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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. 79/15-39

12 **RUDY'S SMOG CHECK,**
MARY ANN GARZA, Owner
13 83-386 Highway 111 #2
Indio, CA 92201

FIRST AMENDED ACCUSATION
SMOG CHECK

14 Automotive Repair Dealer Registration No.
15 ARD269017
Smog Check - Test Only Station License No.
16 TC 269017,

17 **DANIEL DAVID HOLSTER**
80000 Avenue 48, Space 29
18 Indio, CA 92201

19 Smog Check Inspector License No. EO 633118
Smog Check Repair Technician License No.
20 EI 633118 (formerly Advanced Emission
Specialist Technician License No. EA 633118)

21 and

22 **FRANCISCO GARZA III**
23 53-100 Avenida Villa
La Quinta, CA 92253

24 Smog Check Inspector License No. EO 144083
Smog Check Repair Technician License No.
25 EI 144083 (formerly Advanced Emission
Specialist Technician License No. EA 144083)

26 Respondents.
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1 Complainant alleges:

2 **PARTIES**

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

5 **Respondent Mary Ann Garza**

6 2. On May 8, 2012, the Bureau of Automotive Repair (Bureau) issued Automotive
7 Repair Dealer Registration Number ARD 269017 to Mary Ann Garza (Respondent Owner),
8 Owner of Rudy's Smog Check. The Automotive Repair Dealer Registration was in full force and
9 effect at all times relevant to the charges brought herein and was canceled on November 24,
10 2014, and has not been renewed. The Automotive Repair Dealer Registration was revoked
11 effective on December 8, 2015.

12 3. On May 15, 2012, the Bureau issued Smog Check-Test Only Station License
13 Number TC 269017 to Respondent Owner. The Smog Check-Test Only Station License was in
14 full force and effect at all times relevant to the charges brought herein and was canceled on
15 November 24, 2014, and has not been renewed. The Smog Check-Test Only Station License
16 was revoked effective on December 8, 2015.

17 **Respondent Daniel David Holster**

18 4. On May 12, 2011, the Bureau issued Advanced Emission Specialist Technician
19 License Number EA 633118 to Daniel David Holster (Respondent Holster). Respondent
20 Holster's advanced emission specialist technician license was due to expire on June 30, 2013,
21 however, it was cancelled on May 1, 2013. Under California Code of Regulations, title 16,
22 section 3340.28, subdivision (e), the license was renewed, in accordance with Respondent
23 Holster's election, as Smog Check Inspector License Number EO 633118 and Smog Check
24 Repair Technician License Number EI 633118, effective May 1, 2013. Respondent Holster's
25 smog check inspector license and smog check repair technician license were in full force and
26 effect at all times relevant to the charges brought herein and will expire on June 30, 2017, unless
27 renewed.

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1 **Respondent Francisco Garza III**

2 5. In 2001, the Bureau issued Advanced Emission Specialist Technician License
3 Number EA 144083 to Francisco Garza III (Respondent Garza). Respondent Garza's advanced
4 emission specialist technician license was due to expire on May 31, 2013, however, it was
5 cancelled on April 29, 2013. Under California Code of Regulations, title 16, section 3340.28,
6 subdivision (e), the license was renewed, in accordance with Respondent Garza's election, as
7 Smog Check Inspector License Number EO 144083 and Smog Check Repair Technician License
8 Number EI 144083, effective April 29, 2013. Respondent Garza's smog check inspector license
9 and smog check repair technician license were in full force and effect at all times relevant to the
10 charges brought herein and will expire on May 31, 2017, unless renewed.¹

11 **JURISDICTION**

12 6. This Accusation is brought before the Director of Consumer Affairs (Director) for
13 the Bureau, under the authority of the following laws. All section references are to the Business
14 and Professions Code (Code) unless otherwise indicated.

15 7. Code section 118, subdivision (b) states:

16 The suspension, expiration, or forfeiture by operation of law of a license
17 issued by a board in the department, or its suspension, forfeiture, or cancellation by
18 order of the board or by order of a court of law, or its surrender without the written
19 consent of the board, shall not, during any period in which it may be renewed,
20 restored, reissued, or reinstated, deprive the board of its authority to institute or
continue a disciplinary proceeding against the licensee upon any ground provided
by law or to enter an order suspending or revoking the license or otherwise taking
disciplinary action against the licensee on any such ground.

