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

In the Matter of the Accusation Against:

ARCH'S AUTOMOTIVE, INC.,
dba ARCH'S AUTOMOTIVE SERVICE
BRENDAN CLIFTON BROOKS, PRESIDENT
KEVIN MARC MALTESE, SECRETARY

Grass Valley, California 95945
Automotive Repair Dealer Registration
No. ARD 238380
Smog Check Station License No. RC 238380

and

RICKY LEE ALLEN MCDANIEL

Nevada City, California 95959
Advanced Emission Specialist Technician
License No. EA 632021,

and

SANDRA MARIE SANDELIUS

Marysville, CA 95901
Advanced Emission Specialist Technician
License No. EA 153369,

Respondents.

Case No. 79/12-79

OAH No. 2012070456

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter only as to respondent Ricky Lee Allen McDaniel, Advanced Emission Specialist Technician License No. EA 632021, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error in the Proposed Decision is corrected as follows:

> Page 1, caption: "Smog Check Station License No. RC 238830" is corrected to read "Smog Check Station License No. RC 238380."

This Decision shall become effective March 24, 2014.

DATED: FEB 13 2014

DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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

In the Matter of the Accusation Against: ARCH'S AUTOMOTIVE, INC., dba ARCH'S AUTOMOTIVE SERVICE BRENDAN CLIFTON BROOKS, PRESIDENT KEVIN MARC MALTESE, SECRETARY Grass Valley, California 95945 Automotive Repair Dealer Registration No. ARD 238380 Smog Check Station License No. RC 238830 and RICKY LEE ALLEN MCDANIEL Nevada City, California 95959 Advanced Emission Specialist Technician License No. EA 632021, and SANDRA MARIE SANDELIUS Marysville, CA 95901 Advanced Emission Specialist Technician License No. EA 153369, Respondents.	Case No. 79/12-79 OAH No. 2012070456

PROPOSED DECISION

Administrative Law Judge Danette C. Brown, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on March 12 and 13, and December 10, 2013.

Sterling A. Smith, Deputy Attorney General, represented complainant Sherry Mehl, in her official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

Attorney William D. Ferreira represented respondent Ricky Lee Allen McDaniel, who was present throughout the hearing.[1]

Evidence was received, the record was closed, and the matter was submitted for decision on December 10, 2013.

SUMMARY

Complainant seeks to discipline respondent's license on the grounds that he did not perform a proper smog inspection of the Bureau's undercover vehicle. The Bureau's procedures require the smog technician to conduct a visual inspection of the vehicle's emissions control systems and visually verify that all required emission control devices are properly installed. It is undisputed that respondent performed a visual inspection of the Bureau's undercover vehicle's emissions control systems. Complainant contends, however, that respondent did not perform a proper visual inspection because he incorrectly concluded that the positive crankcase ventilation hose was damaged and the evaporative service port was not properly connected. But the accuracy of his conclusions is irrelevant. Therefore, no cause exists to discipline respondent's license.

FACTUAL FINDINGS

1. Complainant issued the First Amended Accusation against respondent on March 8, 2013.

2. On April 28, 2010, the Bureau issued Advanced Emission Specialist (EA) Technician license EA 632021 to respondent.[2] Respondent's license will expire on December 31, 2015, unless renewed.

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[1] During hearing, this matter settled as to respondents Arch's Automotive, Inc., dba Arch's Automotive Service; Brendan Brooks, President; Kevin Maltese, Secretary; and Sandra Marie Sandelius. Therefore, this Proposed Decision pertains only to respondent Ricky Lee Allen McDaniel.

[2] 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

3. The Bureau has the responsibility of monitoring the performance of smog check stations and smog check technicians and ensuring that they are properly performing their duties under the smog control laws of the State of California. To monitor compliance with the State's Emissions Inspection Program, commonly referred to as the Smog Check Program, the Bureau conducts undercover operations at various licensed smog check stations.

4. The California Emissions Inspection Test requires the licensed technician to: (1) visually inspect the vehicle's emission components to ensure that they are present, properly connected, and in good working condition; (2) functionally test or inspect the vehicle's gas cap, the malfunction indicator light (MIL), if equipped, the ignition timing, if adjustable, and, depending on the test required, the exhaust gas recirculation (EGR) system; and (3) conduct a tailpipe emissions test.

5. The vehicle must pass all visual and functional tests, as well as the tailpipe emissions test, before an Emission Inspection Certificate of Compliance (Certificate of Compliance) can be issued by the technician, verifying that the vehicle passed the smog inspection.

Undercover Operation

6. The Bureau's undercover operation occurred on July 13, 2011, at Arch's Automotive Service (Arch's Automotive). Respondent performed a smog check on the Bureau's 1998 Ford Explorer (Explorer).

7. The Explorer was first taken to the Bureau's Documentation Lab, where Bureau employee Joseph Gibson conducted a Two Speed Idle (TSI) California Emissions Test to ensure that the vehicle passed the test. He did not perform any alterations to the vehicle.

