

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

In the Matter of the Accusation Against:

**RUDY'S SMOG CHECK,  
MARY ANN GARZA, Owner**

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

Smog Check Inspector License No. EO  
633118

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

and

**FRANCISCO GARZA III**

Respondents.

Case No. 79/15-39

OAH No. 2015061179

**DECISION**

The attached Stipulated Settlement and Disciplinary Order as to Daniel David Holster Only is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Daniel David Holster, Smog Check Inspector License No. EO 633118, and Smog Check Repair Technician License No. EI 633118 (formerly Advanced Emission Specialist Technician License No. EA 633118).

This Decision shall become effective

April 22, 2016

DATED:

April 1, 2016

  
\_\_\_\_\_  
TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
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Deputy Attorney General  
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*Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **RUDY'S SMOG CHECK,**  
14 **MARY ANN GARZA, Owner**

15 **DANIEL DAVID HOLSTER**  
16 **80000 Avenue 48, Space 29**  
**Indio, CA 92201**

17 **Smog Check Inspector License No. EO 633118**  
18 **Smog Check Repair Technician License No.**  
**EI 633118 (formerly Advanced Emission**  
**Specialist Technician License No. EA 633118**

19 **and**

20 **FRANCISCO GARZA III**

21 Respondents.

Case No. 79/15-39

OAH No. 2015061179

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER AS TO**  
**DANIEL DAVID HOLSTER ONLY**

22  
23  
24 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
25 entitled proceedings that the following matters are true:

26 **PARTIES**

27 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair  
28 (Bureau). He brought this action solely in his official capacity and is represented in this matter by

1 Kamala D. Harris, Attorney General of the State of California, by David E. Hausfeld, Deputy  
2 Attorney General.

3 2. Respondent Daniel David Holster (Respondent) is representing himself in this  
4 proceeding and has chosen not to exercise his right to be represented by counsel.

5 3. On May 12, 2011, the Bureau issued Advanced Emission Specialist Technician  
6 License Number EA 633118 to Respondent. Respondent's advanced emission specialist  
7 technician license was due to expire on June 30, 2013, however, it was cancelled on May 1, 2013.  
8 Under California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was  
9 renewed, in accordance with Respondent's election, as Smog Check Inspector License Number  
10 EO 633118 and Smog Check Repair Technician License Number EI 633118, effective May 1,  
11 2013. Respondent's smog check inspector license and smog check repair technician license were  
12 in full force and effect at all times relevant to the charges brought herein. The smog check  
13 inspector license will expire on June 30, 2017, unless renewed. The smog check repair technician  
14 license expired on June 30, 2015, and has not been renewed.

### 15 JURISDICTION

16 4. Accusation No. 79/15-39 was filed before the Director of Consumer Affairs  
17 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against  
18 Respondent. The Accusation and all other statutorily required documents were properly served  
19 on Respondent on September 16, 2014. Respondent timely filed his Notice of Defense contesting  
20 the Accusation.

21 5. A copy of Accusation No. 79/15-39 is attached as Exhibit A and incorporated herein  
22 by reference.

### 23 ADVISEMENT AND WAIVERS

24 6. Respondent has carefully read, and understands the charges and allegations in  
25 Accusation No. 79/15-39. Respondent has also carefully read, and understands the effects of this  
26 Stipulated Settlement and Disciplinary Order as to Daniel David Holster Only.

27 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
28 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at

1 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
2 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
3 the attendance of witnesses and the production of documents; the right to reconsideration and  
4 court review of an adverse decision; and all other rights accorded by the California  
5 Administrative Procedure Act and other applicable laws.

6 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
7 every right set forth above.

8 **CULPABILITY**

9 9. Respondent admits the truth of each and every charge and allegation in Accusation  
10 No. 79/15-39.

11 10. Respondent agrees that his Smog Check Inspector License and Smog Check Repair  
12 Technician License are subject to discipline and he agrees to be bound by the Director's  
13 probationary terms as set forth in the Disciplinary Order below.

14 **CONTINGENCY**

15 11. This stipulation shall be subject to approval by the Director of Consumer Affairs or  
16 the Director's designee. Respondent understands and agrees that counsel for Complainant and the  
17 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of  
18 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to  
19 or participation by Respondent. By signing the stipulation, Respondent understands and agrees  
20 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the  
21 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision  
22 and Order, the Stipulated Settlement and Disciplinary Order as to Daniel David Holster Only  
23 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action  
24 between the parties, and the Director shall not be disqualified from further action by having  
25 considered this matter.

26 12. The parties understand and agree that Portable Document Format (PDF) and facsimile  
27 copies of this Stipulated Settlement and Disciplinary Order as to Daniel David Holster Only,  
28

1 including PDF and facsimile signatures thereto, shall have the same force and effect as the  
2 originals.