21 8. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
22 "License" includes certificate, registration or other means to engage in a business or profession
23 regulated by the Bus. & Prof. Code.

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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 which are done by the automotive repair dealer or any automotive technician,
2 employee, partner, officer, or member of the automotive repair dealer.

3 (1) Making or authorizing in any manner or by any means
4 whatever any statement written or oral which is untrue or misleading, and which
5 is known, or which by the exercise of reasonable care should be known, to be
6 untrue or misleading.

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8 (3) Failing or refusing to give to a customer a copy of any
9 document requiring his or her signature, as soon as the customer signs the
10 document.

11 (4) Any other conduct which constitutes fraud.

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13 (6) Failure in any material respect to comply with the provisions of
14 this chapter or regulations adopted pursuant to it.

15 (b) Except as provided for in subdivision (c), if an automotive repair
16 dealer operates more than one place of business in this state, the director pursuant
17 to subdivision (a) shall only refuse to validate, or shall only invalidate temporarily
18 or permanently the registration of the specific place of business which has
19 violated any of the provisions of this chapter. This violation, or action by the
20 director, shall not affect in any manner the right of the automotive repair dealer to
21 operate his or her other places of business.

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

27 17. Code section 9884.8 states:

28 All work done by an automotive repair dealer, including all warranty
work, shall be recorded on an invoice and shall describe all service work done and
parts supplied. Service work and parts shall be listed separately on the invoice,
which shall also state separately the subtotal prices for service work and for parts,
not including sales tax, and shall state separately the sales tax, if any, applicable
to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall
clearly state that fact. If a part of a component system is composed of new and
used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The
invoice shall include a statement indicating whether any crash parts are original
equipment manufacturer crash parts or nonoriginal equipment manufacturer
aftermarket crash parts. One copy of the invoice shall be given to the customer
and one copy shall be retained by the automotive repair dealer.

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18. Code section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost.

19. H & S Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

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

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

....

(f) A visual or functional check is 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 Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

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20. H & S Code section 44015 states in pertinent part:

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

....

21. H & S Code section 44032 states:

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

22. H & S 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 (H & S 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.

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

....

23. H & S Code section 44072.10 states, in pertinent part:

....

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, as defined by the department.

....

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

1 **REGULATORY PROVISIONS**

2 24. California Code of Regulations, Title 16, (CCR) section 3340.1, provides that the
3 term "clean piping," for purposes of Health and Safety Code section 44072.10, subdivision
4 (c)(1), means the use of a substitute exhaust emissions sample in place of the actual test vehicle's
5 exhaust in order to cause the EIS to issue a certificate of compliance for the test vehicle.

6 25. CCR, section 3340.24 (c), states:

7 "(c) The bureau may suspend or revoke the license of or pursue other legal action against
8 a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
9 certificate of noncompliance."

10 26. CCR, section 3340.28, subdivision (e), states that "[u]pon renewal of an
11 unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license
12 issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog
13 Check Inspector, Smog Check Repair Technician, or both."

14 27. CCR, section 3340.30 states in pertinent part:

15 A licensed smog check inspector and/or repair technician shall comply
16 with the following requirements at all times while licensed:

17 (a) Inspect, test and repair vehicles, as applicable, in accordance with
18 section 44012 of the Health and Safety Code, section 44035 of the Health and
19 Safety Code, and section 3340.42 of this article.

20

21 28. CCR, section 3340.35 states in pertinent part:

22

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

28 (1) Customers shall be charged the same price for certificates as
that paid by the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

. . . .

1 29. CCR, section 3340.42 states:

2 With the exception of diesel-powered vehicles addressed in subsection (f)
3 of this section, the following emissions test methods and standards apply to all
4 vehicles:

5 (a) A loaded-mode test, except as otherwise specified, shall be the test
6 method used to inspect vehicles registered in the enhanced program areas of the
7 state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon
8 dioxide and oxides of nitrogen emissions, as contained in the bureau's
9 specifications referenced in subsection (b) of Section 3340.17 of this article. The
10 loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment,
11 including a chassis dynamometer, certified by the bureau.

