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7
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 Accusation Against:

Case No. 79116-18251

13 **BRIAN THOMAS NOKES, PRESIDENT**
14 **BELTRAY INC., dba**
15 **ALL STAR FORD**
16 **3800 Century Way**
17 **Pittsburg, CA 94565**

ACCUSATION

18 **Automotive Repair Dealer Registration No.**
19 **ARD 271032**
20 **Smog Check Station License No. RC 271032**

21 **And**

22 **Mario Palaba Robles**
23 **1120 Cottage Lane**
24 **Hercules, CA 94547**

25 **Smog Check Inspector License No. EO**
26 **37348 and Smog Check Repair Technician**
27 **License No. EI 37348**

28 Respondents.

Complainant alleges:

PARTIES

1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

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STATUTORY PROVISIONS

"(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.

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7. Section 9889.22 of the Code states:

8. Section 44012 of the Health and Safety Code states:

3

1 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
2 and shall ensure all of the following:

3 "(a) Emission control systems required by state and federal law are reducing excess
4 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of
5 Section 44013.

6 "(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
7 the vehicle's emission control system.

8 "(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
9 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded
10 mode are tested in accordance with procedures prescribed by the department. In determining
11 how loaded mode and evaporative emissions testing shall be conducted, the department shall
12 ensure that the emission reduction targets for the enhanced program are met.

13 "(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and
14 crankcase ventilation system are tested to reduce any no exhaust sources of volatile organic
15 compound emissions, in accordance with procedures prescribed by the department.

16 "(e) For diesel-powered vehicles, if the department determines that the inclusion of those
17 vehicles is technologically and economically feasible, a visual inspection is made of emission
18 control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in
19 accordance with procedures prescribed by the department. The test may include testing of
20 emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of
21 applicable standards, measurement of emissions of smoke or particulates, or both.

22 "(f) A visual or functional check is made of emission control devices specified by the
23 department, including the catalytic converter in those instances in which the department
24 determines it to be necessary to meet the findings of Section 44001. The visual or functional
25 check shall be performed in accordance with procedures prescribed by the department.

26 "(g) A determination as to whether the motor vehicle complies with the emission standards
27 for that vehicle's class and model-year as prescribed by the department.

28

1 "(h) The test procedures may authorize smog check stations to refuse the testing of a
2 vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the
3 department by regulation. The refusal to test a vehicle for those reasons shall not excuse or
4 exempt the vehicle from compliance with all applicable requirements of this chapter."

5 9. Section 44015 of the Health and Safety Code states:

6 "(a) A licensed smog check station shall not issue a certificate of compliance, except as
7 authorized by this chapter, to any vehicle that meets the following criteria:

8 "(1) A vehicle that has been tampered with.

9 "(2) A vehicle that, prior to repairs, has been initially identified by the smog check station
10 as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated
11 test-only facility, or a test-and-repair station that is both licensed and certified pursuant to
12 Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph
13 (B) of paragraph (2) of subdivision (g) of Section 44014.5.

14 "(3) A vehicle described in subdivision (c).

15 "(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
16 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

17 . . .

18 10. Section 44032 of the Health and Safety Code states:

19 No person shall perform, for compensation, tests or repairs of emission control devices or
20 systems of motor vehicles required by this chapter unless the person performing the test or repair
21 is a qualified smog check technician and the test or repair is performed at a licensed smog check
22 station. Qualified technicians shall perform tests of emission control devices and systems in
23 accordance with Section 44012.

24 11. Section 44059 of the Health and Safety Code states:

25 "The willful making of any false statement or entry with regard to a material matter in any
26 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
27 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
28 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

12. Section 44072.2 of the Health and Safety Code states:

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 and the regulations adopted pursuant to it, which related to the licensed activities.

(b) Is convicted of any crime substantially related to the qualifications, functions, and duties of the licenseholder in question.

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

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

(e) Has misrepresented a material fact in obtaining a license.

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have those records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the records available for inspection.

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 3340.30, states:

"A smog check technician shall comply with the following requirements at all times while licensed.

"(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

• • •

1 14. California Code of Regulations, title 16, section 3340.35, states:

2 . . .

