

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

In the Matter of the Accusation Against:
ERNESTO DANIEL GUTIERREZ
DBA E & J AUTO REPAIR
710 W. 14th Street
Merced, CA 95340
Automotive Repair Dealer Registration No.
ARD 283029
Smog Check Station License No. RC 283029

Case No. 79/19-13430

OAH No. 2020040645

ERNESTO DANIEL GUTIERREZ
1300 3rd Street
Atwater, CA 95301
Smog Check Inspector License No. EO
635664
Smog Check Repair Technician License No.
EI 635664

VICTOR ROMERO
5601 S. HWY 59
Merced, CA 95341
Smog Check Inspector License No. EO
634257
Smog Check Repair Technician License No.
EI 634257

Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Director of Consumer Affairs and the Bureau of Automotive Repair as the Decision and Order in the above entitled matter.

This Decision shall become effective on January 5, 2021.

It is so ORDERED November 20, 2020.

Signed Copy on File

FOR THE DIRECTOR OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR

XAVIER BECERRA
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General
JOSHUA B. EISENBERG
Deputy Attorney General
State Bar No. 279323
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-6115
Facsimile: (916) 327-8643
E-mail: Joshua.Eisenberg@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against:
ERNESTO DANIEL GUTIERREZ
DBA E & J AUTO REPAIR
710 W. 14th Street
Merced, CA 95340
Automotive Repair Dealer Registration No.
ARD 283029
Smog Check Station License No. RC 283029

ERNESTO DANIEL GUTIERREZ
1300 3rd Street
Atwater, CA 95301
Smog Check Inspector License No. EO
635664
Smog Check Repair Technician License No.
EI 635664

VICTOR ROMERO
5601 S. HWY 59
Merced, CA 95341
Smog Check Inspector License No. EO
634257
Smog Check Repair Technician License No.
EI 634257

Respondents.

Case No. 79/19-13430

OAH No. 2020040645

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

**[ERNESTO DANIEL GUTIERREZ
ONLY]**

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

3 **PARTIES**

4 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair
5 (Bureau). He brought this action solely in his official capacity and is represented in this matter by
6 Xavier Becerra, Attorney General of the State of California, by Joshua B. Eisenberg, Deputy
7 Attorney General.

8 2. Respondent Ernesto Daniel Gutierrez (Respondent) is represented in this proceeding
9 by attorney William Ferreira, whose address is: 580 California Street, Ste. 1200, San Francisco,
10 CA 94104.

11 **Automotive Repair Dealer Registration**

12 3. On or about March 16, 2016, the Bureau issued Automotive Repair Dealer
13 Registration Number ARD 283029 (registration) to Respondent Ernesto Daniel Gutierrez, doing
14 business as E & J Auto Repair. The registration was in full force and effect at all times relevant
15 to the charges brought in Accusation No. 79/19-13430, and will expire on March 31, 2021, unless
16 renewed.

17 **Smog Check Station License**

18 4. On or about April 14, 2016, the Bureau issued Smog Check Station License Number
19 RC 283029 to Respondent Ernesto Daniel Gutierrez, doing business as E & J Auto Repair. The
20 license was in full force and effect at all times relevant to the charges brought in Accusation No.
21 79/19-13430, and will expire on March 31, 2021, unless renewed.

22 **Smog Check Inspector License**

23 5. On or about July 11, 2013, the Bureau issued Smog Check Inspector License Number
24 EO 635664 to Respondent. The license was in full force and effect at all times relevant to the
25 charges brought in Accusation No. 79/19-13430, and will expire on May 31, 2021, unless
26 renewed.

27 ///

28 ///

1 **Smog Check Repair Technician License**

2 6. On or about June 24, 2013, the Bureau issued Smog Check Repair License Number
3 EI 635664 to Respondent. The license was in full force and effect at all times relevant to the
4 charges brought Accusation No. 79/19-13430, and will expire on May 31, 2021, unless renewed.

5 **JURISDICTION**

6 7. Accusation No. 79/19-13430 was filed before the Director, and is currently pending
7 against Respondent. The Accusation and all other statutorily required documents were properly
8 served on Respondent on April 13, 2020. Respondent timely filed a Notice of Defense contesting
9 the Accusation.

