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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. 79/12-79

13 **ARCH'S AUTOMOTIVE, INC.,**
14 **dba ARCH'S AUTOMOTIVE SERVICE**
15 **BRENDAN CLIFTON BROOKS, PRESIDENT**
16 **KEVIN MARC MALTESE, SECRETARY**
1355 East Main Street
Grass Valley, CA 95945
Automotive Repair Dealer Reg. No. ARD 238380
Smog Check Station License No. RC 238380,

A C C U S A T I O N
(Smog Check)

17 **RICKY LEE ALLEN MCDANIEL**
18 **11433 Banner Mountain Trail**
19 **Nevada City, CA 95959**
Advanced Emission Specialist Technician
License No. EA 632021,

20 **and**

21 **SANDRA MARIE SANDELIUS**
22 **2012 Covilaud Street, #4**
23 **Marysville, CA 95901**
Advanced Emission Specialist Technician
License No. EA 153369

24 Respondents.

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1 Complainant alleges:

2 **PARTIES**

3 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
4 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

5 **Arch's Automotive, Inc. dba Arch's Automotive Service**

6 2. In or about 2005, the Director of Consumer Affairs ("Director") issued Automotive
7 Repair Dealer Registration Number ARD 238380 ("registration") to Arch's Automotive, Inc.
8 ("Respondent Arch's Automotive"), doing business as Arch's Automotive Service, with Brendan
9 Clifton Brooks as president and Kevin Marc Maltese as secretary. Respondent's registration was
10 in full force and effect at all times relevant to the charges brought herein and will expire on
11 March 31, 2012, unless renewed.

12 3. On or about April 13, 2005, the Director issued Smog Check Station License Number
13 RC 238380 to Respondent Arch's Automotive. Respondent's smog check station license was in
14 full force and effect at all times relevant to the charges brought herein and will expire on March
15 31, 2012, unless renewed.

16 **Ricky Lee Allen McDaniel**

17 4. On or about April 28, 2010, the Director issued Advanced Emission Specialist
18 Technician License Number EA 632021 ("technician license") to Ricky Lee Allen McDaniel
19 ("Respondent McDaniel"). Respondent's technician license was in full force and effect at all
20 times relevant to the charges brought herein and will expire on December 31, 2013, unless
21 renewed.

22 **Sandra Marie Sandelius**

23 5. In or about 2006, the Director issued Advanced Emission Specialist Technician
24 License Number EA 153369 ("technician license") to Sandra Marie Sandelius ("Respondent
25 Sandelius"). Respondent's technician license was in full force and effect at all times relevant to
26 the charges brought herein and will expire on October 31, 2012, unless renewed.

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1 **JURISDICTION**

2 6. Business and Professions Code (“Bus. & Prof. Code”) section 9884.7 provides that
3 the Director may revoke an automotive repair dealer registration.

4 7. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
5 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
6 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
7 invalidating (suspending or revoking) a registration.

8 8. Health and Safety Code (“Health & Saf. Code”) section 44002 provides, in pertinent
9 part, that the Director has all the powers and authority granted under the Automotive Repair Act
10 for enforcing the Motor Vehicle Inspection Program.

11 9. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
12 suspension of a license by operation of law, or by order or decision of the Director of Consumer
13 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
14 of jurisdiction to proceed with disciplinary action.

15 **STATUTORY PROVISIONS**

16 10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

17 (a) The director, where the automotive repair dealer cannot show there
18 was a bona fide error, may deny, suspend, revoke, or place on probation the
19 registration of an automotive repair dealer for any of the following acts or omissions
20 related to the conduct of the business of the automotive repair dealer, which are done
by the automotive repair dealer or any automotive technician, employee, partner,
officer, or member of the automotive repair dealer.

21 (1) Making or authorizing in any manner or by any means whatever any
22 statement written or oral which is untrue or misleading, and which is known, or which
by the exercise of reasonable care should be known, to be untrue or misleading.

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24 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
25 place on probation the registration for all places of business operated in this state by
26 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
engaged in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it.

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1 11. Bus. & Prof. Code section 22, subdivision (a), states:

2 "Board" as used in any provision of this Code, refers to the board in
3 which the administration of the provision is vested, and unless otherwise expressly
4 provided, shall include "bureau," "commission," "committee," "department,"
5 "division," "examining committee," "program," and "agency."

6 12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
7 "license" includes "registration" and "certificate."

8 13. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

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

18 14. Health & Saf. Code section 44072.8 states that when a license has been revoked or
19 suspended following a hearing under this article, any additional license issued under this chapter
20 in the name of the licensee may be likewise revoked or suspended by the director.

21 COST RECOVERY

22 15. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
23 the administrative law judge to direct a licentiate found to have committed a violation or
24 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
25 and enforcement of the case.