12 On and after March 31, 2010, exhaust emissions from a vehicle subject to
13 this inspection shall be measured and compared to the emissions standards shown
14 in the VLT Row Specific Emissions Standards (Cutpoints) Table, dated March
15 2010, which is hereby incorporated by reference. If the emissions standards for a
16 specific vehicle is not included in this table then the exhaust emissions shall be
17 compared to the emissions standards set forth in TABLE I or TABLE II, as
18 applicable. A vehicle passes the loaded-mode test if all of its measured emissions
19 are less than or equal to the applicable emission standards specified in the
20 applicable table.

21 (b) A two-speed idle mode test, unless a different test is otherwise
22 specified in this article, shall be the test method used to inspect vehicles registered
23 in all program areas of the state, except in those areas of the state where the
24 enhanced program has been implemented. The two-speed idle mode test shall
25 measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high
26 RPM and again at idle RPM, as contained in the bureau's specifications
27 referenced in subsection (b) of Section 3340.17 of this article. Exhaust emissions
28 from a vehicle subject to this inspection shall be measured and compared to the
emission standards set forth in this section and as shown in TABLE III. A vehicle
passes the two-speed idle mode test if all of its measured emissions are less than
or equal to the applicable emissions standards specified in Table III.

....

21 (e) In addition to the test methods prescribed in this section, the following
22 tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog
23 Check inspection:

24 (1) A visual inspection of the vehicle's emissions control systems. During
25 the visual inspection, the technician shall verify that the following emission
26 control devices, as applicable, are properly installed on the vehicle:

- 26 (A) air injection systems,
- 27 (B) computer(s) and related sensors and switches,
- 28 (C) crankcase emissions controls, including positive crankcase ventilation,
- (D) exhaust gas after treatment systems, including catalytic converters,

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- (E) exhaust gas recirculation (EGR) systems,
- (F) fuel evaporative emission controls,
- (G) fuel metering systems, including carburetors and fuel injection,
- (H) ignition spark controls, and
- (I) any emissions control systems that are not otherwise prompted by the Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.

(2) A functional inspection of the vehicle's emission control systems. During the functional inspection, the technician shall conduct, as applicable, the following tests and verifications of the vehicle:

-
- (C) proper setting of ignition timing,
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30. CCR, 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.

31. CCR, section 3340.41 (c), states:

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

COST RECOVERY

32. Section 125.3 of the Code provides, in pertinent part, that the Bureau 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.

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1 **UNDERCOVER OPERATION: 1994 Toyota**

2 33. On October 28, 2013, the Bureau conducted an undercover operation at
3 Respondent Owner's smog check-test only station, Rudy's Smog Check. The Bureau's vehicle, a
4 1994 Toyota, was modified to fail a proper smog inspection due to a missing pulse air injection
5 (PAIR) component. A blocked off plate had been installed to seal the exhaust system where a
6 PAIR component was removed.

7 34. A Bureau undercover operator took the vehicle to Respondent Owner's smog
8 check-test only station. The operator requested a smog check inspection. The operator did not
9 sign or receive a written estimate. Respondent Holster and Respondent Garza performed the
10 smog inspections that resulted in improperly issued certificate for the California Inspection and
11 Maintenance (I/M) Smog Check inspection. After the smog test was completed, the operator
12 completed and signed a work order, paid \$60.00, and was provided invoice number [REDACTED]. The
13 operator was also issued a Vehicle Inspection Report (VIR) bearing Certificate of Compliance
14 Number [REDACTED] and Respondent Holster's name as the smog technician who had performed
15 the smog test.

16 35. On December 4, 2013, Bureau personnel re-inspected the vehicle after the smog
17 test at Respondent Owner's smog check-test only station. The condition of the vehicle as
18 modified before testing at Respondent Owner's smog check-test only station had not changed;
19 the PAIR component was still missing. A smog inspection was performed and the overall test
20 results were "Tamper," which means that a required part of the PAIR system was missing.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Misleading Statements)**

23 36. Respondent Owner has subjected her registration to discipline under Code section
24 9884.7, subdivision (a)(1), in that on October 28, 2013, she made statements which she knew or
25 which by exercise of reasonable care she should have known were untrue or misleading when
26 she issued electronic Certificate of Compliance No. XZ683779 for the 1994 Toyota, certifying
27 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle
28 had a missing PAIR component.

