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

12 In the Matter of the Accusation Against:

Case No. 79/12-176

13 **ABC NICKS AUTOMOTIVE**  
14 **4280 Lincoln Boulevard**  
15 **Oroville, CA 95966-6765**  
16 **Mailing Address:**  
17 **P.O. Box 1128**  
18 **Oroville, CA 95965**  
19 **NIKKI LEE EVANS, OWNER**  
20 **Automotive Repair Dealer Registration No.**  
21 **ARD 162848**  
22 **Smog Check Station License No. RC 162848,**

**A C C U S A T I O N**  
**S M O G C H E C K**

18 and

19 **POOMPIBOON JIAMSAKUL BELCHER**  
20 **1083 Ohio Street**  
21 **Gridley, CA 95948**  
22 **Advanced Emission Specialist Technician**  
23 **License No. EA 631163**

22 Respondents.

24 Complainant alleges:

25 **PARTIES**

26 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity  
27 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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1 (4) Any other conduct which constitutes fraud.

2 (b) Except as provided for in subdivision (c), if an automotive repair  
3 dealer operates more than one place of business in this state, the director pursuant to  
4 subdivision (a) shall only invalidate temporarily or permanently the registration of the  
5 specific place of business which has violated any of the provisions of this chapter.  
6 This violation, or action by the director, shall not affect in any manner the right of the  
7 automotive repair dealer to operate his or her other places of business.

8 (c) Notwithstanding subdivision (b), the director may invalidate  
9 temporarily or permanently, the registration for all places of business operated in this  
10 state by an automotive repair dealer upon a finding that the automotive repair dealer  
11 has, or is, engaged in a course of repeated and willful violations of this chapter, or  
12 regulations adopted pursuant to it.

13 6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
14 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary  
15 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
16 temporarily or permanently.

17 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"  
18 "commission," "committee," "department," "division," "examining committee," "program," and  
19 "agency." "License" includes certificate, registration or other means to engage in a business or  
20 profession regulated by the Code.

21 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
22 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
23 the Motor Vehicle Inspection Program.

24 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

25 The director may suspend, revoke, or take other disciplinary action  
26 against a license as provided in this article if the licensee, or any partner, officer, or  
27 director thereof, does any of the following:

28 (a) Violates any section of this chapter [the Motor Vehicle Inspection  
Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted  
pursuant to it, which related to the licensed activities.

(c) Violates any of the regulations adopted by the director pursuant to  
this chapter.

(d) Commits any act involving dishonesty, fraud, or deceit whereby  
another is injured.

10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
expiration or suspension of a license by operation of law, or by order or decision of the Director

1 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
2 the Director of jurisdiction to proceed with disciplinary action.

3 11. Section 44072.8 of the Health and Safety Code states:

4 When a license has been revoked or suspended following a hearing under  
5 this article, any additional license issued under this chapter in the name of the  
6 licensee may be likewise revoked or suspended by the director.

#### 6 **COST RECOVERY**

7 12. Code section 125.3 provides, in pertinent part, that a Board may request the  
8 administrative law judge to direct a licentiate found to have committed a violation or violations of  
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case.

#### 11 **UNDERCOVER OPERATION – AUGUST 17, 2011**

12 13. On August 17, 2011, a Bureau undercover operator (“operator”) drove a Bureau-  
13 documented 1997 Chevrolet Astro to Respondent ABC’s facility and requested a smog  
14 inspection. The vehicle could not pass the visual portion of a smog inspection because the  
15 vehicle’s evaporation canister (“EVAP canister”) was missing. The operator signed a work order  
16 and received a copy of Estimate No. [REDACTED] prior to the smog inspection. Respondent Belcher  
17 performed the smog inspection and issued electronic Certificate of Compliance No. [REDACTED]  
18 for that vehicle. The operator paid Respondent ABC \$40 for the smog inspection and received  
19 Invoice No. [REDACTED] and a copy of the Vehicle Inspection Report (“VIR”).

