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

In the Matter of the Accusation Against:

**AAA TEST ONLY;
WILLIAM FURBUSH – PRESIDENT
DBA AAA TEST ONLY
677 E. 9th Street
San Bernardino, CA 92410**

**Automotive Repair Dealer Registration No.
ARD 256890
Smog Check Test Only Station License No.
TC 256890
Advanced Emission Specialist Technician
License No. EA 155036 (to be redesignated
upon renewal as EO 155036 and/or EI
155036)**

and

**MICHAEL AUSTIN ROSS, JR.
10130 Cartagena Dr.
Moreno Valley, CA 92557**

**Advanced Emission Specialist Technician
License No. EA 633510 (to be redesignated
upon renewal as EO 633510 and/or EI
633510)**

Respondents.

Case No. **79/13-100**

ACCUSATION

1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration No. ARD 256890**

6 2. On December 10, 2008, the BAR issued Automotive Repair Dealer Registration
7 Number ARD 256890 (Registration) to AAA Test Only, William Furbush - President, dba AAA
8 Test Only (Respondent AAA). The Registration, which was in full force and effect at all times
9 relevant to the charges brought herein, expired on September 30, 2012, and has not been renewed.

10 **Smog Check, Test Only, Station License Number TC 256890**

11 3. On November 25, 2009, the BAR issued Smog Check - Test Only Station License
12 Number TC 256890 (Smog Check Station License) to Respondent AAA. The Smog Check
13 Station License, which was in full force and effect at all times relevant to the charges brought
14 herein, expired on September 30, 2012, and has not been renewed.

15 **Advanced Emission Specialist Technician License Number EA 155036**

16 4. On a date uncertain in 2007, the BAR issued Advanced Emission Specialist
17 Technician License Number EA 155036 (technician license) to William Furbush (Respondent
18 Furbush). The Technician License was in full force and effect at all times relevant to the charges
19 brought herein. Respondent Furbush's technician license is due to expire on August 31, 2014.
20 Upon timely renewal thereof, the technician license will be redesignated as EO 155036 and/or EI
21 155036.¹

22 **Advanced Emission Specialist Technician License Number EA 633510**

23 5. On August 15, 2011, the BAR issued Advanced Emission Specialist Technician
24 License Number EA 633510 (technician license) to Michael Austin Ross Jr. (Respondent Ross
25 Jr). The Technician License was in full force and effect at all times relevant to the charges

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

1 brought herein. Respondent Ross Jr's technician license is due to expire on July 31, 2014. Upon
2 timely renewal thereof, the technician license will be redesignated as EO 633510 and/or EI
3 633510.²

4 JURISDICTION

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

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

11 8. Section 44002 of the Health and Safety Code provides, in pertinent party, that the
12 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
13 the Motor Vehicle Inspection Program.

14 9. California Code of Regulations, title 16, section 3340.28, subdivision (e) states that
15 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
16 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
17 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

18 STATUTORY PROVISIONS

19 10. Section 9884.7 of the Code states, in pertinent part:

20 "(a) The director, where the automotive repair dealer cannot show there was a bona
21 fide error, may deny, suspend, revoke, or place on probation the registration of an
22 automotive repair dealer for any of the following acts or omissions related to the conduct of
23 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.

24 (1) Making or authorizing in any manner or by any means whatever any statement
25 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.

26 ² Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 (4) Any other conduct that constitutes fraud.

2 (6) Failure in any material respect to comply with the provisions of this chapter or
3 regulations adopted pursuant to it.

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

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

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

12 12. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
13 "commission," "committee," "department," "division," "examining committee," "program," and
14 "agency." "License" includes certificate, registration or other means to engage in a business or
15 profession regulated by the Code.

15 13. Section 118(b) of the Code states:

16 "The suspension, expiration, or forfeiture by operation of law of a license issued by a board
17 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
18 of a court of law, or its surrender without the written consent of the board, shall not, during any
19 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
20 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
21 provided by law or to enter an order suspending or revoking the license or otherwise taking
22 disciplinary action against the licensee on any such ground.

20 14. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

23 "(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health
24 and Safety Code, Section 44000, et seq.)] and the regulations adopted pursuant to it, which related
25 to the licensed activities.

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

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

27 15. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
28 expiration or suspension of a license by operation of law, or by order or decision of the Director
of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
the Director of jurisdiction to proceed with disciplinary action.

known as "clean plugging,"⁴ resulting in the issuance of fraudulent certificates of compliance for the vehicles that were tested as outlined in the following table.

