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

11 In the Matter of the Accusation Against:

Case No. 79/12-16

12 **ABSOLUTE TEST**
13 **15201 Oxnard Street, Unit B**
Van Nuys, CA 91411
14 **Mailing Address:**
5700 Etiwanda Avenue, Unit 125
Tarzana, CA 91356
15 **VICTOR KANEVSKY, OWNER**
16 **Automotive Repair Dealer Registration No.**
ARD 260184
17 **Smog Check Test Only Station License No.**
TC 260184,

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

18 **VICTOR KANEVSKY**
19 **5700 Etiwanda Avenue, Unit 125**
Tarzana, CA 91356
20 **Advanced Emission Specialist Technician**
License No. EA 631122,

21 **JONE ADWAR SAPA**
22 **10342 Whitaker Ave**
Granada Hills, CA 91344
23 **Advanced Emission Specialist Technician**
License No. EA 139533

24 Respondents.

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26 Complainant alleges:

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1 PARTIES

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

4 **Automotive Repair Dealer Registration**

5 2. On or about December 9, 2009, the Bureau issued Automotive Repair Dealer
6 Registration Number ARD 260184 ("registration") to Victor Kanevsky ("Respondent Absolute
7 Test") doing business as Absolute Test. The registration was in full force and effect at all times
8 relevant to the charges brought herein and will expire on November 30, 2011, unless renewed.

9 **Smog Check Test Only Station License**

10 3. On or about December 14, 2009, the Bureau issued Smog Check Test Only Station
11 License Number TC 260184 ("station license") to Respondent Absolute Test. The station license
12 was in full force and effect at all times relevant to the charges brought herein and will expire on
13 November 30, 2011, unless renewed.

14 **Advanced Emission Specialist Technician License**

15 4. On or about June 24, 2009, the Bureau issued Advanced Emission Specialist
16 Technician License Number EA 631122 ("technician license") to Victor Kanevsky ("Respondent
17 Kanevsky"). The technician license was in full force and effect at all times relevant to the
18 charges brought herein and will expire on July 31, 2013, unless renewed.

19 **Advanced Emission Specialist Technician License**

20 5. On a date uncertain in 1998, the Bureau issued Advanced Emission Specialist
21 Technician License Number EA 139533 ("technician license") to Jone Adwar Sapa ("Respondent
22 Sapa"). The technician license was in full force and effect at all times relevant to the charges
23 brought herein and will expire on January 31, 2013, unless renewed.

24 STATUTORY PROVISIONS

25 6. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
26 part:

27 (a) The director, where the automotive repair dealer cannot show there
28 was a bona fide error, may deny, suspend, revoke, or place on probation the
registration of an automotive repair dealer for any of the following acts or omissions

1 related to the conduct of the business of the automotive repair dealer, which are done
2 by the automotive repair dealer or any automotive technician, employee, partner,
3 officer, or member of the automotive repair dealer.

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

7 (4) Any other conduct that constitutes fraud.

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

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

19 7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
20 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
21 proceeding against an automotive repair dealer or to render a decision invalidating a registration
22 temporarily or permanently.

23 8. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
24 "commission," "committee," "department," "division," "examining committee," "program," and
25 "agency." "License" includes certificate, registration or other means to engage in a business or
26 profession regulated by the Code.

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

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

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

(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.

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

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

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

8 12. Section 44072.8 of the Health and Safety Code states:

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

11 COST RECOVERY

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

16 **SURVEILLANCE OPERATION – MAY 19, 2011**

17 14. On or about May 19, 2011, the Bureau performed a video-taped surveillance at
18 Respondent Absolute Test's facility. The surveillance operation and information obtained from
19 the Bureau's Vehicle Information Database ("VID") revealed that between 1048 hours and 1456
20 hours, Respondent Sapa, with the assistance of an unidentified technician, performed three (3)
21 smog inspections that resulted in the issuance of electronic certificates of compliance for the
22 vehicles set forth in Table 1, below. Respondent Sapa certified that he had tested and inspected
23 those vehicles and that the vehicles were in compliance with applicable laws and regulations. In
24 fact, Respondent Sapa performed the smog inspections using the clean piping method¹ by using
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26 ¹ "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
28 compliance or are not present in the smog check area during the time of the certification.

1 the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the
2 electronic certificates of compliance. Regarding Vehicle 1, the unidentified technician performed
3 the tests and inspections using Respondent Sapa's access code. Further, Vehicle 1 was not tested
4 during the OBD II² functional test and another vehicle was used, constituting clean plugging, and
5 Vehicles 2 and 3 were not tested during the low-pressure fuel evaporative test and another vehicle
6 was used, constituting clean coupling³.

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20 ² The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97
21 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from
22 the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through
the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer
about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the
vehicle fails the OBD II functional test, it will fail the overall inspection.

23 Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble
24 code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle
25 that is not in compliance due to a 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.