#### 20 **FIRST CAUSE FOR DISCIPLINE**

##### 21 **(Misleading Statements)**

22 14. Respondent ABC has subjected his registration to discipline under Code section  
23 9884.7, subdivision (a)(1), in that on or about August 17, 2011, he made statements which he  
24 knew or which by exercise of reasonable care he should have known were untrue or misleading  
25 when he issued electronic Certificate of Compliance No. [REDACTED] for the 1997 Chevrolet  
26 Astro, certifying that the vehicle was in compliance with applicable laws and regulations when, in  
27 fact, the vehicle’s EVAP canister was missing.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 15. Respondent ABC has subjected his registration to discipline under Code section  
4 9884.7, subdivision (a)(4), in that on or about August 17, 2011, he committed acts which  
5 constitute fraud by issuing electronic Certificate of Compliance No. [REDACTED] for the 1997  
6 Chevrolet Astro, without performing a bona fide inspection of the emission control devices and  
7 systems on that vehicle, thereby depriving the People of the State of California of the protection  
8 afforded by the Motor Vehicle Inspection Program.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Violation of the Motor Vehicle Inspection Program)**

11 16. Respondent ABC has subjected his station license to discipline under Health and  
12 Safety Code section 44072.2, subdivision (a), in that on or about August 17, 2011, regarding the  
13 1997 Chevrolet Astro, he violated sections of that Code, as follows:

14 a. **Section 44012, subdivision (a):** Respondent ABC failed to determine that all  
15 emission control devices and systems required by law were installed and functioning correctly in  
16 accordance with test procedures.

17 b. **Section 44012, subdivision (f):** Respondent ABC failed to perform emission control  
18 tests on that vehicle in accordance with procedures prescribed by the department.

19 c. **Section 44015, subdivision (b):** Respondent ABC issued electronic Certificate of  
20 Compliance No. [REDACTED] without properly testing and inspecting the vehicle to determine if  
21 it was in compliance with section 44012 of that Code.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

24 17. Respondent ABC has subjected his station license to discipline under Health and  
25 Safety Code section 44072.2, subdivision (c), in that on or about August 17, 2011, regarding the  
26 1997 Chevrolet Astro, he violated sections of the California Code of Regulations, title 16, as  
27 follows:

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1 a. **Section 3340.35, subdivision (c):** Respondent ABC issued electronic Certificate of  
2 Compliance No. [REDACTED] even though that vehicle had not been inspected in accordance with  
3 section 3340.42 of that Code.

4 b. **Section 3340.42:** Respondent ABC failed to conduct the required smog tests and  
5 inspections on that vehicle in accordance with the Bureau's specifications.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud or Deceit)**

8 18. Respondent ABC subjected his station license to discipline under Health and Safety  
9 Code section 44072.2, subdivision (d), in that on or about August 17, 2011, regarding the 1997  
10 Chevrolet Astro, he committed acts involving dishonesty, fraud or deceit whereby another was  
11 injured by issuing electronic Certificate of Compliance No. [REDACTED] to that vehicle without  
12 performing a bona fide inspection of the emission control devices and systems on the vehicle,  
13 thereby depriving the People of the State of California of the protection afforded by the Motor  
14 Vehicle Inspection Program.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Violations of the Motor Vehicle Inspection Program)**

17 19. Respondent Belcher has subjected his technician license to discipline under Health  
18 and Safety Code section 44072.2, subdivision (a), in that on or about August 17, 2011, regarding  
19 the 1997 Chevrolet Astro, he violated sections of that Code, as follows:

20 a. **Section 44012, subdivision (a):** Respondent Belcher failed to determine that all  
21 emission control devices and systems required by law were installed and functioning correctly in  
22 accordance with test procedures.

23 b. **Section 44012, subdivision (f):** Respondent Belcher failed to perform emission  
24 control tests on that vehicle in accordance with procedures prescribed by the department.

25 c. **Section 44032:** Respondent Belcher failed to perform tests of the emission control  
26 devices and systems on that vehicle in accordance with section 44012 of that Code.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 20. Respondent Belcher has subjected his technician license to discipline under Health  
4 and Safety Code section 44072.2, subdivision (c), in that on or about August 17, 2011, regarding  
5 the 1997 Chevrolet Astro, he violated sections of the California Code of Regulations, title 16, as  
6 follows:

7 a. **Section 3340.30, subdivision (a):** Respondent Belcher failed to inspect and test that  
8 vehicle in accordance with Health and Safety Code section 44012.

9 b. **Section 3340.41, subdivision (c):** Respondent Belcher entered false information into  
10 the Emission Inspection System ("EIS") for electronic Certificate of Compliance No.  
11 [REDACTED] by entering "Pass" for the visual inspection portion of the smog inspection when, in  
12 fact, the vehicle could not pass the visual portion of the inspection because the vehicle's EVAP  
13 canister was missing.

14 c. **Section 3340.42:** Respondent Belcher failed to conduct the required smog tests and  
15 inspections on that vehicle in accordance with the Bureau's specifications.