3 13. This Stipulated Settlement and Disciplinary Order as to Daniel David Holster Only is  
4 intended by the parties to be an integrated writing representing the complete, final, and exclusive  
5 embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements,  
6 understandings, discussions, negotiations, and commitments (written or oral). This Stipulated  
7 Settlement and Disciplinary Order as to Daniel David Holster Only may not be altered, amended,  
8 modified, supplemented, or otherwise changed except by a writing executed by an authorized  
9 representative of each of the parties.

10 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
11 the Director may, without further notice or formal proceeding, issue and enter the following  
12 Disciplinary Order:

13  
14 **DISCIPLINARY ORDER**

15 IT IS HEREBY ORDERED that Smog Check Inspector License No. EO 633118 and Smog  
16 Check Repair Technician License No. EI 633118 issued to Respondent Daniel David Holster are  
17 revoked. However, the revocation is stayed and Respondent is placed on probation for three (3)  
18 years on the following terms and conditions.

19 1. **Obey All Laws.** Comply with all statutes, regulations and rules governing  
20 automotive inspections, estimates and repairs.

21 2. **Reporting.** Respondent or Respondent's authorized representative must report in  
22 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the  
23 Bureau, but no more frequently than each quarter, on the methods used and success achieved in  
24 maintaining compliance with the terms and conditions of probation.

25 3. **Jurisdiction.** If an accusation is filed against Respondent during the term of  
26 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter  
27 until the final decision on the Accusation, and the period of probation shall be extended until such  
28 decision.



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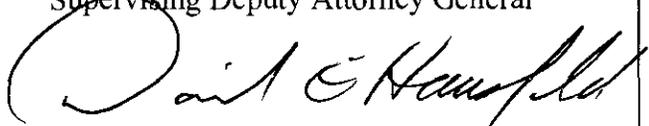
**ENDORSEMENT**

The foregoing Stipulated Settlement and Disciplinary Order as to Daniel David Holster  
Only is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 2/23/16

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JAMES M. LEDAKIS  
Supervising Deputy Attorney General



DAVID E. HAUSFELD  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 79/15-39**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Acting Senior Assistant Attorney General  
3 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

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,**  
13 **MARY ANN GARZA, Owner**  
83-386 Highway 111 #2  
14 Indio, CA 92201

**ACCUSATION**

**(SMOG CHECK)**

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

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

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

and

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

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

27 Respondents.

28

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 will expire on May 31, 2015, unless  
10 renewed.

11 3. On May 15, 2012, the Bureau issued Smog Check-Test Only Station License  
12 Number TC 269017 to Respondent Owner. The Smog Check-Test Only Station License was in  
13 full force and effect at all times relevant to the charges brought herein and will expire on May  
14 31, 2015, unless renewed.

15 **Respondent Daniel David Holster**

16 4. On May 12, 2011, the Bureau issued Advanced Emission Specialist Technician  
17 License Number EA 633118 to Daniel David Holster (Respondent Holster). Respondent  
18 Holster's advanced emission specialist technician license was due to expire on June 30, 2013,  
19 however, it was cancelled on May 1, 2013. Under California Code of Regulations, title 16,  
20 section 3340.28, subdivision (e), the license was renewed, in accordance with Respondent  
21 Holster's election, as Smog Check Inspector License Number EO 633118 and Smog Check  
22 Repair Technician License Number EI 633118, effective May 1, 2013. Respondent Holster's  
23 smog check inspector license and smog check repair technician license were in full force and  
24 effect at all times relevant to the charges brought herein and will expire on June 30, 2015, unless  
25 renewed.<sup>1</sup>

26 \_\_\_\_\_  
27 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
28 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced  
Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog  
(continued...)





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.

7 . . . .

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.

12 . . . .

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. 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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13. 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.

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

....

(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.

....

16. 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.

17. 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.

....

**REGULATORY PROVISIONS**

18. California Code of Regulations, title 16 (Regulations), section 3340.28, subdivision (e), states that “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

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19. Regulations, section 3340.30 states in pertinent part:

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

(a) Inspect, test and repair vehicles, as applicable, 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.

....

20. Regulations, section 3340.35 states in pertinent part:

....

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

(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.

....

21. Regulations, section 3340.42 states:

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

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

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

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

12 . . . .

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

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

- 19 (A) air injection systems,
- 20 (B) computer(s) and related sensors and switches,
- 21 (C) crankcase emissions controls, including positive crankcase ventilation,
- 22 (D) exhaust gas after treatment systems, including catalytic converters,
- 23 (E) exhaust gas recirculation (EGR) systems,
- 24 (F) fuel evaporative emission controls,
- 25 (G) fuel metering systems, including carburetors and fuel injection,
- 26 (H) ignition spark controls, and

27 (I) any emissions control systems that are not otherwise prompted by the  
28 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,

. . . .