26 ³ Clean coupling is the use of another vehicle's fuel evaporative system, that has passed a
27 smog inspection, during the low-pressure fuel evaporative test. This test insures the integrity of
the fuel vapor (hydrocarbons) containment systems.

Table 1

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
1 5/19/2011 1048 hours to 1055 hours	2001 Dodge Dakota Pickup. License No. 7Y60735	2001 Nissan Quest. License No. 4SGV564	OC860738C	An unidentified technician performed the test using Respondent Sapa's access code. Respondent Sapa was on the premises during the test. Certified vehicle was not tested during the OBD II test.
2 5/19/2011 1400 hours to 1411 hours	1989 Ford Thunderbird, License No. 2RRA320	1995 Nissan Altima, License No. 3NLC125	OC860743C	Respondent Sapa performed the tests. The certified vehicle was not tested during the low-pressure fuel evaporative test.
3 5/19/2011 1440 hours to 1456 hours	1993 GMC G3500 Rally Wagon, License No. 4R71825	Blue Mercedes and a 1995 Nissan Altima, License No. 3NLC125	OC860744C	Respondent Sapa performed the tests. The certified vehicle was not tested during the low-pressure fuel evaporative test.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

15. Respondent Absolute Test has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about May 19, 2011, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, Vehicle 1 had been clean piped and clean plugged and Vehicles 2 and 3 had been clean piped and clean coupled.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 18. Respondent Absolute Test has subjected his station license to discipline under Health
4 and Safety Code section 44072.2, subdivision (c), in that on or about May 19, 2011, regarding the
5 vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations,
6 title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent Absolute Test falsely or fraudulently
8 issued electronic certificates of compliance without performing bona fide inspections of the
9 emission control devices and systems on those vehicles as required by Health and Safety Code
10 section 44012.

11 b. **Section 3340.35, subdivision (c):** Respondent Absolute Test issued electronic
12 certificates of compliance even though those vehicles had not been inspected in accordance with
13 section 3340.42 of that Code.

14 c. **Section 3340.42:** Respondent Absolute Test failed to conduct the required smog tests
15 and inspections on those vehicles in accordance with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 19. Respondent Absolute Test subjected his station license to discipline under Health and
19 Safety Code section 44072.2, subdivision (d), in that on or about May 19, 2011, regarding the
20 vehicles set forth in Table 1, above, he committed acts involving dishonesty, fraud or deceit
21 whereby another was injured by issuing electronic certificates of compliance for those vehicles
22 without performing bona fide inspections of the emission control devices and system on those
23 vehicles, thereby depriving the People of the State of California of the protection afforded by the
24 Motor Vehicle Inspection Program.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 20. Respondent Sapa has subjected his technician license to discipline under Health and
4 Safety Code section 44072.2, subdivision (a), in that on or about May 19, 2011, regarding the
5 vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

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

9 b. **Section 44012, subdivision (f):** Respondent Sapa failed to perform emission control
10 tests on those vehicles in accordance with procedures prescribed by the department.

11 c. **Section 44032:** Respondent Sapa failed to perform tests of the emission control
12 devices and systems on those vehicles in accordance with section 44012 of that Code, in that
13 Vehicle 1 had been clean piped and clean plugged and Vehicles 2 and 3 had been clean piped and
14 clean coupled.

15 d. **Section 44059:** Respondent Sapa willfully made false entries for the electronic
16 certificates of compliance by certifying that those vehicles had been inspected as required when,
17 in fact, they had not.

18 SEVENTH CAUSE FOR DISCIPLINE

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

20 21. Respondent Sapa has subjected his technician license to discipline under Health and
21 Safety Code section 44072.2, subdivision (c), in that on or about May 19, 2011, regarding the
22 vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations,
23 title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent Sapa falsely or fraudulently issued
25 electronic certificates of compliance without performing bona fide inspections of the emission
26 control devices and systems on those vehicles as required by Health and Safety Code section
27 44012.

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1 other than the vehicles being certified in order to issue the electronic certificates of compliance.
 2 Further, Vehicle 1 was not tested during the low-pressure fuel evaporative test and another
 3 vehicle was used constituting clean coupling, and Vehicle 2 was not tested during the OBD II
 4 functional test and another vehicle was used, constituting clean plugging.

5 **Table 2**

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
1 5/20/2011 1554 hours to 1606 hours	1986 Buick Regal, License No. 4HXG207	1995 Nissan Altima, License No. 3NLC125	OC958453C	Respondent Sapa performed the test. The certified vehicle was not tested during the low-pressure fuel evaporative test.
2 5/20/2011 1613 hours to 1621 hours	1997 BMW 5 Series, License No. 6JYW406	2002 Saturn Station Wagon, License No. _NQC603	OC958454C	An unidentified technician performed the tests using Respondent Sapa's access code. Respondent Sapa drove the vehicle out of the test bay. Certified vehicle was not tested during the OBD II test.

