BEFORE THE DIRECTOR OF THE

DEPARTMENT OF CONSUMER AFFAIRS

BUREAU OF AUTOMOTIVE REPAIR

STATE OF CALIFORNIA

Received in BAR E
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In the Matter of the Accusation Against:

HARRY'S AUTOMOTIVE INC. dba HARRY'S AUTO REPAIR, INC.; SCOTT BOLLENGIER, PRESIDENT

183 Wyoming Street

Pleasanton, CA 94566

Automotive Repair Dealer Registration No. ARD 213389

Smog Check Station License No. RC 213389

Brake Station License No. 213389, Class C

Lamp Station License No. 213389, Class A

and

KEVIN TODD MCGILBRA

307 Yosemite Dr.

Tracy, CA 95376

Smog Check Inspector License No. EO 639121

Smog Check Repair Technician License No. EI 639121

Brake Adjuster License No. BA 639121, Class C

Lamp Adjuster License No. LA 639121, Class A

and

JUSTIN MICHAEL NOFCHISSEY

1103 Johnson Ct.

Tracy, CA 95376

Smog Check Inspector License No. EO 151217

Smog Check Repair Technician License No. EI 151217

Brake Adjuster License No. BA 151217, Class A

Lamp Adjuster License No. LA 151217, Class A

Respondents.

Case No. 77/19-5307

OAH No. 2020080153

DECISION

The attached Stipulated Settlement and Disciplinary Order as to Harry's Automotive Inc. dba Harry's Auto Repair, Inc.; Scott Bollengier, President only 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 March 10, 2022.

DATED: January 31, 2022

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

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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: **HARRY'S AUTOMOTIVE INC. dba HARRY'S AUTO REPAIR, INC.;** **SCOTT BOLLENGIER, PRESIDENT;** **183 Wyoming Street** **Pleasanton, CA 94566** **Automotive Repair Dealer Registration No. ARD 213389** **Smog Check Station License No. RC 213389** **Brake Station License No. 213389, class C** **Lamp Station License No. 213389, class A** **and** **KEVIN TODD McGILBRA** **370 Yosemite Dr** **Tracy, CA 95376** **Smog Check Inspector (EO) License No. 639121** **Smog Check Repair Technician (EI) License No. 639121** **Brake Adjuster (BA) License No. 639121, class C** **Lamp Adjuster (LA) License No. 639121, class A** **and**	Case No. 77/19-5307 OAH No. 2020080153 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER** [AS TO HARRY'S AUTOMOTIVE INC. DBA HARRY'S AUTO REPAIR, INC.; SCOTT BOLLENGIER, PRESIDENT, ONLY]

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Brake Adjuster (BA) License No. 151217, class A
Lamp Adjuster (LA) License No. 151217, class A

Respondents.

IT IS HEREBY STIPULATED AND AGREED by and between Complainant and Respondent Harry's Automotive Inc. dba Harry's Auto Repair, Inc., Scott Bollengier, President, (collectively the parties) to the above-entitled proceedings that the following matters are true:

PARTIES

1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair (Bureau). He brought this action solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Julianne Mossler, Deputy Attorney General.

2. Respondent Harry's Automotive Inc. dba Harrys Auto Repair Inc. (Respondent Harry's Auto) 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. In 2000, the Bureau issued Automotive Repair Dealer Registration Number ARD 213389 to Respondent Harry's Auto. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 77/19-5307, and will expire on October 31, 2021, unless renewed.

4. On or about October 27, 2000, the Bureau issued Smog Check Station License No. RC 213389 to Respondent Harry's Auto. The Smog Check Station License was in full force and effect at all times relevant to the charges brought in Accusation No. 77/19-5307, and will expire on October 31, 2021, unless renewed.

5. On or about December 11, 2000, the Bureau issued Brake Station License Number BS 213389, class C, to Respondent Harry's Auto. The Brake Station License was in full force

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and effect at all times relevant to the charges brought in Accusation No. 77/19-5307, and will expire on October 31, 2021, unless renewed.

6. On or about December 11, 2000, the Bureau issued Lamp Station License No. LS 213389 to Respondent Harry's Auto. The Lamp Station License was in full force and effect at all times relevant to the charges brought in Accusation No. 77/19-5307, and will expire on October 31, 2021, unless renewed.