3 "(c) A licensed station shall issue a certificate of compliance or noncompliance to the
4 owner or operator of any vehicle that has been inspected in accordance with the procedures
5 specified in section 3340.42 of this article and has all the required emission control equipment
6 and devices installed and functioning correctly. The following conditions shall apply:

7 . . .

8 15. California Code of Regulations, title 16, section 3340.41, states:

9 . . .

10 "(c) No person shall enter into the emissions inspection system any vehicle identification
11 information or emission control system identification data for any vehicle other than the one
12 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
13 information about the vehicle being tested.

14 . . .

15 16. California Code of Regulations, title 16, section 3340.42, states:

16 (a) All vehicles subject to a smog check inspection, shall receive one of the following
17 test methods:

18 . . .

19 (b) In addition to subsection (a), all vehicles subject to the smog check program shall
20 receive the following:

21 (1) A visual inspection of emission control components and systems to verify the
22 vehicle's emission control systems are properly installed.

23 (2) A functional inspection of emission control systems as specified in the Smog
24 Check Manual, referenced by section 3340.45, which may include an OBD test, to verify their
25 proper operation.

26 . . .

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17. California Code of Regulations, title 16, section 3340.45, states:

(a) All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the following:

(1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

(2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This manual shall become effective on or after January 1, 2013.

18. California Code of Regulations, title 16, section 3373, states:

"No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public."

COSTS

19. Section 125.3 of the Code provides, in pertinent part, that the 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL BACKGROUND

20. On October 21, 2016, a Bureau representative initiated an investigation into Respondent All Star Ford's smog check inspection practices. OIS Test Data was reviewed and compared to abnormalities in the data to similar vehicles tested statewide. It was found that Respondent All Star Ford issued fraudulent Smog Check Certificates to certain vehicles. For purposes of the investigation and report the following data was referenced: DMV VIN – VIN of

the vehicle entered or scanned by the Smog Check Inspectors; Cert ID – Smog Check Certificate number issues; eVIN – Digitally stored VIN in the vehicle PCM and identified by the OIS; Protocol – the “type” of communication that was established with the vehicle by the OIS; PID Count – the number of Parameter Identification (PID’s) available from the vehicle computer(s) used for diagnostic data received by the OIS; Similar Vehicle OIS Test Data – Data for similar vehicles is derived and compiled from tests conducted statewide on vehicles that have specific matching VIN characters.

21. The investigation determined that All Star Ford issued nine (9) fraudulent Smog Check Certificates of Compliance using Clean Plugging methods to the following vehicles as listed below:²

Clean Plug One – September 29, 2015

Certificate # PW623365C	eVin	Protocol	PID Count
Pass Inspection 9.29.15	1FMHK7D85CGA25926	ICAN11bt500	42
Expected Value ³	1FTRF02525KD79884	ICAN11bt5	44

Clean Plug Two – October 2, 2015

Certificate # PW623374C	eVin	Protocol	PID Count
Passing Insp. 10.2.15	3GTRCVE0XAG148934	ICAN11bt500	45/7/8
Expected Value	Not Reported	JPWM	20

Clean Plug Three – October 30, 2015

Certificate # PY641206C	eVin	Protocol	PID Count
Passing Insp 10.30.15	Not Reported	ICAN11bt500	25/13/0
Expected Value	Not Reported	JPWM	4

² Clean plugging refers to using another vehicle’s properly functioning On Board Diagnostic, generation II, (OBDII) system or using another source to generate passing diagnostic readings for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance and/or not present for testing.

³ “Expected Value” is the value recorded for “like vehicles” inspected.

Clean Plug Four – October 30, 2015

Certificate # PY641207C eVin Protocol PID Count

Passing Insp. 10.30.15	1ZVFT80NX65177143	ICAN11bt500	47
Expected Value	KMHU6KHXA005273	ICAN11bt5	42, 42/ 14, or 42 /21

Clean Plug Five – December 2, 2015

Certificate # PY641241C eVin Protocol PID Count

Passing Insp. 12.2.15	1FTX1CG9FKE10700	ICAN11bt500	44
Expected Value	5LMEU88H65ZJ21632	JPWM	24

Clean Plug Six – January 25, 2016

Certificate # YV854661C eVin Protocol PID Count

Passing Insp. 1.25.16	3FA6P0K9XFR164551	ICAN11bt500	39
Expected Value	1FADP5CUXDL548199	ICAN11bt5	42/0/15/14