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18 **NINTH CAUSE FOR DISCIPLINE**

19 **(Misleading Statements)**

20 24. Respondent Absolute Test has subjected his registration to discipline under Code
 21 section 9884.7, subdivision (a)(1). in that on or about May 20, 2011, he made statements which
 22 he knew or which by exercise of reasonable care he should have known were untrue or
 23 misleading when he issued electronic certificates of compliance for the vehicles set forth in Table
 24 2, above, certifying that those vehicles were in compliance with applicable laws and regulations
 25 when, in fact, Vehicle 1 had been clean piped and clean coupled and Vehicle 2 had been clean
 26 piped and clean plugged.

1 THIRTEENTH CAUSE FOR DISCIPLINE

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

3 27. Respondent Absolute Test has subjected his station license to discipline under Health
4 and Safety Code section 44072.2, subdivision (c), in that on or about May 20, 2011, regarding the
5 vehicles set forth in Table 2, above, he violated sections of the California Code of Regulations,
6 title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent Absolute Test falsely or fraudulently
8 issued electronic certificates of compliance without performing bona fide inspections of the
9 emission control devices and systems on those vehicles as required by Health and Safety Code
10 section 44012.

11 b. **Section 3340.35, subdivision (c):** Respondent Absolute Test issued electronic
12 certificates of compliance even though those vehicles had not been inspected in accordance with
13 section 3340.42 of that Code.

14 c. **Section 3340.42:** Respondent Absolute Test failed to conduct the required smog tests
15 and inspections on those vehicles in accordance with the Bureau's specifications.

16 FOURTEENTH CAUSE FOR DISCIPLINE

17 (Dishonesty, Fraud or Deceit)

18 28. Respondent Absolute Test subjected his station license to discipline under Health and
19 Safety Code section 44072.2, subdivision (d), in that on or about May 20, 2011, regarding the
20 vehicles set forth in Table 2, above, he committed acts involving dishonesty, fraud or deceit
21 whereby another was injured by issuing electronic certificates of compliance for those vehicles
22 without performing bona fide inspections of the emission control devices and system on those
23 vehicles, thereby depriving the People of the State of California of the protection afforded by the
24 Motor Vehicle Inspection Program.

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1 FIFTEENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 29. Respondent Sapa has subjected his technician license to discipline under Health and
4 Safety Code section 44072.2, subdivision (a), in that on or about May 20, 2011, regarding the
5 vehicles set forth in Table 2, above, he violated sections of that Code, as follows:

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

9 b. **Section 44012, subdivision (f):** Respondent Sapa failed to perform emission control
10 tests on those vehicles in accordance with procedures prescribed by the department.

11 c. **Section 44032:** Respondent Sapa failed to perform tests of the emission control
12 devices and systems on those vehicles in accordance with section 44012 of that Code, in that ,
13 Vehicle 1 had been clean piped and clean coupled and Vehicle 2 had been clean piped and clean
14 plugged.

15 d. **Section 44059:** Respondent Sapa willfully made false entries for the electronic
16 certificates of compliance by certifying that those vehicles had been inspected as required when,
17 in fact, they had not.

18 SIXTEENTH CAUSE FOR DISCIPLINE

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

20 30. Respondent Sapa has subjected his technician license to discipline under Health and
21 Safety Code section 44072.2, subdivision (c), in that on or about May 20, 2011, regarding the
22 vehicles set forth in Table 2, above, he violated sections of the California Code of Regulations,
23 title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent Sapa falsely or fraudulently issued
25 electronic certificates of compliance without performing bona fide inspections of the emission
26 control devices and systems on those vehicles as required by Health and Safety Code section
27 44012.

1 Advanced Emission Specialist Technician License Number EA 631122, issued to Victor
2 Kanevsky.

3 34. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
4 Technician License Number EA 139533, issued to Jone Adwar Sapa, is revoked or suspended,
5 any additional license issued under this chapter in the name of said licensee may be likewise
6 revoked or suspended by the director.

7 **PRAYER**

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

10 1. Revoking, suspending, or placing on probation, Automotive Repair Dealer
11 Registration Number ARD 260184, issued to Victor Kanevsky doing business as Absolute Test;

12 2. Revoking, suspending, or placing on probation, any other automotive repair dealer
13 registration issued to Victor Kanevsky;

14 3. Revoking or suspending Smog Check Test Only Station License Number TC 260184,
15 issued to Victor Kanevsky doing business as Absolute Test;

16 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of Victor Kanevsky including, but not limited to Advanced
18 Emission Specialist Technician License Number EA 631122;

19 5. Revoking or suspending Advanced Emission Specialist Technician License Number
20 EA 139533, issued to Jone Adwar Sapa ;

21 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
22 and Safety Code in the name of Jone Adwar Sapa;

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7. Ordering Victor Kanevsky and Jone Adwar Sapa to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 8/31/11



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant