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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. 77/13-26

12 **AUBURN SERVICE CENTER**  
13 **RICHARD ANTHONY DIEBOLD, OWNER**  
12205 Locksley Lane, #14  
14 Auburn, CA 95602

**A C C U S A T I O N**

15 Automotive Repair Dealer Reg. No. ARD 224459  
Lamp Station License No. LS 224459, Class A  
16 Brake Station License No. BS 224459, Class A

17 **and**

18 **DAVID EUGENE BROWN**  
12645 Shannon Lane  
19 Auburn, CA 95602  
Mailing Address:  
20 13380 Lincoln Way  
Auburn, CA 95603

21 Brake Adjuster License No. BA 102061, Class A  
22 Lamp Adjuster License No. LA 102061, Class A

23 Respondents.

24  
25 Complainant alleges:

26 **PARTIES**

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





1 13. Code section 9887.1 states, in pertinent part:

2 The director shall have the authority to issue licenses for official lamp  
3 and brake adjusting stations and shall license lamp and brake adjusters. The licenses  
4 shall be issued in accordance with this chapter and regulations adopted by the director  
5 pursuant thereto . . . Licenses may be renewed upon application and payment of the  
6 renewal fees if the application for renewal is made within the 30-day period prior to  
7 the date of expiration. Persons whose licenses have expired shall immediately cease  
8 the activity requiring a license . . .

6 14. Code section 9888.3 states:

7 No person shall operate an "official" lamp or brake adjusting station  
8 unless a license therefor has been issued by the director. No person shall issue, or  
9 cause or permit to be issued, any certificate purporting to be an official lamp  
10 adjustment certificate unless he or she is a licensed lamp adjuster or an official brake  
11 adjustment certificate unless he or she is a licensed brake adjuster.

10 15. Code section 9889.9 states that "[w]hen any license has been revoked or suspended  
11 following a hearing under the provisions of this article [Article 7 (commencing with section  
12 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and 6 of  
13 this chapter in the name of the licensee may be likewise revoked or suspended by the director."

14 16. Code section 22, subdivision (a), states:

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

18 17. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes  
19 "registration" and "certificate."

20 18. California Code of Regulations, title 16, section ("Regulation") 3305, subdivision (a),  
21 states, in pertinent part, that [a]ll adjusting, inspecting, servicing, and repairing of brake systems  
22 and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be  
23 performed in official stations, by official adjusters . . . "

24 19. Regulation 3308 states:

25 An official station shall stop performing the functions for which it has  
26 been licensed when it no longer has the services of a licensed adjuster, or when its  
27 station license has expired or has been surrendered, suspended, or revoked. The  
28 station must dispose of materials related to its formerly licensed activity according to  
these provisions.

1 (a) An official station that no longer has the services of a licensed adjuster  
2 shall immediately remove or cover the official station sign in accordance with  
3 subsection (b) of this section. If the station does not employ a licensed adjuster within  
4 60 days, the station shall surrender its official station license to the bureau and shall  
5 return to the bureau all unused certificates of adjustments bought by the station to  
6 carry out the function for which it is no longer licensed.

7 (b) An official station that is no longer authorized to perform the function  
8 for which it has been licensed shall remove or cover the sign pertaining to the  
9 licensed function. A station that has a multipurpose sign shall cover those portions of  
10 the sign that pertain to the functions for which it is no; longer licensed.

11 (c) When an official station license has expired or has been surrendered,  
12 suspended, or revoked, the station shall return to the bureau all unused certificates  
13 purchased by the station to carry out the function for which it is no longer licensed.

### 14 COST RECOVERY

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

### 19 BACKGROUND

20 21. On or about May 21, 2012, a representative of the Bureau conducted a periodic lamp  
21 and brake station inspection at Respondent Diebold's facility. The representative met with  
22 Respondents Diebold and Brown and informed them of the purpose of his visit. Brown told the  
23 representative that his brake adjuster license had expired and that he had submitted the money to  
24 renew his license, but had never taken the test. The representative requested the facility's lamp  
25 and brake certificate books for review, which Diebold provided. Upon reviewing the books, the  
26 representative found that 19 brake certificates had been issued by Brown after his brake adjuster  
27 license had expired. The representative took possession of the facility's brake certificate books,  
28 containing Brake Certificate Nos. BC 1330351 to BC 1330400 and BC 1436751 to BC 1436800.  
The representative advised Diebold to cover all signs for official brake inspections until a  
licensed brake adjuster was employed at the facility. The representative also informed Diebold  
that the facility had 60 days from May 21, 2012 to employ a licensed brake adjuster or he must  
surrender his brake station license to the Bureau. On or about May 22, 2012, the representative

1 returned to the facility and obtained copies of the invoices for the brake certificates identified  
2 below.