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SECOND CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate)

37. Respondent Owner has subjected her registration to discipline under Code section 9884.7, subdivision (a)(6), in that on October 28, 2013, she failed to comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the smog inspection.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

38. Respondent Owner has subjected her station license to discipline under H & S Code section 44072.2, subdivision (a), in that on October 28, 2013, regarding the 1994 Toyota, she violated the following sections of that Code:

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

b. **Section 44015, subdivision (b):** Respondent Owner issued electronic Certificate of Compliance No. XZ683779 without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

FOURTH CAUSE FOR DISCIPLINE

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

39. Respondent Owner has subjected her station license to discipline under H & S Code section 44072.2, subdivision (c), in that on October 28, 2013, regarding the 1994 Toyota, she violated the following sections of the CCR:

a. **Section 3340.35, subdivision (c):** Respondent Owner issued electronic Certificate of Compliance No. XZ683779 even though the vehicle had not been inspected in accordance with H & S Code section 3340.42.

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

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 40. Respondent Owner has subjected her station license to discipline under H & S
4 Code section 44072.2, subdivision (d), in that on October 28, 2013, regarding the 1994 Toyota,
5 she committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
6 electronic Certificate of Compliance No. XZ683779 for that vehicle without performing a bona
7 fide inspection of the emission control devices and systems on the vehicle.

8 SIXTH CAUSE FOR DISCIPLINE

9 (Violations of the Motor Vehicle Inspection Program)

10 41. Respondent Holster has subjected his Smog Check Inspector License to discipline
11 under H & S Code section 44072.2, subdivision (a), in that on October 28, 2013, regarding the
12 1994 Toyota, he violated the following sections of that Code:

13 a. **Section 44032:** Respondent Holster failed to perform tests of the emission
14 control devices and systems on that vehicle in accordance with H & S Code section 44012, in
15 that the vehicle had a missing PAIR component.

16 b. **Section 44059:** Respondent Holster willfully made false entries for
17 electronic Certificate of Compliance No. XZ683779 by certifying that the vehicle had been
18 inspected as required when, in fact, it had not.

19 SEVENTH CAUSE FOR DISCIPLINE

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

21 42. Respondent Holster has subjected his Smog Check Inspector License to discipline
22 under H & S Code section 44072.2, subdivision (c), in that on October 28, 2013, regarding the
23 1994 Toyota, he violated the following sections of the CCR:

24 a. **Section 3340.30, subdivision (a):** Respondent Holster failed to inspect
25 and test that vehicle in accordance with H & S Code section 44012.

26 b. **Section 3340.42:** Respondent Holster failed to conduct the required smog
27 tests and 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 43. Respondent Holster has subjected his Smog Check Inspector License to discipline
4 under H & S Code section 44072.2, subdivision (d), in that on October 28, 2013, he committed
5 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
6 Certificate of Compliance No. XZ683779 for the 1994 Toyota without performing a bona fide
7 inspection of the emission control devices and systems on that vehicle.

8 **NINTH CAUSE FOR DISCIPLINE**

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

10 44. Respondent Garza has subjected his Smog Check Inspector License to discipline
11 under H & S Code section 44072.2, subdivision (a), in that on October 28, 2013, regarding the
12 1994 Toyota, he violated the following sections of that Code:

13 a. **Section 44032:** Respondent Garza failed to perform tests of the emission
14 control devices and systems on that vehicle in accordance with H & S Code section 44012, in
15 that the vehicle had a missing PAIR component.

16 b. **Section 44059:** Respondent Garza willfully made false entries for
17 electronic Certificate of Compliance No. XZ683779 by certifying that the vehicle had been
18 inspected as required when, in fact, it had not.

19 **TENTH CAUSE FOR DISCIPLINE**

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

21 45. Respondent Garza has subjected his Smog Check Inspector License to discipline
22 under H & S Code section 44072.2, subdivision (c), in that on October 28, 2013, regarding the
23 1994 Toyota, he violated the following sections of the CCR:

24 a. **Section 3340.30, subdivision (a):** Respondent Garza failed to inspect and
25 test that vehicle in accordance with H & S Code section 44012.