Clean Plug Seven – February 11, 2016

Certificate # YV854697C eVin Protocol PID Count

Passing Insp. 2.11.16	2C3CDXBG0EH326330	ICAN11bt500	43/12
Expected Value	2C3CDXCT8CH194555	ICAN11bt5	42/12

Clean Plug Eight – February 11, 2016

Certificate # YV854700C eVin Protocol PID Count

Passing Insp. 2.11.16	2C3CDXBG0EH326330	ICAN11bt500	43/12
Expected Value	1FBZX2ZM4FKA63348	ICAN11bt5	45

Clean Plug Nine – February 24, 2016

Certificate #	YX763828C	eVin	Protocol	PID Count
Passing Insp.	2.24.16	1C4RDHAG9DC699722	ICAN11bt500	42/12
Expected Value		3N1AB7AP8EL659024	ICAN11bt5	39 or 39/16

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements - Registration)

22. Respondent All Star Ford has subjected its registration to discipline under section 9884.7, subdivision (a)(1); in that Respondent All Star Ford made statements which were untrue or misleading, in that Respondent fraudulently purported to test the nine (9) vehicles, and certified that the nine (9) vehicles passed inspection and were following applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using clean plugging methods.

SECOND CAUSE FOR DISCIPLINE

(Fraud - Registration)

23. Respondent All Star Ford has subjected its registration to discipline under section 9884.7, subdivision (a)(4), in that Respondent All Star Ford committed acts which constitute fraud, in that Respondent fraudulently purported to test the nine (9) vehicles, and certified that the nine (9) vehicles passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents conducted the inspections on those vehicles using clean plugging methods.

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1 d. **Section 44059:** Respondent All Star Ford knowingly made a false statement resulting
2 in the issuance of nine (9) fraudulent Certificates of Compliance to nine (9) vehicles.

3 e. **Section 3340.35(c):** Respondent All Star Ford failed to inspect vehicles in accordance
4 with section 3340.42 and issued fraudulent Certificates of Compliance to vehicles that were not
5 connected to the BAR-OIS when they were being certified. conduct tests on the nine (9) vehicles
6 in accordance with the BAR Onboard Inspections System Specifications.

7 f. **Section 3340.42(b)(2):** Respondent All Star Ford failed to conduct tests on the nine (9)
8 vehicles in accordance with the BAR Onboard Inspections System Specifications.

9 g. **Section 3340.45(a)(2):** Respondent All Star Ford failed to perform smog check
10 inspections in accordance with requirements and procedures prescribed in the Smog Check
11 Inspection Manual.

12 h. **Section 3373:** Respondent All Star Ford created false records when they issued nine
13 (9) fraudulent Certificated of Compliance.

14
15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 27. Respondent All Star Ford has subjected its station license to discipline under Health
18 and Safety Code section 44072.2, subdivision (d), in that Respondent All Star Ford committed
19 acts which constitute fraud, in that Respondent fraudulently purported to test the nine (9)
20 vehicles, and certified that the nine (9) vehicles passed inspection and were in compliance with
21 applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles
22 using clean plugging methods.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Misleading Statements - Registration)**

3 28. Respondent Robles has subjected his license to discipline under section 9889.22
4 in that he made statements which he knew or which by exercise of reasonable care he should have
5 known were untrue or misleading in that Respondent fraudulently purported to test the nine (9)
6 vehicles, and certified that the nine (9) vehicles passed inspection and were in compliance with
7 applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles
8 using clean plugging methods.

9
10 **NINTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 29. Respondent Robles has subjected his technician license to discipline under Health and
13 Safety Code section 44072.2, subdivision (d), in that Respondent Robles committed acts which
14 constitute fraud, in that Respondent fraudulently purported to test the nine (9) vehicles, and
15 certified that the nine (9) vehicles passed inspection and were in compliance with applicable laws
16 and regulations. In fact, Respondent conducted the inspections on those vehicles using clean
17 plugging methods.