26 UNDERCOVER OPERATION #1: 1998 FORD EXPLORER

27 16. On July 13, 2011, a representative of the Bureau, acting in an undercover capacity
28 ("operator"), took the Bureau's 1998 Ford Explorer to Respondent Arch's Automotive's facility
and requested a smog inspection. All of the required emission control devices and systems on the
Bureau-documented vehicle were present, properly connected, and in good working condition.
The operator signed and received a copy of a written estimate. After the inspection was

1 completed, the operator paid the facility \$61.75 and received copies of an invoice and a vehicle
2 inspection report ("VIR"). The VIR indicated that Respondent McDaniel performed the
3 inspection on the vehicle. The VIR also indicated that the PCV (positive crankcase ventilation)
4 system and fuel evaporative controls had failed the visual inspection and that the fuel evaporative
5 controls were modified, resulting in the vehicle's failure of the overall inspection.

6 17. On July 22, 2011, the Bureau performed a Two Speed Idle ("TSI") California
7 Emission Inspection test on the vehicle. The vehicle passed all portions of the test, including the
8 visual inspection. The Bureau found that the facility had improperly failed the PCV and fuel
9 evaporative systems, as set forth below.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 18. Respondent Arch's Automotive's registration is subject to disciplinary action
13 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
14 authorized statements which it knew or in the exercise of reasonable care should have known to
15 be untrue or misleading, as follows:

16 a. Respondent Arch's Automotive's technician, Respondent McDaniel, certified under
17 penalty of perjury on the VIR that the information listed on the VIR was true and correct and that
18 the PCV system on the Bureau's 1998 Ford Explorer had failed the visual inspection. In fact, the
19 PCV system was fitted with the correct parts, was not damaged, was properly installed on the
20 vehicle, and should have passed the visual inspection.

21 b. Respondent Arch's Automotive's technician, Respondent McDaniel, certified under
22 penalty of perjury on the VIR that the information listed on the VIR was true and correct, and that
23 the fuel evaporative controls on the Bureau's 1998 Ford Explorer were modified and had failed
24 the visual inspection. In fact, the fuel evaporative system was fitted with the correct parts, was
25 not damaged, was properly installed on the vehicle, and should have passed the visual inspection.

26 c. Respondent Arch's Automotive's technician, Respondent McDaniel, represented on
27 the VIR that "Evap service port looks like its hook up wrong". In fact, the evaporative emissions

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1 service port and hose were correct for the vehicle, were properly installed, were not modified or
2 damaged, and should have passed the visual inspection.

3 **SECOND CAUSE FOR DISCIPLINE**

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

5 19. Respondent Arch's Automotive's smog check station license is subject to disciplinary
6 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
7 to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to
8 ensure that the visual inspection of the emission control systems and devices on the Bureau's
9 1998 Ford Explorer was performed in accordance with procedures prescribed by the department.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant**
12 **to the Motor Vehicle Inspection Program)**

13 20. Respondent Arch's Automotive's smog check station license is subject to disciplinary
14 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed
15 to comply with California Code of Regulations, title 16, section 3340.42, as follows: Respondent
16 failed to ensure that the required smog tests were conducted on the Bureau's 1998 Ford Explorer
17 in accordance with the Bureau's specifications.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 21. Respondent McDaniel's technician license is subject to disciplinary action pursuant to
21 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
22 section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the visual
23 inspection of the emission control systems and devices on the Bureau's 1998 Ford Explorer in
24 accordance with procedures prescribed by the department.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 22. Respondent McDaniel's technician license is subject to disciplinary action pursuant to
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
6 provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's
8 1998 Ford Explorer in accordance with Health & Saf. Code sections 44012 and 44035, and
9 California Code of Regulations, title 16, section 3340.42.

10 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
11 Bureau's 1998 Ford Explorer in accordance with the Bureau's specifications.

12 **UNDERCOVER OPERATION #2: 1990 PLYMOUTH SUNDANCE**

13 23. On July 13, 2011, a representative of the Bureau, acting in an undercover capacity
14 ("operator"), took the Bureau's 1990 Plymouth Sundance to Respondent Arch's Automotive's
15 facility and requested a smog inspection. All of the required emission control devices and
16 systems on the Bureau-documented vehicle were present, properly connected, and in good
17 working condition. The operator signed and received a copy of a written estimate. After the
18 inspection was completed, the operator paid the facility \$61.75 and received copies of an invoice
19 and VIR. The VIR indicated that Respondent Sandelius performed the smog inspection on the
20 vehicle. The VIR also indicated that the vehicle's ignition timing was defective and had failed
21 the functional check, resulting in the vehicle's failure of the overall inspection.

