

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

In the Matter of the Accusation Against:

VIVEK BERRY, OWNER, dba SAN LEANDRO TEST ONLY

1948 Davis St. #B

San Leandro, CA 94577

Mailing Address:

643 Olive Ave.

Fremont, CA 94539

Automotive Repair Dealer Registration No. ARD 270349

Smog Check Test Only Station License No. TC 270349

and

ERICK ANH BUI

1223 Drake Ave.

San Leandro, CA 94579

Smog Check Inspector No. EO 149871

Smog Check Repair Technician License No. EI 149871

Respondents.

Case No. 79/19-12094

OAH No. 2020080755

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 6, 2021.

DATED: February 17, 2021

Signed Copy 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**

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13 In the Matter of the Accusation Against:

14 **VIVEK BERRY, OWNER**
15 **dba SAN LEANDRO TEST ONLY**
16 **1948 Davis St. #B**
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17 **Mailing Address:**
18 **643 Olive Ave**
Fremont, CA 94539

19 **Automotive Repair Dealer No. ARD 270349**
20 **Smog Check, Test Only, License No. TC 270349**

21 **ERICK ANH BUI**
22 **1223 Drake Ave.**
San Leandro, CA 94579

23 **Smog Check Inspector (EO) license No. EO 149871**
Smog Check Repair (EI) Technician No. EI 149871

24 Respondents.

Case No. 79/19-12094

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STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER

25
26 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
27 entitled proceedings that the following matters are true:
28

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 Joshua D. Johnson, Deputy Attorney General.

2. Respondent Vivek Berry, Owner, doing business as San Leandro Test Only (Respondent Vivek Berry) and Erick Anh Bui (Respondent Bui) are represented in this proceeding by attorney William Ferreira, whose address is: 580 California Street, Suite 1200, San Francisco, CA 94104.

Automotive Repair Dealer Registration

3. On or about September 25, 2012, the Bureau issued Automotive Repair Dealer Registration Number ARD 270349 (ARD Registration) to Respondent Vivek Berry. The ARD Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2021, unless renewed.

Smog Check, Test Only, Station License

4. On or about September 28, 2012, the Bureau issued Smog Check, Test Only, Station License Number TC 270349 to Respondent Vivek Berry. The Smog Check, Test Only, Station License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2021, unless renewed.

STAR Certification

5. On or about June 5, 2013, the Bureau of Automotive Repair issued STAR Certification to Respondent Vivek Berry. The STAR Certification will remain active unless the ARD Registration and/or Smog Check, Test Only, Station License is revoked, canceled, become delinquent or certification is invalidated.

Smog Check Inspector Licenses

6. In 2004, the Bureau issued Advanced Emission Specialist Technician License Number EA 149871 to Respondent Bui. Respondent Bui's advanced emission specialist technician license expired on March 31, 2014, and was cancelled on May 16, 2014. Pursuant to

1 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
2 renewed, pursuant to Respondent Bui's election, as Smog Check Inspector License EO 149871
3 and Smog Check Repair Technician License EI 149871, effective May 16, 2014. Respondent
4 Bui's Smog Check Inspector License will expire on March 31, 2022, unless renewed.
5 Respondent Bui's Smog Check Repair Technician License expired on March 31, 2018, and has
6 not been renewed.¹

7 **JURISDICTION**

8 7. Accusation No. 79/19-12094 was filed before the Director of the Department of
9 Consumer Affairs (Bureau), for the Bureau of Automotive Repair, and is currently pending
10 against Respondent. The Accusation and all other statutorily required documents were properly
11 served on Respondent on March 23, 2020. Respondent timely filed his Notice of Defense
12 contesting the Accusation.

13 8. A copy of Accusation No. 79/19-12094 is attached as exhibit A and incorporated
14 herein by reference.

15 **ADVISEMENT AND WAIVERS**

16 9. Respondents have carefully read, fully discussed with counsel, and understand the
17 charges and allegations in Accusation No. 79/19-12094. Respondents have also carefully read,
18 fully discussed with counsel, and understand the effects of this Stipulated Settlement and
19 Disciplinary Order.

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

26
27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,
28 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and and/or Smog Check Repair Technician (EI) license.

11. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

12. Respondent Vivek Berry understands and agrees that the charges and allegations in Accusation No. 79/19-12094, if proven at a hearing, constitute cause for imposing discipline upon his Automotive Repair Dealer Registration, Smog Check, Test Only, Station License, and STAR Certification.

13. Respondent Bui understands and agrees that the charges and allegations in Accusation No. 79/19-12094, if proven at a hearing, constitute cause for imposing discipline upon his Smog Check Inspector License.

14. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondents agree that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondents hereby gives up their right to contest those charges.

15. Respondent Vivek Berry agrees that his Automotive Repair Dealer Registration, Smog Check, Test Only, Station License, and STAR Certification are subject to discipline and he agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order below.

16. Respondent Bui agrees that his Smog Check Inspector License is subject to discipline and he agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

17. 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

1 considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and
2 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
3 this paragraph, it shall be inadmissible in any legal action between the parties, and the Director
4 shall not be disqualified from further action by having considered this matter.

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

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

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

17 **DISCIPLINARY ORDER**

18 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration Number ARD
19 270349 and Smog Check, Test Only, Station License Number TC 270349 issued to Respondent
20 Vivek Berry, and Smog Check Inspector License EO 149871 and Smog Check Repair Technician
21 License EI 149871 issued to Respondent Bui are revoked. However, the revocation is stayed and
22 Respondent Vivek Berry and Respondent Bui are placed on probation for three (3) years on the
23 following terms and conditions:

24 1. **Obey All Laws.** During the period of probation, Respondents shall comply with all
25 federal and state statutes, regulations and rules governing all BAR registrations and licenses held
26 by Respondents.

