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

12 In the Matter of the First Amended Accusation Against:

Case No. 79/12-176

13 **ABC NICKS AUTOMOTIVE**
4280 Lincoln Boulevard
Oroville, CA 95966-6765
14 Mailing Address:
P.O. Box 1128
Oroville, CA 95965
15 **NIKKI LEE EVANS, OWNER**
16 **Automotive Repair Dealer Reg. No. ARD 162848**
Smog Check Station License No. RC 162848

OAH No. 2012080778

**FIRST AMENDED
ACCUSATION**

SMOG CHECK

17 **and**

18 **POOMPIBOON JIAMSAKUL BELCHER**
19 1083 Ohio Street
Gridley, CA 95948
20 **Advanced Emission Specialist Technician License**
No. EA 631163 (to be redesignated upon renewal as
21 **EO 631163 and/or EI 631163)**

22 Respondents.

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24 Complainant alleges:

25 **PARTIES**

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

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1 Consumer Affairs. This First Amended Accusation replaces in its entirety Accusation No.
2 79/12-176 filed on June 27, 2012.

3 **Automotive Repair Dealer Registration**

4 2. On or about September 20, 1991, the Bureau issued Automotive Repair Dealer
5 Registration Number ARD 162848 ("registration") to Nikki Lee Evans ("Respondent ABC"),
6 doing business as ABC Nicks Automotive. The registration was in full force and effect at all
7 times relevant to the charges brought herein and will expire on September 30, 2013, unless
8 renewed.

9 **Smog Check Station License**

10 3. On or about August 22, 1997, the Bureau issued Smog Check Station License
11 Number RC 162848 ("station license") to Respondent ABC. The station license was in full force
12 and effect at all times relevant to the charges brought herein and will expire on September 30,
13 2013, unless renewed.

14 **Technician License**

15 4. On or about July 13, 2009, the Bureau issued Advanced Emission Specialist
16 Technician License Number EA 631163 ("technician license") to Poompiboon Jiamsakul Belcher
17 ("Respondent Belcher"). Respondent's technician license is due to expire on July 31, 2013.
18 Upon renewal of the license, the license will be redesignated as EO 631163 and/or EI 631163.¹

19 **JURISDICTION**

20 5. Business and Professions Code ("Code") section 9884.7 provides that the Director
21 may revoke an automotive repair dealer registration.

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

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

1 (c) Notwithstanding subdivision (b), the director may invalidate
2 temporarily or permanently, the registration for all places of business operated in this
3 state by an automotive repair dealer upon a finding that the automotive repair dealer
4 has, or is, engaged in a course of repeated and willful violations of this chapter, or
5 regulations adopted pursuant to it.

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

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

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

14 (a) Violates any section of this chapter [the Motor Vehicle Inspection
15 Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted
16 pursuant to it, which related to the licensed activities.

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

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

21 COST RECOVERY

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

26 UNDERCOVER OPERATION – AUGUST 17, 2011

27 15. On August 17, 2011, a Bureau undercover operator ("operator") drove a Bureau-
28 documented 1997 Chevrolet Astro to Respondent ABC's facility and requested a smog
inspection. The vehicle could not pass the visual portion of a smog inspection because the
vehicle's evaporation canister ("EVAP canister") was missing. The operator signed a work order
and received a copy of Estimate No. [REDACTED] prior to the smog inspection. Respondent Belcher
performed the smog inspection and issued electronic Certificate of Compliance No. [REDACTED]

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1 for that vehicle. The operator paid Respondent ABC \$40 for the smog inspection and received
2 Invoice No. [REDACTED] and a copy of the Vehicle Inspection Report ("VIR").

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Misleading Statements)**

5 16. Respondent ABC has subjected his registration to discipline under Code section
6 9884.7, subdivision (a)(1), in that on or about August 17, 2011, he made statements which he
7 knew or which by exercise of reasonable care he should have known were untrue or misleading
8 when he issued electronic Certificate of Compliance No. [REDACTED] for the 1997 Chevrolet
9 Astro, certifying that the vehicle was in compliance with applicable laws and regulations when, in
10 fact, the vehicle's EVAP canister was missing.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 17. Respondent ABC has subjected his registration to discipline under Code section
14 9884.7, subdivision (a)(4), in that on or about August 17, 2011, he committed acts which
15 constitute fraud by issuing electronic Certificate of Compliance No. [REDACTED] for the 1997
16 Chevrolet Astro, without performing a bona fide inspection of the emission control devices and
17 systems on that vehicle, thereby depriving the People of the State of California of the protection
18 afforded by the Motor Vehicle Inspection Program.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Violation of the Motor Vehicle Inspection Program)**