JURISDICTION

7. Accusation No. 77/19-5307 was filed before the Director of the Department of Consumer Affairs, for the Bureau of Automotive Repair, and is currently pending against Respondent Harry's Auto. The Accusation and all other statutorily required documents were properly served on Respondent Harry's Auto on April 20, 2020. Respondent timely filed its Notice of Defense contesting the Accusation.

8. A copy of Accusation No. 77/19-5307 is attached as exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

9. Respondent Harry's Auto has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 77/19-5307. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

10. Respondent Harry's Auto is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

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CULPABILITY

12. Respondent admits the truth of each and every charge and allegation in Accusation No. 77/19-5307.

13. Respondent agrees that its Automotive Repair Dealer Registration, Smog Check Station License, Brake Station License, and Lamp Station License are subject to discipline and they agree to be bound by the Director's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

14. This stipulation shall be subject to approval by the Director or the Director's designee. Respondent Harry's Auto 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 its counsel. By signing the stipulation, Respondent understands and agrees that they may not withdraw its 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.

15. 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.

16. 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.

17. In consideration of the foregoing admissions and stipulations, the parties agree that

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the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Lamp Station License No. LS 213389 issued to Respondent Harry's Automotive Inc. dba Harrys Auto Repair Inc. is revoked and the acceptance of the revoked license by the Bureau shall constitute the imposition of discipline against Lamp Station License No LS 213389 issued to Respondent Harry's Auto. This stipulation constitutes a record of the discipline and shall become a part of Respondent Harry's Auto's license history with the Bureau.

1. Respondent Harry's Auto shall lose all rights and privileges as a Lamp Station in California as of the effective date of the Director's Decision and Order.

2. Respondent Harry's Auto shall cause to be delivered to the Bureau its Lamp Station License No. LS 213389, pocket licenses and, if one was issued, wall certificates on or before the effective date of the Decision and Order

3. If Respondent Harry's Auto ever files an application for licensure or a petition for reinstatement in the State of California, the Bureau shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 77/19-5307 shall be deemed to be true, correct and admitted by Respondent Harry's Auto when the Director determines whether to grant or deny the petition.

4. Respondent Harry's Auto may not petition for reinstatement of a revoked or surrendered license/registration for one (1) year from the effective date of this Decision.

IT IS FURTHER ORDERED that Automotive Repair Dealer Registration No. ARD 213389, Smog Check Station License No. RC 213389, and Brake Station License No. BS 213389 issued to Respondent Harry's Automotive Inc. dba Harrys Auto Repair Inc. are revoked. However, the revocation of Automotive Repair Dealer Registration No. ARD 213389, Smog Check Station License No. RC 213389, and Brake Station License No. BS 213389 are stayed, and

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Respondent is placed on probation for three (3) years on the following terms and conditions:

1. **Actual Suspension**. Automotive Repair Dealer Registration No. ARD 213389, Smog Check Station License No. RC 213389, and Brake Station License No. BS 213389 issued to Respondent Harry's Auto are suspended for 7 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 BAR registrations and licenses held by Respondent.

3. **Posting of Sign**. During the period of suspension, Respondent shall prominently post a sign or signs, provided by BAR, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. 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 actual suspension.

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

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

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

7. **Tolling of Probation.** If, during probation, Respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction

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of California, Respondent shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California. All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that Respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which Respondent is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which Respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

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

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

10. **Cost Recovery.** Respondent shall pay the Bureau of Automotive Repair $7,008.70 for the reasonable costs of the investigation and enforcement of case No. 77/19-5307.

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Respondent shall make such payment in 30 equal monthly payments, to be completed no later than six (6) months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No. 77/19-5307. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

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

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

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

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it will have on my Automotive Repair Dealer Registration, Smog Check Station License, Brake Station License, and Lamp Station License. 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: 1/8/2021

SCOTT BOLLENGIER

HARRY'S AUTOMOTIVE INC. DBA HARRYS AUTO REPAIR INC.; SCOTT BOLLENGIER, PRESIDENT
Respondent

I have read and fully discussed with Respondent Harry's Automotive Inc. dba Harrys Auto Repair Inc. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1/8/2021

Michael B. Levin

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: 1/8/2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

Julianne Mossler

JULIANNE MOSSLER
Deputy Attorney General
Attorneys for Complainant

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