<u>Brake Certificate No.</u>	<u>Date of Issuance</u>	<u>Make/Model of Vehicle Inspected</u>
4 BC 1330385	February 15, 2012	1991 Volkswagen Golf
5 BC 1330386	February 15, 2012	2012 "Special Cons"
6 BC 1330387	February 16, 2012	1987 Cadillac Deville
7 BC 1330388	February 21, 2012	2000 Ford Windstar
8 BC 1330389	February 29, 2012	1997 Dodge Ram 3500 pickup
9 BC 1330390	March 8, 2012	2012 "Special Cons"
10 BC 1330391	March 9, 2012	1989 Honda Accord LX
11 BC 1330392	March 12, 2012	2009 Yamaha motorcycle
12 BC 1330393	March 14, 2012	2004 Chevrolet Trailblazer
13 BC 1330394	March 20, 2012	1990 Ford Ranger
14 BC 1330395	March 29, 2012	2001 Volkswagen Beetle GXL
15 BC 1330396	March 29, 2012	1992 Toyota pickup
16 BC 1330397	April 4, 2012	2003 BMW M3
17 BC 1330398	April 6, 2002	2002 Acura RSX
18 BC 1330399	May 2, 2012	2007 Harley Davidson Roadking
19 BC 1330400	May 4, 2012	1992 Oldsmobile Bravada
20 BC 1436752	May 11, 2012	1961 Sunbeam Alpine
21 BC 1436754	May 15, 2012	1990 Peterbilt truck
22 BC 1436755	May 17, 2012	1999 Dodge Dakota

### FIRST CAUSE FOR DISCIPLINE

#### (Untrue or Misleading Statements)

23 22. Respondent Diebold's registration is subject to disciplinary action pursuant to Code  
24 section 9884.7, subdivision (a)(1), Respondent made or authorized statements which he knew or  
25 in the exercise of reasonable care should have known to be untrue or misleading, as follows:

26 Respondent Diebold's technician, Respondent Brown, certified under penalty of perjury on the  
27 brake certificates, identified in paragraph 21, above, that he performed the applicable inspections  
28 of the brake systems on the vehicles (described in the certificates) as specified by the Bureau and  
in accordance with Title 16 of the California Code of Regulations and the Business and  
Professions Code. In fact, Respondent Brown issued the certificates when his brake adjuster  
license had expired, in violation of Code sections 9887.1 and 9888.3 and Regulation 3305,  
subdivision (a).

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**SECOND CAUSE FOR DISCIPLINE**

**(Failure to Comply with the Code)**

23. Respondent Diebold's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with sections 9887.1 and 9888.3 of that Code in the following material respects: Respondent Diebold continued to issue brake certificates despite the fact that his technician, Respondent Brown's brake adjuster license had expired on January 31, 2012, as set forth in paragraph 5 above.

**THIRD CAUSE FOR DISCIPLINE**

**(Violations of Regulations)**

24. Respondent Diebold's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

- a. **Section 3305, subdivision (a)**: Respondent Diebold continued to issue brake certificates despite the fact that his technician Respondent Brown's brake adjuster license had expired on January 31, 2012.
- b. **Section 3308**: Respondent Diebold continued to perform his official functions as a brake station, including issuing brake certificates, even though his technician Respondent Brown's brake adjuster license had expired on January 31, 2012.

**FOURTH CAUSE FOR DISCIPLINE**

**(Failure to Comply with the Code)**

25. Respondent Diebold's brake station license is subject to disciplinary action pursuant to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the provisions of Code sections 9887.1 and 9888.3 relating to its licensed activities, as set forth in paragraph 23 above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 26. Respondent Diebold's brake station license is subject to disciplinary action pursuant  
4 to Code section 9889.3, subdivision (c), in that Respondent failed to comply with Regulations  
5 3305, subdivision (a), and 3308, as set forth in paragraph 24 above.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with the Code)**

8 27. Respondent Brown's brake adjuster license is subject to disciplinary action pursuant  
9 to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the provisions of  
10 Code sections 9887.1 and 9888.3 relating to his licensed activities, as set forth in paragraph 23  
11 above.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Regulations)**

14 28. Respondent Brown's brake adjuster license is subject to disciplinary action pursuant  
15 to Code section 9889.3, subdivision (c), in that Respondent failed to comply with Regulation  
16 3305, subdivision (a), as set forth in paragraph 24 above.

17 **OTHER MATTERS**

18 29. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or  
19 place on probation the registration for all places of business operated in this state by Respondent  
20 Richard Anthony Diebold, owner of Auburn Service Center, upon a finding that Respondent has,  
21 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining  
22 to an automotive repair dealer.

23 30. Pursuant to Code section 9889.9, if Brake Station License Number BS 224459, issued  
24 to Respondent Richard Anthony Diebold, owner of Auburn Service Center, is revoked or  
25 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Code in the  
26 name of said licensee, including, but not limited to, Lamp Station License Number LS 224459,  
27 may be likewise revoked or suspended by the Director.

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

DATED: 12/21/12

John WALLAUCH   
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

*DUG BALATT*