8. On July 13, 2011, Jeff Hammer, a Bureau undercover agent, took the vehicle to Arch's Automotive, requested a smog inspection, and obtained an estimate for the inspection. He remained on site during the inspection. At the end of the inspection, respondent gave Mr. Hammer a work order receipt documenting payment for the smog inspection in the amount of $61.75 and a Vehicle Inspection Report (VIR) certifying under penalty of perjury that the vehicle failed visual inspection due to a faulty positive crankcase ventilation (PCV) hose and the fuel evaporative port appeared to be "hooked up wrong."

9. Mr. Hammer returned the vehicle to the Documentation Lab, where it was secured. On July 22, 2011, Mr. Gibson performed a TSI California Emissions Test, which the vehicle passed. Mr. Gibson obtained a printout of the test results

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Technician (EI) license. Complainant amended the accusation on the record to reflect that respondent's EA license is now referred to as an EO license.

showing "Overall Test Results – PASS." The "PASS" result indicated that the vehicle met all requirements for issuance of a certificate of compliance.

10. Mr. Gibson then inspected the VIR report respondent had previously provided Mr. Hammer. He noticed that the visual inspection results of the VIR stated "Fail" for the PCV system and "Modified" for the fuel evaporative controls. The PCV system on the Explorer consists of a PCV valve mounted in the left engine valve cover, a hose connecting the PCV valve to a vacuum source at the engine intake manifold, and a tube connecting the engine crankcase to filtered fresh air. The PCV system controls engine crankcase vapor emissions by using engine vacuum to pull fresh air through the engine crankcase, picking up engine vapors through the PCV valve into the intake manifold to be burned in the engine with the air/fuel mixture.

11. Mr. Gibson examined the PCV hose and valve. The hose is a pre-formed rubber hose marked with the Ford oval logo and a part number. The hose was not collapsed, split, cut, or damaged. Mr. Gibson found that the PCV hose was identical in all respects to a new hose obtained from a Ford dealer parts department. The PCV hose was not modified or damaged, and, in Mr. Gibson's opinion, should not have caused the Explore to fail a properly performed smog check visual inspection.

12. Mr. Gibson also noticed the handwritten note on the VIR stating, "Evap service port looks like its hook up [*sic*] wrong." The evaporative emissions service port is a component of the vehicle's fuel evaporative control system. It is a service access valve, similar in appearance and operation to a tire valve stem. The service port is used by a technician to monitor pressure in the vehicle's fuel evaporative system during diagnosis and repair of the fuel evaporative system. The Explorer's port is connected to the end of a hose routed to the evaporative canister purge valve. The purge valve is located under the vehicle's battery. The service port hose and valve is routed from the purge valve, under the battery, to the battery ground cable wire harness, adjacent to the radiator filler cap. The hose and service port are secured to the wire harness with a metal clip. The service port and hose, and their location, are illustrated in the ALLDATA computerized vehicle repair information database. Mr. Gibson determined that the service port and hose were correct for the Explorer, properly installed, not modified or damaged, and should not have caused the Explorer to fail a properly performed smog check visual inspection.

Respondent's Evidence

13. Respondent began his employment at Arch's Automotive in June 2010.

14. Respondent signed a sworn declaration dated March 11, 2013, wherein he stated that he performed the smog inspection on the Explorer on July 13, 2011, at Arch's Automotive. Respondent's declaration stated, "The hose was unusually soft to the touch and would collapse when the vehicle's engine was revved." In his

professional opinion, respondent felt the hose was sufficiently faulty to cause the vehicle "not to pass the smog inspection." At the time of the smog inspection, respondent consulted Kevin Maltese, another licensed Advanced Emission Specialist Technician employed by Arch Automotive, for a second opinion. Mr. Maltese agreed with respondent's assessment.

15. Respondent testified that when he sees a collapsing hose, he is supposed to "fail" it. He asserted that a hose can collapse after being driven for 50 miles to an elevation of 2,500 feet on a hot day. His boss agreed that the hose was collapsing, and that respondent should "fail" the vehicle. It was respondent's "call" to fail the PCV hose due to the visual inspection. He did so, and did not issue a certificate of compliance.

16. Respondent also observed during his visual inspection that the evaporative service port was not properly connected. Respondent testified that he thought it was unusual that the evaporative service port was clipped to the negative battery cable. To determine the proper wiring location, respondent checked the underhood emissions label and the schematic diagram with ALLDATA. Respondent testified that the underhood label and ALLDATA were "not much help with the proper location of the [evaporative service port] hose." Respondent consulted with his supervisor Mr. Maltese for a second opinion. Mr. Maltese agreed with respondent's visual observation, in that the connection of the evaporative service port "raised a red flag." Respondent failed the fuel evaporative controls based upon his visual inspection.

17. Respondent is no longer employed at Arch's Automotive. His employment terminated in May 2012. Respondent is currently employed as a smog technician at a star-certified station in Roseville. The station is certified by the Bureau to conduct smog check and gross polluter inspections.