21 18. Respondent ABC has subjected his station license to discipline under Health and
22 Safety Code section 44072.2, subdivision (a), in that on or about August 17, 2011, regarding the
23 1997 Chevrolet Astro, he violated sections of that Code, as follows:

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

27 b. **Section 44012, subdivision (f):** Respondent ABC failed to perform emission control
28 tests on that vehicle in accordance with procedures prescribed by the department.

1 c. **Section 44015, subdivision (b):** Respondent ABC issued electronic Certificate of
2 Compliance No. [REDACTED] without properly testing and inspecting the vehicle to determine if
3 it was in compliance with section 44012 of that Code.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 19. Respondent ABC has subjected his station license to discipline under Health and
7 Safety Code section 44072.2, subdivision (c), in that on or about August 17, 2011, regarding the
8 1997 Chevrolet Astro, he violated sections of the California Code of Regulations, title 16, as
9 follows:

10 a. **Section 3340.35, subdivision (c):** Respondent ABC issued electronic Certificate of
11 Compliance No. [REDACTED] even though that vehicle had not been inspected in accordance with
12 section 3340.42 of that Code.

13 b. **Section 3340.42:** Respondent ABC failed to conduct the required smog tests and
14 inspections on that vehicle in accordance with the Bureau's specifications.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 20. Respondent ABC subjected his station license to discipline under Health and Safety
18 Code section 44072.2, subdivision (d), in that on or about August 17, 2011, regarding the 1997
19 Chevrolet Astro, he committed acts involving dishonesty, fraud or deceit whereby another was
20 injured by issuing electronic Certificate of Compliance No. [REDACTED] to that vehicle without
21 performing a bona fide inspection of the emission control devices and systems on the vehicle,
22 thereby depriving the People of the State of California of the protection afforded by the Motor
23 Vehicle Inspection Program.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 21. Respondent Belcher has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (a), in that on or about August 17, 2011, regarding
5 the 1997 Chevrolet Astro, he violated sections of that Code, as follows:

6 a. **Section 44012, subdivision (a):** Respondent Belcher 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 Belcher failed to perform emission
10 control tests on that vehicle in accordance with procedures prescribed by the department.

11 c. **Section 44032:** Respondent Belcher failed to perform tests of the emission control
12 devices and systems on that vehicle in accordance with section 44012 of that Code.

13 **SEVENTH CAUSE FOR DISCIPLINE**

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

15 22. Respondent Belcher has subjected his technician license to discipline under Health
16 and Safety Code section 44072.2, subdivision (c), in that on or about August 17, 2011, regarding
17 the 1997 Chevrolet Astro, he violated sections of the California Code of Regulations, title 16, as
18 follows:

19 a. **Section 3340.30, subdivision (a):** Respondent Belcher failed to inspect and test that
20 vehicle in accordance with Health and Safety Code section 44012.

21 b. **Section 3340.41, subdivision (c):** Respondent Belcher entered false information into
22 the Emission Inspection System ("EIS") for electronic Certificate of Compliance No.
23 [REDACTED] by entering "Pass" for the visual inspection portion of the smog inspection when, in
24 fact, the vehicle could not pass the visual portion of the inspection because the vehicle's EVAP
25 canister was missing.

26 c. **Section 3340.42:** Respondent Belcher failed to conduct the required smog tests and
27 inspections on that vehicle in accordance with the Bureau's specifications.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 23. Respondent Belcher has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (d), in that on or about August 17, 2011, regarding
5 the 1997 Chevrolet Astro, he committed acts involving dishonesty, fraud or deceit whereby
6 another was injured by issuing electronic Certificate of Compliance No. [REDACTED] without
7 performing a bona fide inspection of the emission control devices and systems on that vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **FACTUAL BACKGROUND**

11 24. The Bureau conducted a detailed review of the Vehicle Information Database
12 (“VID”) for all smog inspections performed at Respondent ABC’s facility for the period June 6,
13 2011, through September 9, 2011. The Bureau found that Respondent Belcher performed all of
14 the smog inspections for this time period. Respondent Belcher had inspected and tested the 6
15 vehicles set forth in Table 1, below, that failed or would have failed the smog inspection due to
16 too many incomplete OBD-II monitors or the Malfunction Indicator Light (“MIL”) had been
17 commanded on by the Power Train Control Module (“PCM”), as more particularly set forth in
18 Table 1, below. The Bureau discovered that Respondent Belcher had knowingly entered false
19 information into the EIS regarding the functional testing of the OBD II for those vehicles.
20 Vehicles 1 through 6 received smog certificates; however, they had not been tested during the
21 OBD II functional test.