16 **EIGHTH CAUSE FOR DISCIPLINE**

17 **(Dishonesty, Fraud or Deceit)**

18 21. Respondent Belcher has subjected his technician license to discipline under Health  
19 and Safety Code section 44072.2, subdivision (d), in that on or about August 17, 2011, regarding  
20 the 1997 Chevrolet Astro, he committed acts involving dishonesty, fraud or deceit whereby  
21 another was injured by issuing electronic Certificate of Compliance No. [REDACTED] without  
22 performing a bona fide inspection of the emission control devices and systems on that vehicle,  
23 thereby depriving the People of the State of California of the protection afforded by the Motor  
24 Vehicle Inspection Program.

25 **FACTUAL BACKGROUND**

26 22. The Bureau conducted a detailed review of the Vehicle Information Database  
27 ("VID") for all smog inspections performed at Respondent ABC's facility for the period June 6,  
28 2011, through September 9, 2011. The Bureau found that Respondent Belcher performed all of

1 the smog inspections for this time period. Respondent Belcher had inspected and tested the 6  
 2 vehicles set forth in Table 1, below, that failed or would have failed the smog inspection due to  
 3 too many incomplete OBD-II monitors or the Malfunction Indicator Light ("MIL") had been  
 4 commanded on by the Power Train Control Module ("PCM"), as more particularly set forth in  
 5 Table 1, below. The Bureau discovered that Respondent Belcher had knowingly entered false  
 6 information into the EIS regarding the functional testing of the OBD II for those vehicles.  
 7 Vehicles 1 through 6 received smog certificates; however, they had not been tested during the  
 8 OBD II functional test.

9 **TABLE 1**

<b>Date &amp; Time of Inspection</b>	<b>Vehicle Certified &amp; License No.</b>	<b>Certificate No.</b>	<b>Details</b>
1. 6/7/2011 0839 hours	1997 Acura Integra, License No. 6BUX239	OE027191C	Vehicle should have failed due to too many incomplete monitors.
1a. 6/9/2011 1514 hours	1997 Acura Integra, License No. 6BUX239	OE190306C	Vehicle should have failed due to too many incomplete monitors.
2. 6/22/2011 1107 hours	1998 Volkswagen Jetta, License No. 4TUD591	OE190332C	Vehicle should have failed due to too many incomplete monitors.
3. 6/28/2011 1057 hours	1998 Dodge Ram 2500 Diesel, License No. 7G16537	OE190347C	Vehicle should have failed due to the MIL being commanded on by the PCM
4. 8/1/2011 1124 hours	1999 Honda Accord, License No. 5CPS529	OE676578C	Vehicle should have failed due to too many incomplete monitors.
5. 8/25/2011 0859 hours	1997 Mercury Tracer, License No. 3UVH099	OG058546C	Vehicle should have failed due to the MIL being commanded on by the PCM
6. 6/17/2011 1053 hours	2000 Honda Civic, License No. 5BYF877	OE190321C	Vehicle should have failed all portions of the smog inspection due to an engine change, which would require that all monitors had to be completed before the vehicle could pass the inspection.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 26. Respondent ABC has subjected his station license to discipline under Health and  
4 Safety Code section 44072.2, subdivision (c), in that between June 7, 2011, through August 25,  
5 2011, regarding vehicles 1 through 6, identified in Table 1, above, he violated sections of the  
6 California Code of Regulations, title 16, as follows:

7 a. **Section 3340.35, subdivision (c):** Respondent ABC issued electronic certificates of  
8 compliance even though those vehicles had not been inspected in accordance with section  
9 3340.42 of that Code.

10 b. **Section 3340.42:** Respondent ABC failed to conduct the required smog tests and  
11 inspections on those vehicles in accordance with the Bureau's specifications.

12 **THIRTEENTH CAUSE FOR DISCIPLINE**

13 **(Dishonesty, Fraud or Deceit)**

14 27. Respondent ABC has subjected his station license to discipline under Health and  
15 Safety Code section 44072.2, subdivision (d), in that between June 7, 2011, through August 25,  
16 2011, regarding vehicles 1 through 6, identified in Table 1, above, it committed acts involving  
17 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of  
18 compliance for those vehicles without performing bona fide inspections of the emission control  
19 devices and systems on the vehicles, thereby depriving the People of the State of California of the  
20 protection afforded by the Motor Vehicle Inspection Program.

21 **FOURTEENTH CAUSE FOR DISCIPLINE**

22 **(Violations of the Motor Vehicle Inspection Program)**

23 28. Respondent Belcher has subjected his technician license to discipline under Health  
24 and Safety Code section 44072.2, subdivision (a), in that between June 7, 2011, through August  
25 25, 2011, regarding vehicles 1 through 6, identified in Table 1, above, Respondent Belcher failed  
26 to comply with section 44012 of that Code in a material respect, as follows: Respondent Belcher  
27 failed to perform the emission control tests on vehicles 1 through 6, in accordance with  
28 procedures prescribed by the department.

1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 29. Respondent Belcher has subjected his technician license to discipline under Health  
4 and Safety Code section 44072.2, subdivision (c), in that between June 7, 2011, through August  
5 25, 2011, regarding vehicles 1 through 6, identified in Table 1, above, he violated sections of the  
6 California Code of Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a):** Respondent Belcher failed to inspect and test  
8 those vehicles in accordance with Health and Safety Code section 44012.

9 b. **Section 3340.42:** Respondent Belcher failed to conduct the required smog tests and  
10 inspections on those vehicles in accordance with the Bureau's specifications.

11 **SIXTEENTH CAUSE FOR DISCIPLINE**

12 **(Dishonesty, Fraud or Deceit)**

13 30. Respondent Belcher has subjected his technician license to discipline under Health  
14 and Safety Code section 44072.2, subdivision (d), in that between June 7, 2011, through August  
15 25, 2011, regarding vehicles 1 through 6, identified in Table 1, above, he committed acts  
16 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic  
17 certificates of compliance without performing bona fide inspections of the emission control  
18 devices and systems on those vehicles, thereby depriving the People of the State of California of  
19 the protection afforded by the Motor Vehicle Inspection Program.

20 **PRIOR CITATIONS**

21 31. To determine the degree of penalty, if any, to be imposed upon Respondent ABC,  
22 Complainant alleges, as follows:

23 a. On April 11, 2003, the Bureau issued Citation No. C03-1079 to Respondent ABC  
24 against his station license for violations of Health and Safety Code section 44012, subdivision (f)  
25 (failure to perform a visual/functional check of emission control devices) and California Code of  
26 Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing a certificate of  
27 compliance to a vehicle improperly tested). Respondent ABC issued a certificate of compliance  
28 to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's specifications.

1 The Bureau assessed a civil penalty of \$500. Respondent ABC complied with this citation on  
2 May 14, 2003.

3 b. On June 18, 2008, the Bureau issued Citation No. C08-1105 to Respondent ABC  
4 against his station license for violations of Health and Safety Code section 44012, subdivision (f)  
5 (failure to perform a visual/functional check of emission control devices) and Regulation, section  
6 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested).  
7 Respondent ABC issued a certificate of compliance to a Bureau vehicle with a missing air  
8 injection system. The Bureau assessed a civil penalty of \$500. Respondent ABC complied with  
9 this citation on August 4, 2008.

10 c. On October 13, 2010, the Bureau issued Citation No. M2011-0411 to Respondent  
11 Belcher against his technician license for violations of Health and Safety Code section 44032,  
12 (qualified technicians shall perform tests of emission control systems and devices in accordance  
13 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")  
14 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
15 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
16 3340.42). Respondent Belcher issued a certificate of compliance to a Bureau vehicle with a non-  
17 functional exhaust gas recirculation valve. Respondent Belcher was required to attend a 68-hour  
18 training course. Respondent Belcher complied with this citation on December 3, 2010.

19 **OTHER MATTERS**

20 32. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
21 or permanently or refuse to validate, the registrations for all places of business operated in this  
22 state by Nikki Lee Evans upon a finding that he has, or is, engaged in a course of repeated and  
23 willful violations of the laws and regulations pertaining to an automotive repair dealer.

24 33. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station  
25 License Number RC 162848, issued to Nikki Lee Evans, doing business as ABC Nicks  
26 Automotive, is revoked or suspended, any additional license issued under this chapter in the name  
27 of said licensee may be likewise revoked or suspended by the director.

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1           7.    Ordering Nikki Lee Evans and Poompiboon Jiamsakul Belcher to pay the Bureau of  
2 Automotive Repair the reasonable costs of the investigation and enforcement of this case,  
3 pursuant to Business and Professions Code section 125.3; and,

4           8.    Taking such other and further action as deemed necessary and proper.

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DATED: 6/27/12

John Wallauch by [Signature]

JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

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