-7469 was filed before the Director, and is currently pending against Respondent. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on September 4, 2019. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation.

7. A copy of Petition to Revoke Probation No. 77/19-7469 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

8. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Petition to Revoke Probation No. 77/19-7469. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

9. Respondent is fully aware of his legal rights in this matter, including the right to a

1 hearing on the charges and allegations in the Petition to Revoke Probation; the right to confront
2 and cross-examine the witnesses against him; the right to present evidence and to testify on his
3 own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
4 production of documents; the right to reconsideration and court review of an adverse decision;
5 and all other rights accorded by the California Administrative Procedure Act and other applicable
6 laws.

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

9 **CULPABILITY**

10 11. Respondent admits the truth of each and every charge and allegation in Petition to
11 Revoke Probation No. 77/19-7469.

12 12. Respondent agrees that his Brake Adjuster License and Lamp Adjuster License are
13 subject to discipline and he agrees to be bound by the Director's probationary terms as set forth in
14 the Disciplinary Order below.

15 **CONTINGENCY**

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

27 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
28 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:

DISCIPLINARY ORDER

The Director's prior Decision and Order in this case, effective November 9, 2018, revoked Brake Adjuster License No. BA 638563 and Lamp Adjuster License No. LA 638563 issued to Respondent Fernando Zuniga, but stayed the revocation and placed Respondent's Brake Adjuster and Lamp Adjuster Licenses on probation for five (5) years with terms and conditions. If Respondent had been compliant therewith, that probation would have terminated on or about November 9, 2023.

IT IS HEREBY ORDERED that Brake Adjuster License No. BA 638563 and Lamp Adjuster License No. LA 638563 issued to Respondent Fernando Zuniga are revoked. However, the revocation is stayed and Respondent's original five (5) year term of probation, originally effective November 9, 2018, is reinstated, and absent further extension or tolling, will be set to expire on November 9, 2023, on the following conditions.

1. **Actual Suspension.** Brake Adjuster License No. BA 638563 and Lamp Adjuster License No. LA 638563 issued to Respondent Fernando Zuniga are suspended for 30 consecutive days beginning on the effective date of the Decision and Order.

2. **Obey All Laws.** During the period of probation, Respondent shall comply with all federal and state statutes, regulations and rules governing all Bureau of Automotive Repair (BAR) registrations and licenses held by Respondent.

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

5 4. **Report Financial Interests.** Respondent shall, within 30 days of the effective date
6 of the decision and within 30 days from the date of any request by BAR during the period of
7 probation, report any financial interest in which Respondent may have in any business required to
8 be registered pursuant to Section 9884.6 of the Business and Professions Code.

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

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

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1 7. **Maintain Valid Licenses.** Respondent shall, at all times while on probation,
2 maintain a current and active registration(s) and/or license(s) with BAR, including any period
3 during which suspension or probation is tolled. If Respondent's registration or license is expired
4 at the time the decision becomes effective, the registration or license must be renewed by
5 Respondent within 30 days of that date. If Respondent's registration or license expires during a
6 term of probation, by operation of law or otherwise, then upon renewal Respondent's registration
7 or license shall be subject to any and all terms and conditions of probation not previously
8 satisfied. Failure to maintain a current and active registration and/or license during the period of
9 probation shall also constitute a violation of probation.

10 8. **Cost Recovery.** Respondent shall continue to pay the Bureau of Automotive Repair
11 \$4,615.00 for reasonable costs of the investigation and enforcement of original Accusation Case
12 No. 77/16-6155. Respondent shall make such payment as follows: 48 consecutive, equal
13 monthly payments with the final payment due 12 months before the termination of probation.
14 Respondent shall make payment by check or money order payable to the Bureau of Automotive
15 Repair, and shall indicate on the check or money order that it is for cost recovery payment for
16 case No. 77/16-6155. Any order for payment of cost recovery shall remain in effect whether or
17 not probation is tolled. Probation shall not terminate until full cost recovery payment has been
18 made. BAR reserves the right to pursue any other lawful measures in collecting on the costs
19 ordered and past due, in addition to taking action based upon the violation of probation.

20 9. **Completion of Probation.** Upon successful completion of probation, Respondent's
21 affected registrations and/or licenses will be fully restored or issued without restriction, if
22 Respondent meets all current requirements for registration or licensure and has paid all
23 outstanding fees, monetary penalties, or cost recovery owed to BAR.

24 10. **License Surrender.** Following the effective date of a decision that orders a stay of
25 invalidation or revocation, if Respondent ceases business operations or is otherwise unable to
26 satisfy the terms and conditions of probation, Respondent may request that the stay be vacated.
27 Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right
28 to evaluate the Respondent's request and to exercise discretion whether to grant the request or

1 take any other action deemed appropriate or reasonable under the circumstances. Upon formal
2 granting of the request, the Director will vacate the stay order and carry out the disciplinary order
3 provided in the decision. Respondent may not petition the Director for reinstatement of the
4 surrendered registration and/or license, or apply for a new registration or license under the
5 jurisdiction of BAR at any time before the date of the originally scheduled completion of
6 probation. If Respondent applies to BAR for a registration or license at any time after that date,
7 Respondent must meet all current requirements for registration or licensure and pay all
8 outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

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

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ENDORSEMENT

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

DATED: July 1, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

Signed Copy on File

ALVARO MEJIA
Deputy Attorney General
Attorneys for Complainant