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

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1 ELEVENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 46. Respondent Garza has subjected his Smog Check Inspector License to discipline
4 under H & S Code section 44072.2, subdivision (d), in that on October 28, 2013, he committed
5 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
6 Certificate of Compliance No. XZ683779 for the 1994 Toyota without performing a bona fide
7 inspection of the emission control devices and systems on that vehicle.

8 **UNDERCOVER OPERATION: 1989 Ford**

9 47. On January 13, 2014, the Bureau conducted an undercover operation at
10 Respondent Owner's smog check-test only station, Rudy's Smog Check. The Bureau's vehicle, a
11 1989 Ford, was modified to fail a proper smog inspection due to the installation of a non-
12 functional Exhaust Gas Recirculation (EGR) valve on the intake manifold. A blockage plate had
13 been installed to close off the EGR port of the intake manifold.

14 48. A Bureau undercover operator took the vehicle to Respondent Owner's smog
15 check-test only station. The operator requested a smog check inspection. The operator did not
16 sign or receive a written estimate. Respondent Holster and Respondent Garza performed the
17 smog inspections that resulted in improperly issued certificate for the California Inspection and
18 Maintenance (I/M) Smog Check inspection. After the smog test was completed, the operator
19 completed and signed a work order, paid \$55.00, and was provided invoice number [REDACTED]. The
20 operator was also issued a Vehicle Inspection Report (VIR) bearing Certificate of Compliance
21 Number [REDACTED] and Respondent Holster's name as the smog technician who had performed
22 the smog test.

23 49. On January 15, 2014, Bureau personnel re-inspected the vehicle after the smog test
24 at Respondent Owner's smog check-test only station. The condition of the vehicle as modified
25 before testing at Respondent Owner's smog check-test only station had not changed; the EGR
26 component remained inoperative and tamper seal remained intact. A BAR-97 two speed idle test
27 resulted in a failed inspection.

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1 TWELFTH CAUSE FOR DISCIPLINE

2 (Misleading Statements)

3 50. Respondent Owner has subjected her registration to discipline under Code section
4 9884.7, subdivision (a)(1), in that on January 13, 2014, she made statements which she knew or
5 which by exercise of reasonable care she should have known were untrue or misleading when
6 she issued electronic Certificate of Compliance No. YB775368C for the 1989 Ford, certifying
7 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle
8 had a non-functional Exhaust Gas Recirculation (EGR) valve on the intake manifold.

9 THIRTEENTH CAUSE FOR DISCIPLINE

10 (Failure to Provide a Written Estimate)

11 51. Respondent Owner has subjected her registration to discipline under Code section
12 9884.7, subdivision (a)(6), in that on January 13, 2014, she failed to comply with Code section
13 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the
14 smog inspection.

15 FOURTEENTH CAUSE FOR DISCIPLINE

16 (Violation of the Motor Vehicle Inspection Program)

17 52. Respondent Owner has subjected her station license to discipline under H & S
18 Code section 44072.2, subdivision (a), in that on January 13, 2014, regarding the 1989 Ford, she
19 violated the following sections of that Code:

20 a. **Section 44012, subdivision (f):** Respondent Owner failed to perform
21 emission control tests on the vehicle in accordance with procedures prescribed by the
22 department.

23 b. **Section 44015, subdivision (b):** Respondent Owner issued electronic
24 Certificate of Compliance No. YB775368C without properly testing and inspecting the vehicle to
25 determine if it was in compliance with section 44012 of that Code.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

3 53. Respondent Owner has subjected her station license to discipline under H & S
4 Code section 44072.2, subdivision (c), in that on January 13, 2014, regarding the 1989 Ford, she
5 violated the following sections of the CCR:

6 a. **Section 3340.35, subdivision (c):** Respondent Owner issued electronic
7 Certificate of Compliance No. YB775368C even though the vehicle had not been inspected in
8 accordance with H & S Code section 3340.42.

