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**BEFORE THE MOTOR VEHICLE DEALER BOARD  
STATE OF COLORADO**

Case No. BD16-2194

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**STIPULATION AND FINAL AGENCY ORDER**

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**IN THE MATTER OF: GUERRA AUTOS  
WHOLESALE LICENSE NO. 37304,**

**Respondent.**

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IT IS HEREBY STIPULATED AND AGREED to by and between the Colorado Department of Revenue, Motor Vehicle Dealer Board ("Board") and Guerra Autos ("Respondent") (collectively the "Parties") in lieu of further legal action:

1. The Board has jurisdiction over the Respondent and the subject matter of this Stipulation and Final Agency Order ("Stipulation") as set forth in article 6 of Title 12, C.R.S. and the Administrative Procedure Act, article 4 of Title 24, C.R.S.
2. The Respondent has been licensed as a wholesaler in the State of Colorado at all times relevant herein.
3. The Board has alleged that the Respondent violated:
  - A. C.R.S. § 12-6-118 (3)(b) for material misstatement in an application for a license. (3 Counts).
  - B. C.R.S. § 12-6-118 (3)(c) for violation of any of the terms and provisions of part 1 or any rule or regulation promulgated by the board under this part 1. Specifically:
    - i. Failing to provide information to the Board, by application for license fully, faithfully, truthfully and fairly. 1 CCR 205-1 Regulation 12-6-104(3)(g)(10). (3 Counts)
    - ii. Failing to immediately notify the board of a change in Respondent's place of business or business address during any license year. C.R.S. § 12-6-116(4). (1 Count)
    - iii. Exercising any of the privileges granted under a license that such person does not hold. C.R.S. §12-6-109. (9 Counts).
  - C. C.R.S. § 12-6-118(3)(o) for willfully violating any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority

pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles. Specifically:

i. Failing to maintain records required to be created or kept by any state or local law or regulation for three years from the date of creation, or such specified records retention period C.R.S. § 6-14-104; and/or

Failing to make Respondent's books and records, excluding financial statements and tax returns, open to inspection Monday through Friday between 9 a.m. and 5 p.m. by the Board and its agents during an ongoing investigation.<sup>1</sup> CCR 205-1 Regulation 12-6-102(16)(3). (18 counts).

ii. Committing perjury in the second degree by, with an intent to mislead a public servant in the performance of his duty, making a material false statement, which he does not believe to be true, under an oath required or authorized by law. C.R.S. §18-8-503 (3 counts).

iii. Attempting to influence any public servant by means of deceit or by threat of violence or economic reprisal against any person or property, with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or the agency . C.R.S. §18-8-306. (3 counts).

iv. Selling, leasing or offering or attempting to negotiate the sale, lease or exchange of an interest in motor vehicles by such wholesaler or wholesale motor vehicle auction dealer to persons other than motor vehicle dealers, used motor vehicle dealers, or other wholesalers or wholesale motor vehicle auction dealers. C.R.S. § 12-6-118(4). (9 counts).

D. C.R.S. § 12-6-118 (3)(s) for violating any state or federal statute or regulation issued thereunder dealing with odometers. Specifically,

i. Failing to execute an odometer disclosure statement and retain for five years a photostat, carbon or other facsimile copy of each odometer mileage statement at Respondent's primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval. Title 49 CFR Part 580.8 (a). (9 counts)

4. The Respondent understands that:

A. The Respondent has the right to be represented by an attorney of the Respondent's choice, at the Respondent's expense and is so represented;

B. The Respondent has the right to a formal hearing in accordance with article 6 of Title 12, C.R.S.;

C. By entering into this Stipulation, the Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Stipulation, and relieves the Board of its burden of proving such facts;

D. The Respondent is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Board; and,

E. The Respondent is knowingly and voluntarily giving up the right to judicial review of this matter.

5. The Respondent acknowledges receipt of sufficient notice, sufficient advisement of rights, and sufficient process in the proceedings of this case, and desires to resolve all issues that were the subject of the investigation by entering into this Stipulation.

6. The Respondent admits to:

A. Two (2) counts of selling, or offering or attempting to negotiate the sale, lease or exchange of an interest in motor vehicles to persons other than motor vehicle dealers, used motor vehicle dealers, or other wholesalers or wholesale motor vehicle auction dealers. C.R.S. § 12-6-118(4).

Based upon this admission, the Board is authorized to impose the sanctions set forth in this Stipulation.

7. The Respondent agrees, in lieu of subsequent administrative proceedings, to submit to the following sanction:

A. The Respondent is assessed a fine of \$1,000.00 per count.

B. Respondent's fine of \$2,000.00 shall be due and payable within thirty (30) days from the date this Stipulation is approved by the Board.

C. The Respondent agrees not to apply for renewal of Wholesaler license number 37304 beyond its 2016 expiration date.

8. Respondent will be permitted until October 15, 2016 to liquidate, in accordance with applicable law, the inventory on hand on the date of summary suspension as evidenced by a list previously provided to the Board, without penalty for unlicensed sales or sales while under suspension.

9. Upon satisfaction of the terms and conditions of this stipulation, including the monetary payments due, all other counts shall be deemed dismissed with prejudice.