18. Respondent does not have a history of prior citations or discipline by the Bureau.

Evidentiary Discussion

19. Complainant asserts that the PCV hose was not damaged, and the fuel evaporative port was connected properly. Complainant further asserts that had respondent conducted a visual inspection in accordance with the Bureau's procedures and verified that the emission control devices were properly installed, the Explorer would have passed the smog check inspection. However, the evidence established that respondent conducted a visual inspection of the Explorer's PCV valve and hose and determined that the PCV hose was collapsed and therefore damaged. While respondent's conclusions differed from Mr. Gibson's testimony that the PCV hose was not damaged or collapsed, those differences do not negate the fact that respondent performed the visual inspection. The evidence did not establish that

respondent failed to perform his visual inspection of the PCV valve and hose in accordance with the procedures prescribed by the Bureau. (Health & Saf. Code, § 44012, subd. (f), Cal. Code Regs., tit. 16, § 3340.30, subd. (a).)

20. The evidence further established that respondent performed a visual inspection of the fuel evaporative service port and determined that it was not connected properly after verifying that the fuel evaporative emission controls were properly installed. (Cal. Code Regs., tit. 16, § 3340.42, subd. (e)(1).) The evidence did not establish that respondent failed to perform a visual inspection of the fuel evaporative emission controls in accordance with the procedures prescribed by the Bureau. (Health & Saf. Code, § 44012, subd. (f).)

Costs

21. The Bureau submitted a certified copy of the actual costs of investigation of this matter. The Bureau incurred a total of $6,556.35 in investigative costs. Specific components of costs were $6,362.85 for Bureau staff investigative services and $193.50 for undercover runs. Similarly, the attorney general certified his prosecution costs of $7,027.50 for legal services, including case evaluation and preparation, and paralegal work. The total amount of costs of investigation and prosecution of this matter is $13,583.85.

LEGAL CONCLUSIONS

Burden of Proof

1. The Bureau bears the burden of proving, by a preponderance of the evidence, that the facts alleged in its Accusation are true and that the requested discipline against respondent's license should be imposed.

Statutes and Regulations

2. Qualified smog check technicians shall perform tests of emission control devices and systems in accordance with section Health and Safety Code section 44012. (Health & Saf. Code, § 44032.) Pursuant to Health and Safety Code section 44012, the test at the smog check stations "shall be performed in accordance with procedures prescribed by the department," which shall ensure, *inter alia*, "a visual or functional check ... made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Health and Safety Code section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department." (Health & Saf. Code, § 44012, subd. (f).)

3. A smog check station's license or a qualified smog check technician's qualification may be suspended or revoked by the department, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. (Health & Saf. Code, § 44035, subd. (a).)

4. The director may suspend, revoke, or take other disciplinary action against a license if the licensee violates any statute or regulation relating to the Program. (Health & Saf. Code, § 44072.2, subds. (a), (c).)

5. A smog check technician shall inspect, test and repair vehicles, as applicable, in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42. (Cal. Code Regs., tit. 16, § 3340.30, subd. (a).)

6. Smog check technicians are required conduct to a visual inspection of the vehicle's emissions control systems. During the visual inspection, the technician shall verify that emission control devices, including but not limited to: crankcase emissions controls, including positive crankcase ventilation; and fuel evaporative emission controls, are properly installed on the vehicle. (Cal. Code Regs., tit. 16, § 3340.42, subd. (e).)

Cause for Discipline

7. By reason of Findings 6, 14 through 16, 19, and 20, cause does not exist to discipline respondent's Smog Check Inspector License No. EO 632021, for violating Health and Safety Code section 44012, subdivision (f), in that the evidence did not establish that respondent failed to perform a visual inspection of the emission control systems and devices on the Explorer in accordance with the procedures prescribed by the Bureau.

8. By reason of Findings 6, 14 through 16, 19, and 20, cause does not exist to discipline respondent's Smog Check Inspector License No. EO 632021, for violating Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.30, subdivision (a), in that the evidence did not establish that respondent failed to inspect and test the Explorer in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

9. By reason of Findings 6, 14 through 16, 19, and 20, cause does not exist to discipline respondent's Smog Check Inspector License No. EO 632021 for violating Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42, in that the evidence did not establish that respondent failed to perform visual inspections of the PCV valve and hose and the fuel evaporative emission controls for proper installation on the vehicle.

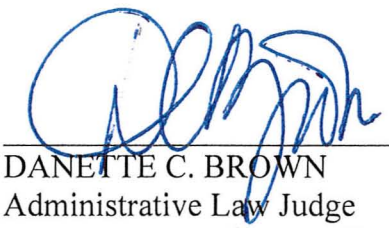
Costs

10. As set forth in Legal Conclusions 7 through 9, cause does not exist to discipline respondent's license. Therefore, costs shall not be awarded to the Bureau.

ORDER

The Accusation against respondent Ricky Lee Allen McDaniel, is hereby DISMISSED, by reason of Legal Conclusions 7 through 9.

DATED: January 23, 2014.



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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.

. . . .

(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

SA2011102824