9 b. **Section 3340.42:** Respondent Owner failed to conduct the required smog
10 tests and inspections on the vehicle in accordance with the Bureau's specifications.

11 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

13 54. Respondent Owner has subjected her station license to discipline under H & S
14 Code section 44072.2, subdivision (d), in that on January 13, 2014, regarding the 1989 Ford, she
15 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
16 electronic Certificate of Compliance No. YB775368C for that vehicle without performing a bona
17 fide inspection of the emission control devices and systems on the vehicle.

18 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

20 55. Respondent Holster has subjected his Smog Check Inspector License to discipline
21 under H & S Code section 44072.2, subdivision (a), in that on January 13, 2014, regarding the
22 1989 Ford, he violated the following sections of that Code:

23 a. **Section 44032:** Respondent Holster failed to perform tests of the emission
24 control devices and systems on that vehicle in accordance with H & S Code section 44012, in
25 that the vehicle had a non-functional Exhaust Gas Recirculation (EGR) valve on the intake
26 manifold.

1 b. **Section 44059:** Respondent Holster willfully made false entries for
2 electronic Certificate of Compliance No. YB775368C by certifying that the vehicle had been
3 inspected as required when, in fact, it had not.

4 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

6 56. Respondent Holster has subjected his Smog Check Inspector License to discipline
7 under H & S Code section 44072.2, subdivision (c), in that on January 13, 2014, regarding the
8 1989 Ford, he violated the following sections of the CCR:

9 a. **Section 3340.30, subdivision (a):** Respondent Holster failed to inspect
10 and test that vehicle in accordance with H & S Code section 44012.

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

13 **NINETEENTH CAUSE FOR DISCIPLINE**

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

15 57. Respondent Holster has subjected his Smog Check Inspector License to discipline
16 under H & S Code section 44072.2, subdivision (d), in that on January 13, 2014, he committed
17 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
18 Certificate of Compliance No. YB775368C for the 1989 Ford without performing a bona fide
19 inspection of the emission control devices and systems on that vehicle.

20 **TWENTIETH CAUSE FOR DISCIPLINE**

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

22 58. Respondent Garza has subjected his Smog Check Inspector License to discipline
23 under H & S Code section 44072.2, subdivision (a), in that on January 13, 2014, regarding the
24 1989 Ford, he violated the following sections of that Code:

25 a. **Section 44032:** Respondent Garza failed to perform tests of the emission
26 control devices and systems on that vehicle in accordance with H & S Code section 44012, in
27 that the vehicle had a non-functional Exhaust Gas Recirculation (EGR) valve on the intake
28 manifold.

1 smog inspections that resulted in improperly issued certificate for the California Inspection and
2 Maintenance (I/M) Smog Check inspection. After the smog test was completed, the operator
3 completed and signed a work order, paid \$55.00, and was provided invoice number [REDACTED]. The
4 operator was also issued a Vehicle Inspection Report (VIR) bearing Certificate of Compliance
5 Number [REDACTED] and Respondent Holster's name as the smog technician who had
6 performed the smog test.

7 63. On February 13, 2014, Bureau personnel re-inspected the vehicle after the smog
8 test at Respondent Owner's smog check-test only station. The condition of the vehicle as
9 modified before testing at Respondent Owner's smog check-test only station had not changed; the
10 tamper indicator was still intact. A smog inspection was performed and the vehicle failed the
11 inspection for the timing out of specification.

12 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

13 **(Misleading Statements)**

14 64. Respondent Owner has subjected her registration to discipline under Code section
15 9884.7, subdivision (a)(1), in that on February 5, 2014, she made statements which she knew or
16 which by exercise of reasonable care she should have known were untrue or misleading when
17 she issued electronic Certificate of Compliance No. YD169020C for the 1990 Toyota, certifying
18 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle
19 had the adjustment of the ignition to twenty degrees before top dead center.

20 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Provide a Written Estimate)**

22 65. Respondent Owner has subjected her registration to discipline under Code section
23 9884.7, subdivision (a)(6), in that on February 5, 2014, she failed to comply with Code section
24 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the
25 smog inspection.

