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

In the Matter of the First Amended Accusation Against: **ARCH'S AUTOMOTIVE, INC.,** **dba ARCH'S AUTOMOTIVE SERVICE** **BRENDAN CLIFTON BROOKS, PRESIDENT** **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,** **RICKY LEE ALLEN MCDANIEL** **11433 Banner Mountain Trail** **Nevada City, CA 95959** **Advanced Emission Specialist Technician License No. EA 632021,** **and** **SANDRA MARIE SANDELIUS** **2012 Covilaud Street, #4** **Marysville, CA 95901** **Smog Check Inspector License No. EO 153369 (formerly Advanced Emission Specialist Technician License No. EA 153369)** Respondents.	Case No. 79/12-79 OAH No. 2012070456 **FIRST AMENDED ACCUSATION** **(Smog Check)**

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Complainant alleges:

PARTIES

1. John Wallauch ("Complainant") brings this First Amended Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs. This First Amended Accusation replaces in its entirety Accusation No. 79/12-79 filed on February 9, 2012.

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

2. In or about 2005, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 238380 ("registration") to Arch's Automotive, Inc. ("Respondent Arch's Automotive"), doing business as Arch's Automotive Service, with Brendan Clifton Brooks as president and Kevin Marc Maltese as secretary. Respondent's registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2014, unless renewed.

3. On or about April 13, 2005, the Director issued Smog Check Station License Number RC 238380 to Respondent Arch's Automotive. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2014, unless renewed.

Ricky Lee Allen McDaniel

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

Sandra Marie Sandelius

5. In or about 2006, the Director issued Advanced Emission Specialist Technician License Number EA 153369 to Sandra Marie Sandelius ("Respondent Sandelius"). Respondent's advanced emission specialist technician license was due to expire on October 31, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), said license was

renewed, pursuant to Respondent's election, as Smog Check Inspector License No. EO 153369, effective October 31, 2012.[1] Respondent's smog check inspector license will expire on October 31, 2014, unless renewed.

JURISDICTION

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

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

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

9. Health & Saf. Code section 44072.6 provides, in pertinent part, that the 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.

10. Health & Saf. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under 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. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

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[1] Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced 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.

STATUTORY PROVISIONS

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

> (a) The director, where the automotive repair dealer cannot show there 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 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.
>
> (1) Making or authorizing in any manner or by any means whatever any 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.
>
> . . . .
>
> (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by 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.

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

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

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

15. Health & Saf. Code section 44072.2 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.
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> . . . .
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter . . .

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COST RECOVERY

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

UNDERCOVER OPERATION #1: 1998 FORD EXPLORER

17. On July 13, 2011, a representative of the Bureau, acting in an undercover capacity ("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 completed, the operator paid the facility $61.75 and received copies of an invoice and a vehicle inspection report ("VIR"). The VIR indicated that Respondent McDaniel performed the inspection on the vehicle. The VIR also indicated that the PCV (positive crankcase ventilation) system and fuel evaporative controls had failed the visual inspection and that the fuel evaporative controls were modified, resulting in the vehicle's failure of the overall inspection.

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

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

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

a. Respondent Arch's Automotive's technician, Respondent McDaniel, certified under penalty of perjury on the VIR that the information listed on the VIR was true and correct and that

the PCV system on the Bureau's 1998 Ford Explorer had failed the visual inspection. In fact, the PCV system was fitted with the correct parts, was not damaged, was properly installed on the vehicle, and should have passed the visual inspection.

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

c. Respondent Arch's Automotive's technician, Respondent McDaniel, represented on the VIR that "Evap service port looks like its hook up wrong". In fact, the evaporative emissions service port and hose were correct for the vehicle, were properly installed, were not modified or damaged, and should have passed the visual inspection.

SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

THIRD CAUSE FOR DISCIPLINE

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

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

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FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

FIFTH CAUSE FOR DISCIPLINE

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

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

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

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

UNDERCOVER OPERATION #2: 1990 PLYMOUTH SUNDANCE

24. On July 13, 2011, a representative of the Bureau, acting in an undercover capacity ("operator"), took the Bureau's 1990 Plymouth Sundance 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 completed, the operator paid the facility $61.75 and received copies of an invoice and VIR. The VIR indicated that Respondent Sandelius performed the smog inspection on the vehicle. The VIR also indicated that the vehicle's ignition timing was defective and had failed the functional check, resulting in the vehicle's failure of the overall inspection.

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

SIXTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

26. Respondent Arch's Automotive's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Arch's Automotive's technician, Respondent Sandelius, certified under penalty of perjury on the VIR that the information listed on the VIR was true and correct, that the ignition timing on the Bureau's 1990 Plymouth Sundance was set to 6 degrees After Top Dead Center and was defective, and that the vehicle failed the functional check portion of the smog inspection. In fact, the ignition timing on the vehicle was set to factory specifications, 12 degrees Before Top Dead Center, was not defective, and should have passed the functional check.

SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

EIGHTH CAUSE FOR DISCIPLINE

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

28. Respondent Arch's Automotive's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed

to comply with California Code of Regulations, title 16, section 3340.42, as follows: Respondent failed to ensure that the required smog tests were conducted on the Bureau's 1990 Plymouth Sundance in accordance with the Bureau's specifications.

NINTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

29. Respondent Sandelius' smog check inspector license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the functional check of the emission control systems and devices on the Bureau's 1990 Plymouth Sundance in accordance with procedures prescribed by the department.

TENTH CAUSE FOR DISCIPLINE

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

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

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

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

MATTERS IN AGGRAVATION

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

Respondent Arch's Automotive

a. On or about March 2, 2009, the Bureau issued Citation No. C09-1015 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed

by the department); and California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On February 9, 2009, Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing PCV system. The Bureau assessed civil penalties totaling $500 against Respondent for the violations. Respondent paid the fine on March 25, 2009.

b. On or about May 6, 2009, the Bureau issued Citation No. C09-1279 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On April 23, 2009, Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing fuel evaporative storage system canister. The Bureau assessed civil penalties totaling $1,000 against Respondent for the violations. Respondent paid the fine on May 28, 2009.

Respondent Sandelius

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

OTHER MATTERS

32. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Arch's Automotive, Inc., doing business as Arch's Automotive Service,

upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

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

34. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 632021, issued to Respondent Ricky Lee Allen McDaniel, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

35. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License Number EO 153369, issued to Respondent Sandra Marie Sandelius, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 238380, issued to Arch's Automotive, Inc., doing business as Arch's Automotive Service;

2. Revoking or suspending any other automotive repair dealer registration issued to Arch's Automotive, Inc;

3. Revoking or suspending Smog Check Station License Number RC 238380, issued to Arch's Automotive, Inc., doing business as Arch's Automotive Service;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Arch's Automotive, Inc.;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 632021, issued to Ricky Lee Allen McDaniel;

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6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Ricky Lee Allen McDaniel;

7. Revoking or suspending Smog Check Inspector License Number EO 153369, issued to Sandra Marie Sandelius;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Sandra Marie Sandelius;

9. Ordering Arch's Automotive, Inc., doing business as Arch's Automotive Service, Ricky Lee Allen McDaniel, and Sandra Marie Sandelius to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 3/8/2013

Brian Newman Deputy Chief

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

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