OBDII Clean Plug Table No. 1

#	Test Date Start-End	Year	Make	Model	License #	Unsupported Code	Certificate #	Tech. Id. #
1	3/22/2012 1229-1237	2002	Kia	Rio	5CCR407	P1514	XF222399C	633510
2	3/23/2012 1554-1606	1996	Honda	Civic	3POZ186	P1514	XF407215C	633510
3	3/23/2012 1637-1650	1998	Honda	Civic	6REM231	P1514	XF407217C	633510
4	3/27/2012 1647-1656	2002	Toyota	Camry	4WSJ898	P1514	XF407231C	633510
5	4/6/2012 1623-1632	2001	Toyota	Tacoma	6L30103	P1514	XF657166C	633510
6	4/7/2012 1044-1055	2000	Toyota	Tacoma	6F53406	P1514	XF657167C	633510
7	4/26/2012 1752-1802	1998	Ford	Escort	4APJ985	P1514	XF933376C	155036
8	4/26/2012 1807-1817	1999	Toyota	4Runner	4FKA397	P1514	XF933377C	155036
9	5/21/2012 1102-1130	1998	Toyota	Corolla	E2WZ030899	P1514	XH371555C	633510
10	5/22/2012 1818-1834	1997	Acura	Integra	5JYA023	P1514	XH371564C	633510

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⁴ Clean-plugging is the use of the OBD II readiness monitor status and stored code status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to the noncompliant vehicle's failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure. Clean plugging occurs during the inspection of a vehicle that has an OBD II system. To clean plug a vehicle, the smog technician enters information into the EIS for the vehicle the technician wishes to certify and then plugs the OBD II system connector from the EIS into another vehicle that has a properly functioning OBD II system for the purpose of obtaining a "Passing" OBD II functional test result.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 20. Respondent AAA's registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(1) in that he made statements which he knew or which
5 by exercise of reasonable care he should have known were untrue or misleading when he issued
6 electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that
7 those vehicles were in compliance with applicable laws and regulations when, in fact, those
8 vehicles had not been so inspected.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 21. Respondent AAA's registration is subject to disciplinary action under pursuant to
12 Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent AAA committed acts
13 that constitute fraud by issuing electronic smog certificates of compliance for the vehicles 1
14 through 10, identified in Table 1 of paragraph 18 above, without performing bona fide inspections
15 of the emission control devices and systems on the vehicles, thereby depriving the People of the
16 State of California of the protection afforded by the Motor Vehicle Inspection Program.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Material Violation of Automotive Repair Act)**

19 22. Respondent AAA's registration is subject to disciplinary action pursuant to Bus. &
20 Prof. Code section 9884.7, subdivision (a)(6), in that Respondent AAA failed in a "material
21 respect to comply with the provisions of this chapter or regulations adopted pursuant to it" when
22 Respondent AAA issued electronic certificates of compliance for the vehicles set forth in Table 1
23 of paragraph 18 above, without performing bona fide inspections of the emission control devices
24 and systems on those vehicles, thereby depriving the people of the State of California of the
25 protection afforded by the Motor Vehicle Inspection Program.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 23. Respondent AAA's registration is subject to disciplinary action pursuant to Health &
4 Safety Code section 44072.2, subdivision (a), in that Respondent AAA failed to comply with the
5 following sections of that Code:

6 a. Section 44012: Respondent AAA failed to ensure that all emission control devices and
7 systems required by law for vehicles 1 through 10, identified in Table 1 of paragraph 18 above,
8 were installed and functioning correctly in accordance with test procedures.

9 b. Section 44012, subdivision (f): Respondent AAA failed to ensure that the emission
10 control tests were performed on vehicles 1 through 10, identified in Table 1 of paragraph 18
11 above, in accordance with procedures prescribed by the department.

12 c. Section 44015, subdivision (b): Respondent AAA issued electronic smog certificates of
13 compliance for vehicles 1 through 10, identified in Table 1 of paragraph 18 above, without
14 ensuring that the vehicles were properly tested and inspected to determine if they were in
15 compliance with Health & Safety Code section 44012.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 24. Respondent AAA's smog check station license is subject to disciplinary action
19 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that Respondent AAA
20 failed to comply with provisions of California Code of Regulations, title 16, as follows:

21 a. Section 3340.24, subdivision (c): Respondent AAA falsely or fraudulently issued
22 electronic smog certificates of compliance for vehicles 1 through 10, identified in Table 1 of
23 paragraph 18 above.

24 b. Section 3340.35, subdivision (c): Respondent AAA issued electronic smog certificates
25 of compliance for vehicles 1 through 10, identified in Table 1 of paragraph 18 above, even though
26 the vehicles had not been inspected in accordance with section 3340.42.

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1 c. Section 3340.42: Respondent AAA failed to ensure that the required smog tests were
2 conducted on vehicles 1 through 10, identified in Table 1 of paragraph 18 above, in accordance
3 with the BAR's specifications.

4 **FIFTH CAUSE FOR DISCIPLINE**

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

6 25. Respondent AAA's smog check station license is subject to disciplinary action
7 pursuant to Health & Safety Code section 44072.2, subdivision (d). in that Respondent AAA
8 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic
9 smog certificates of compliance for the vehicles 1 through 10, identified in Table 1 of paragraph
10 18 above, without performing bona fide inspections of the emission control devices and systems
11 on the vehicles, thereby depriving the People of the State of California of the protection afforded
12 by the Motor Vehicle Inspection Program.

13 **SIXTH CAUSE FOR DISCIPLINE**

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

15 26. Respondent Furbush's technician license is subject to disciplinary action pursuant to
16 Health & Safety Code section 44072.2, subdivision (a), in that Respondent Furbush failed to
17 comply with the following sections of that Code:

18 a. Section 44012, subdivision (a): Respondent Furbush failed to ensure that all emission
19 control devices and systems required by law for vehicles 7 and 8, identified in Table 1 of
20 paragraph 18 above, were installed and functioning correctly in accordance with test procedures.

21 b. Section 44012, subdivision (f): Respondent Furbush failed to perform the emission
22 control tests on vehicles 7 and 8, identified in Table I of paragraph 18 above, in accordance with
23 procedures prescribed by the department.

24 c. Section 44059: Respondent Furbush willfully made false entries for electronic
25 certificates of compliance for vehicles 7 and 8, identified in Table 1 of paragraph 18 above, by
26 certifying that the vehicles had been inspected as required when, in fact, they had not.

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1 SEVENTH CAUSE FOR DISCIPLINE

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

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

6 a. Section 3340.24, subdivision (c): Respondent Furbush falsely or fraudulently issued
7 electronic smog certificates of compliance for vehicles 7 and 8, identified in Table 1 of paragraph
8 18 above.

9 b. Section 3340.30, subdivision (a): Respondent Furbush failed to inspect and test
10 vehicles 7 and 8, identified in Table 1 of paragraph 18 above, in accordance with Health & Safety
11 Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

12 c. Section 3340.41, subdivision (c): Respondent Furbush entered into the emissions
13 inspection system vehicle identification information or emission control system identification
14 data for a vehicle other than the one being tested for vehicles 7 and 8, identified in Table 1 of
15 paragraph 18 above.

16 d. Section 3340.42: Respondent Furbush failed to conduct the required smog tests on
17 vehicles 7 and 8, identified in Table 1 of paragraph 18 above, in accordance with the Bureau's
18 specifications.

19 EIGHTH CAUSE FOR DISCIPLINE

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

21 28. Respondent Furbush's technician license is subject to disciplinary action pursuant to
22 Health & Safety Code section 44072.2, subdivision (d), in that Respondent Furbush committed
23 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
24 certificates of compliance for the vehicles 7 and 8, identified in Table 1 of paragraph 18 above,
25 without performing bona fide inspections of the emission control devices and systems on the
26 vehicles, thereby depriving the People of the State of California of the protection afforded by the
27 Motor Vehicle Inspection Program.

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1 **NINTH CAUSE FOR DISCIPLINE**

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

3 29. Respondent Ross Jr's technician license is subject to disciplinary action pursuant to
4 Health & Safety Code section 44072.2, subdivision (a), in that Respondent Ross Jr failed to
5 comply with the following sections of that Code:

6 a. Section 44012, subdivision (a): Respondent Ross Jr failed to ensure that all emission
7 control devices and systems required by law for vehicles 1 through 6 and 9 through 10, identified
8 in Table 1 of paragraph 18 above, were installed and functioning correctly in accordance with test
9 procedures.

10 b. Section 44012, subdivision (f): Respondent Ross Jr failed to perform the emission
11 control tests on vehicles 1 through 6 and 9 through 10, identified in Table 1 of paragraph 18
12 above, in accordance with procedures prescribed by the department.

13 c. Section 44059: Respondent Ross Jr willfully made false entries for electronic certificates
14 of compliance for vehicles 1 through 6 and 9 through 10, identified in Table 1 of paragraph 18
15 above, by certifying that the vehicles had been inspected as required when, in fact, they had not.

16 **TENTH CAUSE FOR DISCIPLINE**

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

18 30. Respondent Ross Jr's technician license is subject to disciplinary action pursuant to
19 Health & Safety Code section 44072.2, subdivision (c), in that Respondent Ross Jr failed to
20 comply with provisions of California Code of Regulations, title 16, as follows:

21 a. Section 3340.24, subdivision (c): Respondent Ross Jr falsely or fraudulently issued
22 electronic smog certificates of compliance for vehicles 1 through 6 and 9 through 10, identified in
23 Table 1 of paragraph 18 above.

24 b. Section 3340.30, subdivision (a): Respondent Ross Jr failed to inspect and test vehicles
25 1 through 6 and 9 through 10, identified in Table 1 of paragraph 18 above, in accordance with
26 Health & Safety Code sections 44012 and 44035, and California Code of Regulations, title 16,
27 section 3340.42.

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1 e. Section 3340.41, subdivision (c): Respondent Ross Jr entered into the emissions
2 inspection system vehicle identification information or emission control system identification
3 data for a vehicle other than the one being tested for vehicles 1 through 6 and 9 through 10,
4 identified in Table 1 of paragraph 18 above.

5 d. Section 3340.42: Respondent Ross Jr failed to conduct the required smog tests on
6 vehicles 1 through 6 and 9 through 10, identified in Table 1 of paragraph 18 above, in accordance
7 with the Bureau's specifications.

8 **ELEVENTH CAUSE FOR DISCIPLINE**

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

10 31. Respondent Ross Jr's technician license is subject to disciplinary action pursuant to
11 Health & Safety Code section 44072.2, subdivision (d), in that Respondent Ross Jr committed
12 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
13 certificates of compliance for the vehicles 1 through 6 and 9 through 10, identified in Table 1 of
14 paragraph 18 above, without performing bona fide inspections of the emission control devices
15 and systems on the vehicles, thereby depriving the People of the State of California of the
16 protection afforded by the Motor Vehicle Inspection Program.

17 **OTHER MATTERS**

18 32. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
19 suspend, revoke or place on probation the registration for all places of business operated in this
20 state by Respondent, AAA Test Only, William Furbush - President, dba AAA Test Only, upon a
21 finding that Respondent has, or is, engaged in a course of repeated and willful violations of the
22 laws and regulations pertaining to an automotive repair dealer.

23 33. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only,
24 Station License Number TC 256890, issued to Respondent, AAA Test Only, William Furbush -
25 President, dba AAA Test Only, is revoked or suspended, any additional license issued under the
26 same chapter in the name of said licensee may be likewise revoked or suspended by the Director.

27 34. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
28 Technician License Number EA 155036 (to be redesignated upon renewal as EO 155036 and/or

1 EI 155036) issued to Respondent William Furbush is revoked or suspended. any additional
2 license issued under the same chapter in the name of said licensee may be likewise revoked or
3 suspended by the Director.

4 35. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
5 Technician License Number EA 633510 (to be redesignated upon renewal as EO 633510 and/or
6 EI 633510) issued to Respondent Michael Austin Ross, Jr. is revoked or suspended, any
7 additional license issued under the same chapter in the name of said licensee may be likewise
8 revoked or suspended by the Director.

9 **PRAYER**

10 WHEREFORE. Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Director of Consumer Affairs issue a decision:

12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
13 256890, issued to AAA Test Only, William Furbush - President, dba AAA Test Only;

14 2. Revoking or suspending Smog Check - Test Only Station License Number TC
15 256890, issued to AAA Test Only, William Furbush - President, dba AAA Test Only;

16 3. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of AAA Test Only, William Furbush - President, dba AAA Test
18 Only;

19 4. Revoking or suspending Advanced Emission Specialist Technician License Number
20 EA 155036 (to be redesignated upon renewal as EO 155036 and/or EI 155036) issued to William
21 Furbush;

22 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of William Furbush;

24 6. Revoking or suspending Advanced Emission Specialist Technician License Number
25 EA 633510 (to be redesignated upon renewal as EO 633510 and/or EI 633510) issued to Michael
26 Austin Ross, Jr.;

27 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
28 and Safety Code in the name of Michael Austin Ross, Jr.;

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8. Ordering Respondents AAA Test Only, William Furbush - President, dba AAA Test Only, William Furbush and Michael Austin Ross, Jr. to pay the Director the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

9. Taking such other and further action as deemed necessary and proper.

DATED: 6/17/13

John WALLAUCH by Doug Balatti
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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