10 8. A copy of Accusation No. 79/19-13430 is attached as exhibit A and incorporated
11 herein by reference.

12 **ADVISEMENT AND WAIVERS**

13 9. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 79/19-13430. Respondent has also carefully read, fully
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
16 Order.

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

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

25 **CULPABILITY**

26 12. Respondent admits the truth of each and every charge and allegation in Accusation
27 No. 79/19-13430.

28 ///

13. Respondent agrees that his Automotive Repair Dealer Registration, Smog Station License, Smog Check Inspector License, and Smog Check Repair Technician License are subject to discipline and he agrees 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 of Consumer Affairs 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.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 283029, Smog Check Station License No. RC 283029, Smog Check Inspector License No. EO 635664, and Smog Check Repair Technician License No. 635664, issued to Respondent Ernesto Daniel Gutierrez, are revoked. However, the revocations are stayed and all registrations and licenses are placed on probation for three (3) years on the following terms and conditions:

1. **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.

2. **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.

3. **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.

4. **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.

5. **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 of California, that 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

1 period of time of 30 days or more in which Respondent is not residing or engaging in business
2 within the jurisdiction of California. All provisions of probation shall recommence on the
3 effective date of resumption of business in California. Any period of time of 30 days or more in
4 which Respondent is not residing or engaging in business within the jurisdiction of California
5 shall not apply to the reduction of this probationary period or to any period of actual suspension
6 not previously completed. Tolling is not available if business or work relevant to the probationary
7 license or registration is conducted or performed during the tolling period.

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

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

22 **8. Cost Recovery.** Respondent shall be jointly and severally liable for payment to the
23 Bureau of Automotive Repair in the amount of \$8,885.74, for the reasonable costs of the
24 investigation and enforcement of case No. 79/19-13430. Respondent shall make such payment
25 within 24 months of the effective date of the Bureau's order. Respondent shall make payment by
26 check or money order payable to the Bureau of Automotive Repair and shall indicate on the
27 check or money order that it is for cost recovery payment for case No. 79/19-13430. Any order
28 for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation

1 shall not terminate until full cost recovery payment has been made. BAR reserves the right to
2 pursue any other lawful measures in collecting on the costs ordered and past due, in addition to
3 taking action based upon the violation of probation.

4 **9. Completion of Probation.** Upon successful completion of probation, Respondent's
5 affected registration and/or license(s) will be fully restored or issued without restriction, if
6 Respondent meets all current requirements for registration or licensure and have paid all
7 outstanding fees, monetary penalties, or cost recovery owed to BAR.

8 **10. License Surrender.** Following the effective date of a decision that orders a stay of
9 invalidation or revocation, if Respondent ceases business operations or is otherwise unable to
10 satisfy the terms and conditions of probation, Respondent may request that the stay be vacated.
11 Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right
12 to evaluate the Respondent's request and to exercise discretion whether to grant the request or
13 take any other action deemed appropriate or reasonable under the circumstances. Upon formal
14 granting of the request, the Director will vacate the stay order and carry out the disciplinary order
15 provided in the decision. Respondent may not petition the Director for reinstatement of the
16 surrendered registration and/or license, or apply for a new registration or license under the
17 jurisdiction of BAR at any time before the date of the originally scheduled completion of
18 probation. If Respondent applies to BAR for a registration or license at any time after that date,
19 Respondent must meet all current requirements for registration or licensure and pay all
20 outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, William Ferreira. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration, Smog Check Station License, Smog Check Inspector License, and Smog Check Repair Technician 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 Consumer Affairs.

DATED: 10/15/2020 Signed Copy on File
ERNESTO DANIEL GUTIERREZ
Respondent

I have read and fully discussed with Respondent Ernesto Daniel Gutierrez the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 10/15/2020 Signed Copy on File
WILLIAM FERREIRA
Attorney for Respondents

ENDORSEMENT

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

DATED: 10/15/2020 Respectfully submitted,
XAVIER BECERRA
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General

Signed Copy on File
JOSHUA B. EISENBERG
Deputy Attorney General
Attorneys for Complainant

SA2019105841
34389235.docx