22 24. On July 18, 2011, the Bureau inspected the vehicle. The Bureau found that the
23 ignition timing was adjusted to factory specifications and that the facility had improperly failed
24 the vehicle for the ignition timing, as set forth below.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 **(Untrue or Misleading Statements)**

27 25. Respondent Arch's Automotive's registration is subject to disciplinary action
28 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or

1 authorized a statement which it knew or in the exercise of reasonable care should have known to
2 be untrue or misleading, as follows: Respondent Arch's Automotive's technician, Respondent
3 Sandelius, certified under penalty of perjury on the VIR that the information listed on the VIR
4 was true and correct, that the ignition timing on the Bureau's 1990 Plymouth Sundance was set to
5 6 degrees After Top Dead Center and was defective, and that the vehicle failed the functional
6 check portion of the smog inspection. In fact, the ignition timing on the vehicle was set to factory
7 specifications, 12 degrees Before Top Dead Center, was not defective, and should have passed the
8 functional check.

9 **SEVENTH CAUSE FOR DISCIPLINE**

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

11 26. Respondent Arch's Automotive's smog check station license is subject to disciplinary
12 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
13 to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to
14 ensure that the functional check of the emission control systems and devices on the Bureau's
15 1990 Plymouth Sundance was performed in accordance with procedures prescribed by the
16 department.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations Pursuant
19 to the Motor Vehicle Inspection Program)**

20 27. Respondent Arch's Automotive's smog check station license is subject to disciplinary
21 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed
22 to comply with California Code of Regulations, title 16, section 3340.42, as follows: Respondent
23 failed to ensure that the required smog tests were conducted on the Bureau's 1990 Plymouth
24 Sundance in accordance with the Bureau's specifications.

25 **NINTH CAUSE FOR DISCIPLINE**

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

27 28. Respondent Sandelius' technician license is subject to disciplinary action pursuant to
28 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with

1 section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the
2 functional check of the emission control systems and devices on the Bureau's 1990 Plymouth
3 Sundance in accordance with procedures prescribed by the department.

4 **TENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant**
6 **to the Motor Vehicle Inspection Program)**

7 29. Respondent Sandelius' technician license is subject to disciplinary action pursuant to
8 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
9 provisions of California Code of Regulations, title 16, as follows:

10 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's
11 1990 Plymouth Sundance in accordance with Health & Saf. Code sections 44012 and 44035, and
12 California Code of Regulations, title 16, section 3340.42.

13 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
14 Bureau's 1990 Plymouth Sundance in accordance with the Bureau's specifications.

15 **MATTERS IN AGGRAVATION**

16 30. To determine the degree of discipline, if any, to be imposed on Respondents Arch's
17 Automotive and Sandelius, Complainant alleges as follows:

18 **Respondent Arch's Automotive**

19 a. On or about March 2, 2009, the Bureau issued Citation No. C09-1015 against
20 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
21 perform a visual/functional check of emission control devices according to procedures prescribed
22 by the department); and California Code of Regulations, title 16, section ("Regulation") 3340.35,
23 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On
24 February 9, 2009, Respondent had issued a certificate of compliance to a Bureau undercover
25 vehicle with a missing PCV system. The Bureau assessed civil penalties totaling \$500 against
26 Respondent for the violations. Respondent paid the fine on March 25, 2009.

27 b. On or about May 6, 2009, the Bureau issued Citation No. C09-1279 against
28 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to

1 perform a visual/functional check of emission control devices according to procedures prescribed
2 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
3 to a vehicle that was improperly tested). On April 23, 2009, Respondent had issued a certificate
4 of compliance to a Bureau undercover vehicle with a missing fuel evaporative storage system
5 canister. The Bureau assessed civil penalties totaling \$1,000 against Respondent for the
6 violations. Respondent paid the fine on May 28, 2009.

7 **Respondent Sandelius**

8 c. On or about May 6, 2009, the Bureau issued Citation No. M09-1280 against
9 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
10 perform tests of emission control systems and devices in accordance with Health & Saf. Code
11 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
12 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
13 Regulation 3340.42). On or about April 23, 2009, Respondent issued a certificate of compliance
14 to a Bureau undercover vehicle with a missing fuel evaporative storage system canister.
15 Respondent was directed to complete an 8 hour training course and to submit proof of completion
16 to the Bureau within 30 days from receipt of the citation. Respondent completed the training on
17 May 21, 2009.

18 **OTHER MATTERS**

19 31. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
20 suspend, revoke, or place on probation the registration for all places of business operated in this
21 state by Respondent Arch's Automotive, Inc., doing business as Arch's Automotive Service,
22 upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations
23 of the laws and regulations pertaining to an automotive repair dealer.

24 32. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
25 Number RC 238380, issued to Respondent Arch's Automotive, Inc., doing business as Arch's
26 Automotive Service, is revoked or suspended, any additional license issued under this chapter in
27 the name of said licensee may be likewise revoked or suspended by the Director.

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