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1 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

3 66. Respondent Owner has subjected her station license to discipline under H & S
4 Code section 44072.2, subdivision (a), in that on February 5, 2014, regarding the 1990 Toyota,
5 she violated the following sections of that Code:

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

9 b. **Section 44015, subdivision (b):** Respondent Owner issued electronic
10 Certificate of Compliance No. YD169020C without properly testing and inspecting the vehicle
11 to determine if it was in compliance with section 44012 of that Code.

12 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

14 67. Respondent Owner has subjected her station license to discipline under H & S
15 Code section 44072.2, subdivision (c), in that on February 5, 2014, regarding the 1990 Toyota,
16 she violated the following sections of the CCR:

17 a. **Section 3340.35, subdivision (c):** Respondent Owner issued electronic
18 Certificate of Compliance No. YD169020C even though the vehicle had not been inspected in
19 accordance with H & S Code section 3340.42.

20 b. **Section 3340.42:** Respondent Owner failed to conduct the required smog
21 tests and inspections on the vehicle in accordance with the Bureau's specifications.

22 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

24 68. Respondent Owner has subjected her station license to discipline under H & S
25 Code section 44072.2, subdivision (d), in that on February 5, 2014, regarding the 1990 Toyota,
26 she committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
27 electronic Certificate of Compliance No. YD169020C for that vehicle without performing a bona
28 fide inspection of the emission control devices and systems on the vehicle.

1 c. **Section 44015, subdivision (b):** Respondent issued an electronic smog certificate
2 of compliance for the Mitsubishi without properly testing and inspecting the vehicle to determine
3 if they were in compliance with H & S Code section 44012.

4 d. **Section 44059:** Respondent willfully made false entries for an electronic
5 certificate of compliance for the Mitsubishi by certifying that the vehicle had been inspected as
6 required when, in fact, it had not.

7 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

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

9 84. Respondent Garza's technician license is subject to disciplinary action pursuant to
10 H & S Code section 44072.2, subdivision (c), in that Respondent failed to comply with
11 provisions of California Code of Regulations, Title 16, as set forth in paragraphs 75 through 82,
12 above.

13 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
14 electronic smog certificate of compliance for the Mitsubishi .

15 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the
16 Mitsubishi in accordance with H & S Code sections 44012 and 44035, and CCR section 3340.42.

17 c. **Section 3340.41, subdivision (c):** Respondent entered into the emissions inspection
18 system vehicle identification information or emission control system identification data for a
19 vehicle other than the one being tested.

20 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
21 Mitsubishi in accordance with the Bureau's specifications.

22 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

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

24 85. Respondent Garza's technician license is subject to disciplinary action pursuant to
25 H & S Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
26 fraudulent, or deceitful acts whereby another is injured, as set forth in paragraphs 75 through 82,
27 above. Respondent issued an electronic smog certificate of compliance for the Mitsubishi
28 without performing bona fide inspections of the emission control devices and systems on the

1 vehicle, thereby depriving the People of the State of California of the protection afforded by the
2 Motor Vehicle Inspection Program.

3 **OTHER MATTERS**

4 86. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
5 Number EO 633118 issued to Daniel David Holster, is revoked or suspended, Smog Check
6 Repair Technician License Number EI 633118 and any additional license issued under this
7 chapter in the name of said licensee may be likewise revoked or suspended by the director.

8 87. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
9 Number EO 144083 issued to Francisco Garza III, is revoked or suspended, Smog Check Repair
10 Technician License Number EI 144083 and any additional license issued under this chapter in
11 the name of said licensee may be likewise revoked or suspended by the director.

12 **PRAYER**

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

15 1. Revoking or suspending Smog Check Inspector License Number EO 633118,
16 issued to Daniel David Holster;

17 2. Revoking or suspending Smog Check Repair Technician License Number EI
18 633118, issued to Daniel David Holster;

19 3. Revoking or suspending Smog Check Inspector License Number EO 144083,
20 issued to Francisco Garza III;

21 4. Revoking or suspending Smog Check Repair Technician License Number EI
22 144083, issued to Francisco Garza III;

23 5. Ordering Daniel David Holster and Francisco Garza III to pay the Bureau of
24 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
25 pursuant to Business and Professions Code section 125.3;

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

DATED: 2/9/16

Patrick Dorais by Doug Balatti
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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