22 **TABLE 1**

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Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.	Details
1. 6/7/2011 0839 hours	1997 Acura Integra, License No. 6BUX239	OE027191C	Vehicle should have failed due to too many incomplete monitors.
1a. 6/9/2011 1514 hours	1997 Acura Integra, License No. 6BUX239	OE190306C	Vehicle should have failed due to too many incomplete monitors.

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Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.	Details
2. 6/22/2011 1107 hours	1998 Volkswagen Jetta, License No. 4TUD591	OE190332C	Vehicle should have failed due to too many incomplete monitors.
3. 6/28/2011 1057 hours	1998 Dodge Ram 2500 Diesel, License No. 7G16537	OE190347C	Vehicle should have failed due to the MIL being commanded on by the PCM
4. 8/1/2011 1124 hours	1999 Honda Accord, License No. 5CPS529	OE676578C	Vehicle should have failed due to too many incomplete monitors.
5. 8/25/2011 0859 hours	1997 Mercury Tracer, License No. 3UVH099	OG058546C	Vehicle should have failed due to the MIL being commanded on by the PCM
6. 6/17/2011 1053 hours	2000 Honda Civic, License No. 5BYF877	OE190321C	Vehicle should have failed all portions of the smog inspection due to an engine change, which would require that all monitors had to be completed before the vehicle could pass the inspection.

NINTH CAUSE FOR DISCIPLINE

(Misleading Statements)

25. Respondent ABC has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that between June 7, 2011, through August 25, 2011, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading as follows: Respondent ABC certified that vehicles 1 through 6, identified in Table 1, above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent ABC issued certificates of compliance to those vehicles without testing or inspecting those vehicles as required by Health and Safety Code section 44012.

TENTH CAUSE FOR DISCIPLINE

(Fraud)

26. Respondent ABC has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that between June 7, 2011, through August 25, 2011, he committed acts which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through

1 6, identified in Table 1, above, without performing bona fide inspections of the emission control
2 devices and systems on those vehicles, thereby depriving the People of the State of California of
3 the protection afforded by the Motor Vehicle Inspection Program.

4 **ELEVENTH CAUSE FOR DISCIPLINE**

5 **(Violation of the Motor Vehicle Inspection Program)**

6 27. Respondent ABC has subjected his station license to discipline under Health and
7 Safety Code section 44072.2, subdivision (a), in that between June 7, 2011, through August 25,
8 2011, regarding vehicles 1 through 6, identified in Table 1, above, he violated sections of that
9 Code, as follows:

10 a. **Section 44012:** Respondent ABC failed to ensure that the emission control tests were
11 performed on those vehicles in accordance with procedures prescribed by the department.

12 b. **Section 44015:** Respondent ABC issued electronic certificates of compliance for
13 those vehicles without ensuring that the vehicles were properly tested and inspected to determine
14 if they were in compliance with Health and Safety Code section 44012.

15 **TWELFTH CAUSE FOR DISCIPLINE**

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

17 28. Respondent ABC has subjected his station license to discipline under Health and
18 Safety Code section 44072.2, subdivision (c), in that between June 7, 2011, through August 25,
19 2011, regarding vehicles 1 through 6, identified in Table 1, above, he violated sections of the
20 California Code of Regulations, title 16, as follows:

21 a. **Section 3340.35, subdivision (c):** Respondent ABC issued electronic certificates of
22 compliance even though those vehicles had not been inspected in accordance with section
23 3340.42 of that Code.

24 b. **Section 3340.42:** Respondent ABC failed to conduct the required smog tests and
25 inspections on those vehicles in accordance with the Bureau's specifications.

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THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

29. Respondent ABC has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that between June 7, 2011, through August 25, 2011, regarding vehicles 1 through 6, identified in Table 1, above, it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

30. Respondent Belcher has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that between June 7, 2011, through August 25, 2011, regarding vehicles 1 through 6, identified in Table 1, above, Respondent Belcher failed to comply with section 44012 of that Code in a material respect, as follows: Respondent Belcher failed to perform the emission control tests on vehicles 1 through 6, in accordance with procedures prescribed by the department.