10. The Respondent shall not engage in any act that would require licensure by the State of Colorado until the Respondent first obtains the appropriate licensure.

11. The Respondent agrees to strictly adhere to and to completely fulfill all requirements established in this Stipulation.

12. The Respondent is aware that this Stipulation will not become an order of the Board unless and until the Board approves it. If this Stipulation is not approved by the Board, it is void, and the Respondent shall not be bound by any provisions hereof or admissions herein.

13. Each Party shall bear its own costs and fees incurred in this action.

14. This Stipulation is the complete integration of all understandings between the parties. No addition, deletion, or amendment, except as mutually agreed to in writing and signed by both Parties, shall have any force or effect whatsoever.

15. The Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Stipulation and which are not inconsistent with its terms.

16. The provisions of this Stipulation shall be enforceable by the Parties before the Colorado Motor Vehicle Dealer Board, by any lawful remedy.

17. The Respondent expressly acknowledges having read and understood completely the terms of this Stipulation. The Respondent enters this Stipulation knowingly and voluntarily, after the opportunity to consult with counsel, and with full understanding of the legal consequences of this Stipulation. The Respondent expressly states that the Respondent believes the terms of this Stipulation are lawful, fair, conscionable and appropriate to reach a full and final resolution of this disciplinary matter.

18. This Stipulation and all its terms shall have the same force and effect as an order entered by the Board after hearing pursuant to article 6 of Title 12, C.R.S., except that this Stipulation cannot be appealed. The Respondent agrees that any violation of this Stipulation may constitute grounds for disciplinary proceedings pursuant to the Motor Vehicle Dealer Licensing Law and if proven may constitute a basis for further disciplinary action or for any other remedy authorized by law. In the event this matter is referred to hearing for violation of this Stipulation, this Stipulation shall be admissible as evidence. In the event an alleged violation of this Stipulation is taken to hearing and the facts that constitute the violation are determined not to be proven, the Board shall not take any disciplinary action, and this Stipulation shall remain operative and in full force and effect. The pendency of any disciplinary action pursuant to this Stipulation shall not affect the obligation of the Respondent to continue to comply with the terms of this Stipulation during the pendency of and after the conclusion of such disciplinary action.

19. This Stipulation is a public record in the Board's custody at all times.

20. Effective Date: This Stipulation shall become an order of the Board when accepted by the Board and signed by an authorized representative of the Board.

21. This Stipulation is a full and final resolution of Case Number BD16-2194. This Stipulation does not resolve any other cases, complaints or matters, known or unknown to the Parties, as of the effective date of this Stipulation.

22. The Respondent shall immediately provide in writing to the Board any change of the Respondent's legal address, in order for any notice required under this Stipulation or any necessary follow-up to this Stipulation to be made in a timely and efficient manner. Any notice required under this Stipulation shall be valid only if provided, in writing, to the Parties at their respective legal addresses, which the Parties acknowledge are currently as follows:

A. Board:

Colorado Department of Revenue,  
Motor Vehicle Dealer Board  
Auto Industry Division  
Attention: Bruce A. Zulauf, Division Director/Executive Secretary  
1881 Pierce Street, Suite 112  
Lakewood, CO 80214

B. Respondent:

Guerra Autos  
c/o Benjamin Guerra  
524 Stover St.  
Fort Collins, CO 80524


23. Should any term or provision of this Stipulation be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

24. This Stipulation may be signed in counterparts, each of which will have full force and effect upon execution by all Parties.

25. The Respondent warrants that it possesses the legal authority to enter into this Stipulation and that it has taken all actions required by its procedures, bylaws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Stipulation and to bind the Respondent to its terms. The person executing this Stipulation on behalf of the Respondent warrants that such person has full authorization to execute this Stipulation.

AGREED TO BY:

  
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Bruce A. Zulauf  
Director/Executive Secretary  
Motor Vehicle Dealer Board

  
\_\_\_\_\_  
Date

Benjamin Guerra  
Benjamin Guerra  
Guerra Autos  
Owner/President  
Respondent

10/10/2016  
Date

APPROVED AS TO FORM:

Y. E. Scott for  
Y. E. Scott  
Senior Assistant Attorney General

10/11/16  
Date

Benjamin J. Ross  
Benjamin J. Ross  
Jackson Kelly PLLC  
Attorney for Respondent

10/11/16  
Date

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This Stipulation and Final Agency Order is approved and its terms are hereby adopted as an Order of this Board.

ORDERED AND ENTERED this 18 day of October, 2016.

COLORADO MOTOR VEHICLE DEALER BOARD

BY: Joseph Gebhardt  
Joseph Gebhardt, President

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within STIPULATION AND FINAL AGENCY ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 11<sup>th</sup> day of October, 2016 addressed as follows:

Benjamin J. Ross  
Jackson Kelly PLLC  
1099 18th Street, Suite 2150  
Denver, CO 80202

Y. E. Scott  
Senior Assistant Attorney General  
1300 Broadway, 8<sup>th</sup> Floor  
Denver CO 80203



A handwritten signature in blue ink, appearing to read "Y. E. Scott", is written over a horizontal line.

cc: Bruce A. Zulauf, Executive Secretary  
Colorado Motor Vehicle Dealer Board