18
19 **TENTH CAUSE FOR DISCIPLINE**

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

21 30. Respondent Robles has subjected his station license to discipline under Health and
22 Safety Code sections 44012 in that he violated sections of that Code and applicable regulations,
23 as follows:

24 a. **Section 44012(f):** Respondent Robles failed to perform a visual and/or functional
25 check of the required equipment when he failed to connect nine (9) Vehicles to the BAR-OIS at
26 the time they were certified.

b. **Section 44032:** Respondent Robles failed to inspect, test or repair vehicles in accordance with section 44012 when she failed to connect nine (9) vehicles to the BAR-OIS at the time they were certified.

c. **Section 44059:** Respondent Robles knowingly made a false statement resulting in the issuance of twenty-nine fraudulent Certificates of Compliance to nine (9) vehicles.

d. **Section 3340.30(a):** Respondent Robles failed to follow test procedures when he failed to connect nine (9) vehicles to the Bar 97 EIS or the BAR-OIS for inspection.

e. **Section 3340.41(c):** Respondent Robles entered into the test analyzer system vehicle identification and test or emission system information for a vehicle other than the one being tested when she entered false information regarding the vehicles being tested.

f. **Section 3340.42(b)(2):** Respondent Robles failed to conduct tests on the nine (9) vehicles in accordance with the BAR Onboard Inspections System Specifications.

g. **Section 3340.45(a)(2):** Respondent Robles failed to perform smog check inspections in accordance with requirements and procedures prescribed in the Smog Check Inspection Manual.

OTHER MATTERS

31. Under Business and Professions 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 Brian Thomas Nokes upon a finding that Brian Thomas Nokes, President of Beltray Inc., dba All Star Ford, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

32. Under Health and Safety Code section 44072.8, if Brian Thomas Nokes's smog check station license, is revoked or suspended, any additional license issued under Chapter 5, Part 5, Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the Director.

33. Under Health and Safety Code section 44072.8, if Mario Robles's smog check inspector license or smog check repair technician license is revoked or suspended, any additional

1 license issued under Chapter 5, Part 5, Division 26 in the name of said licensee may be likewise
2 revoked or suspended by the Director.

3
4 **PRIOR CITATIONS**

5 34. To determine the degree of penalty, if any to be imposed upon Respondent,
6 Complainant alleges as follows: On January 8, 2015, the Bureau issued Citation No. M2015-0023
7 to Respondent Mario Robles EO 37348 (formerly Advanced Emission Specialist Technician
8 License Number EA 37348) for violations of Health and Safety Code section 44012, subdivision
9 (f) (Failure to perform a visual/functional check of emission control devices) and California Code
10 of Regulations, title 16, ("Regulation"), section 3340.5, subdivision (c) (issuing a certificate of
11 compliance to a vehicle with a missing Positive Crankcase Ventilation (PCV) system. The
12 Bureau assessed a penalty of an 8 Hour training course. A Citation Conference was held on
13 February 12, 2015, where Respondent Robles was presented with the citation. Training was
14 completed on April 14, 2015. The Citation is now final and is incorporated herein by reference.

15
16 **PRAYER**

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

19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
20 271032, issued to Brian Thomas Nokes, President of Beltray Inc., dba All Star Ford;

21 2. Revoking or suspending Smog Check Station License Number RC 271032, issued to
22 Brian Thomas Nokes, President of Beltray Inc., dba All Star Ford;

23 3. Revoking, suspending or placing on probation any additional license issued under
24 Chapter 5, Part 5 of the Division 26 of the Health and Safety Code in the name of Brian Thomas
25 Nokes.

26 4. Revoking, suspending, or placing on probation any additional license issued under
27 Chapter 5, Part 5 of Division 26 of the Health and Safety Code section in the name of Brian
28 Thomas Nokes.

1 5. Revoking or suspending the Smog Check Inspector License No. EO 37348 issued to
2 Mario Robles;

3 6. Revoking or suspending the Smog Check Repair Technician License No. EI 37348
4 issued to Mario Palaba Robles;

5 7. Revoking, suspending or placing on probation any additional license or registration
6 issued to Mario Palaba Robles;

7 8. Ordering Brian Thomas Nokes, President of Beltray Inc., dba All Star Ford to pay the
8 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
9 case, pursuant to Business and Professions Code section 125.3;

10 9. Ordering Mario Robles to pay the Bureau of Automotive Repair the reasonable costs
11 of the investigation and enforcement of this case, pursuant to Business and Professions Code
12 section 125.3;

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

14
15 DATED:

August 10, 2018



PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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