FIFTEENTH CAUSE FOR DISCIPLINE

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

31. Respondent Belcher has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that between June 7, 2011, through August 25, 2011, regarding vehicles 1 through 6, identified in Table 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent Belcher failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.

b. **Section 3340.42:** Respondent Belcher failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

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1 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent Belcher has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (d), in that between June 7, 2011, through August
5 25, 2011, regarding vehicles 1 through 6, identified in Table 1, above, he committed acts
6 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
7 certificates of compliance without performing bona fide inspections of the emission control
8 devices and systems on those vehicles, thereby depriving the People of the State of California of
9 the protection afforded by the Motor Vehicle Inspection Program.

10 **PRIOR CITATIONS**

11 33. To determine the degree of penalty, if any, to be imposed upon Respondent ABC,
12 Complainant alleges, as follows:

13 a. On April 11, 2003, the Bureau issued Citation No. C03-1079 to Respondent ABC
14 against his station license for violations of Health and Safety Code section 44012, subdivision (f)
15 (failure to perform a visual/functional check of emission control devices) and California Code of
16 Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing a certificate of
17 compliance to a vehicle improperly tested). Respondent ABC issued a certificate of compliance
18 to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's specifications.
19 The Bureau assessed a civil penalty of \$500. Respondent ABC complied with this citation on
20 May 14, 2003.

21 b. On June 18, 2008, the Bureau issued Citation No. C08-1105 to Respondent ABC
22 against his station license for violations of Health and Safety Code section 44012, subdivision (f)
23 (failure to perform a visual/functional check of emission control devices) and Regulation, section
24 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested).
25 Respondent ABC issued a certificate of compliance to a Bureau vehicle with a missing air
26 injection system. The Bureau assessed a civil penalty of \$500. Respondent ABC complied with
27 this citation on August 4, 2008.

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1 c. On October 13, 2010, the Bureau issued Citation No. M2011-0411 to Respondent
2 Belcher against his technician license for violations of Health and Safety Code section 44032,
3 (qualified technicians shall perform tests of emission control systems and devices in accordance
4 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")
5 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
6 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
7 3340.42). Respondent Belcher issued a certificate of compliance to a Bureau vehicle with a non-
8 functional exhaust gas recirculation valve. Respondent Belcher was required to attend a 68-hour
9 training course. Respondent Belcher complied with this citation on December 3, 2010.

10 **OTHER MATTERS**

11 34. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
12 or permanently or refuse to validate, the registrations for all places of business operated in this
13 state by Nikki Lee Evans upon a finding that he has, or is, engaged in a course of repeated and
14 willful violations of the laws and regulations pertaining to an automotive repair dealer.

15 35. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
16 License Number RC 162848, issued to Nikki Lee Evans, doing business as ABC Nicks
17 Automotive, is revoked or suspended, any additional license issued under this chapter in the name
18 of said licensee may be likewise revoked or suspended by the director.

19 36. Under Health and Safety Code section 44072.8, if Poompi boon Jiamsakul Belcher's
20 technician license, currently designated as EA 631163, but upon renewal will be redesignated as
21 EO 631163 and/or EI 631163, is revoked or suspended, any additional license issued under this
22 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

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1 PRAYER

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

4 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
5 Number ARD 162848, issued to Nikki Lee Evans, doing business as ABC Nicks Automotive;

6 2. Revoking, suspending, or placing on probation any other automotive repair dealer
7 registration issued to Nikki Lee Evans;

8 3. Revoking or suspending Smog Check Station License Number RC 162848, issued to
9 Nikki Lee Evans, ABC Nicks Automotive;

10 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
11 and Safety Code in the name of Nikki Lee Evans;

12 5. Revoking or suspending Poompiboon Jiamsakul Belcher's smog technician license,
13 currently designated as EA 631163, but which, upon renewal, will be redesignated as EO 631163
14 and/or EI 631163;

15 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
16 and Safety Code in the name of Poompiboon Jiamsakul Belcher;

17 7. Ordering Nikki Lee Evans and Poompiboon Jiamsakul Belcher to pay the Bureau of
18 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
19 pursuant to Business and Professions Code section 125.3; and,

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

21
22 DATED: May 28 2013


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

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