27 2. **Posting of Sign.** During the period of suspension, Respondents shall prominently
28 post a sign or signs, provided by BAR, indicating the beginning and ending dates of the

1 suspension and indicating the reason for the suspension. The sign or signs shall be conspicuously
2 displayed in a location or locations open to and frequented by customers. The location(s) of the
3 sign(s) shall be approved by BAR and shall remain posted during the entire period of actual
4 suspension.

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

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

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

18 **6. Tolling of Probation.** If, during probation, Respondent Vivek Berry and/or
19 Respondent Bui leaves the jurisdiction of California to reside or do business elsewhere or
20 otherwise ceases to do business in the jurisdiction of California, Respondent shall notify BAR in
21 writing within 10 days of the dates of departure and return, and of the dates of cessation and
22 resumption of business in California. All provisions of probation other than cost reimbursement
23 requirements, restitution requirements, training requirements, and that Respondent obey all laws,
24 shall be held in abeyance during any period of time of 30 days or more in which Respondent is
25 not residing or engaging in business within the jurisdiction of California. All provisions of
26 probation shall recommence on the effective date of resumption of business in California. Any
27 period of time of 30 days or more in which Respondent is not residing or engaging in business
28 within the jurisdiction of California shall not apply to the reduction of this probationary period or

1 to any period of actual suspension not previously completed. Tolling is not available if business
2 or work relevant to the probationary license or registration is conducted or performed during the
3 tolling period.

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

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

19 **9. Cost Recovery.** Respondent Vivek Berry and Respondent Bui shall jointly and
20 severally pay the Bureau of Automotive Repair \$4,216.08 for the reasonable costs of the
21 investigation and enforcement of case No. 79/19-12094. Respondents shall make such payment in
22 24 equal monthly installments of \$175.67 beginning on the effective date of the decision.
23 Respondents shall make payment by check or money order payable to the Bureau of Automotive
24 Repair and shall indicate on the check or money order that it is for cost recovery payment for case
25 No. 79/19-12094. Any order for payment of cost recovery shall remain in effect whether or not
26 probation is tolled. Probation shall not terminate until full cost recovery payment has been made.
27 BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and
28 past due, in addition to taking action based upon the violation of probation.

1 **10. Completion of Probation.** Upon successful completion of probation, Respondents'
2 affected registration and/or license will be fully restored or issued without restriction, if
3 Respondents meet all current requirements for registration or licensure and have paid all
4 outstanding fees, monetary penalties, or cost recovery owed to BAR.

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

18 **12. Actual Suspension.** Automotive Repair Dealer Registration Number ARD 270349
19 and Smog Check, Test Only, Station License Number TC 270349 issued to Respondent Vivek
20 Berry, and Smog Check Inspector License EO 149871 and Smog Check Repair Technician
21 License EI 149871 issued to Respondent Bui is suspended five (5) consecutive days beginning on
22 the effective date of the Decision and Order.

23 **13. Renewal of Expired License.** If Respondent Bui renews Smog Check Repair
24 Technician License EI 149871 within one year from the effective date of the Decision and Order,
25 the license shall be on probation for the period specified in the order, beginning on effective date
26 of Decision and Order. Should Respondent Bui fail to successfully renew Smog Check Repair
27 Technician License EI 149871 within one year from the effective date of the Decision and Order,
28 the stay of revocation of that license shall be vacated and the license revoked pursuant to Term

1 #11 above.

2 14. **Training Course.** During the period of probation, Respondent Bui shall attend and
3 successfully complete a BAR-specified and -approved level two training course in inspection,
4 diagnosis and/or repair of emission systems failures and engine performance, applicable to the
5 class of license held by the Respondent Bui. Respondent Bui shall provide to the Bureau proof of
6 enrollment in the course within 30 days of the effective date of the decision, and proof of
7 successful course completion within 365 days of the effective date of the decision. Failure to
8 provide proof of enrollment and/or successful course completion to the Bureau within the
9 timeframes specified shall constitute a violation of probation, and Respondent shall be prohibited
10 from issuing any certificate of compliance or noncompliance until such proof is received.

11 **ACCEPTANCE**

12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
13 discussed it with my attorney, William Ferreira. I understand the stipulation and the effect it will
14 have on my Automotive Repair Dealer Registration, and Smog Check, Test Only, Station
15 License, and STAR Certification Station. I enter into this Stipulated Settlement and Disciplinary
16 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
17 of the Director of the Department of Consumer Affairs.

18 DATED: January 29, 2021 Signed Copy on File
19 VIVEK BERRY, DBA SAN LEANDRO TEST ONLY
Respondent

20 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
21 discussed it with my attorney, William Ferreira. I understand the stipulation and the effect it will
22 have on my Smog Check Inspector License and Smog Check Repair Technician License. I enter
23 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
24 and agree to be bound by the Decision and Order of the Director of the Department of Consumer
25 Affairs.

26 DATED: January 29, 2021 Signed Copy on File
27 ERICK ANH BUI
28 Respondent

1 I have read and fully discussed with Respondent Vivek Berry, Owner, doing business as
2 San Leandro Test Only, and Respondent Erick Anh Bui the terms and conditions and other
3 matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form
4 and content.

5 DATED: January 29, 2021

Singed Copy on File
6 WILLIAM FERREIRA
Attorney for Respondent

7
8 **ENDORSEMENT**

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

11 DATED: January 29, 2021
12 _____

Respectfully submitted,

13 XAVIER BECERRA
Attorney General of California
14 CHAR SACHSON
Supervising Deputy Attorney General

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16 JOSHUA D. JOHNSON
Deputy Attorney General
17 Attorneys for Complainant
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