23. Regulations, 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

1 information which will cause any such document to be false or misleading, or  
2 where the tendency or effect thereby would be to mislead or deceive customers,  
3 prospective customers, or the public.

### 3 COST RECOVERY

4 24. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the  
5 administrative law judge to direct a licentiate found to have committed a violation or violations of  
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
7 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
8 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
9 included in a stipulated settlement.

### 10 UNDERCOVER OPERATION: 1994 Toyota

11 19. On October 28, 2013, the Bureau conducted an undercover operation at  
12 Respondent Owner's smog check-test only station, Rudy's Smog Check. The Bureau's vehicle, a  
13 1994 Toyota, was modified to fail a proper smog inspection due to a missing pulse air injection  
14 (PAIR) component. A blocked off plate had been installed to seal the exhaust system where a  
15 PAIR component was removed.

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

25 21. On December 4, 2013, Bureau personnel re-inspected the vehicle after the smog  
26 test at Respondent Owner's smog check-test only station. The condition of the vehicle as  
27 modified before testing at Respondent Owner's smog check-test only station had not changed;

28 ///

1 the PAIR component was still missing. A smog inspection was performed and the overall test  
2 results were "Tamper," which means that a required part of the PAIR system was missing.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Misleading Statements)**

5 22. Respondent Owner has subjected her registration to discipline under Code section  
6 9884.7, subdivision (a)(1), in that on October 28, 2013, she made statements which she knew or  
7 which by exercise of reasonable care she should have known were untrue or misleading when  
8 she issued electronic Certificate of Compliance [REDACTED] for the 1994 Toyota, certifying  
9 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle  
10 had a missing PAIR component.

11 **SECOND CAUSE FOR DISCIPLINE**

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

13 23. Respondent Owner has subjected her registration to discipline under Code section  
14 9884.7, subdivision (a)(6), in that on October 28, 2013, she failed to comply with Code section  
15 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the  
16 smog inspection.

17 **THIRD CAUSE FOR DISCIPLINE**

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

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

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

25 b. **Section 44015, subdivision (b):** Respondent Owner issued electronic  
26 Certificate of Compliance [REDACTED] without properly testing and inspecting the vehicle to  
27 determine if it was in compliance with section 44012 of that Code.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

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

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

6 a. **Section 3340.35, subdivision (c):** Respondent Owner issued electronic  
7 Certificate of Compliance [REDACTED] 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 **FIFTH CAUSE FOR DISCIPLINE**

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

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

18 **SIXTH CAUSE FOR DISCIPLINE**

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

20 27. Respondent Holster has subjected his Smog Check Inspector License to discipline  
21 under H & S Code section 44072.2, subdivision (a), in that on October 28, 2013, regarding the  
22 1994 Toyota, 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 missing PAIR component.

26 b. **Section 44059:** Respondent Holster willfully made false entries for  
27 electronic Certificate of Compliance [REDACTED] by certifying that the vehicle had been  
28 inspected as required when, in fact, it had not.

1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 28. Respondent Holster has subjected his Smog Check Inspector License to discipline  
4 under H & S Code section 44072.2, subdivision (c), in that on October 28, 2013, regarding the  
5 1994 Toyota, he violated the following sections of the CCR:

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

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

10 **EIGHTH CAUSE FOR DISCIPLINE**

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

12 29. Respondent Holster has subjected his Smog Check Inspector License to discipline  
13 under H & S Code section 44072.2, subdivision (d), in that on October 28, 2013, he committed  
14 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic  
15 Certificate of Compliance [REDACTED] for the 1994 Toyota without performing a bona fide  
16 inspection of the emission control devices and systems on that vehicle.

17 **NINTH CAUSE FOR DISCIPLINE**

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

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

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

25 b. **Section 44059:** Respondent Garza willfully made false entries for  
26 electronic Certificate of Compliance No [REDACTED] by certifying that the vehicle had been  
27 inspected as required when, in fact, it had not.

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1 **TENTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent Garza has subjected his Smog Check Inspector License to discipline  
4 under H & S Code section 44072.2, subdivision (c), in that on October 28, 2013, regarding the  
5 1994 Toyota, he violated the following sections of the CCR:

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

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

10 **ELEVENTH CAUSE FOR DISCIPLINE**

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

12 32. Respondent Garza has subjected his Smog Check Inspector License to discipline  
13 under H & S Code section 44072.2, subdivision (d), in that on October 28, 2013, he committed  
14 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic  
15 Certificate of Compliance [REDACTED] for the 1994 Toyota without performing a bona fide  
16 inspection of the emission control devices and systems on that vehicle.

17 **UNDERCOVER OPERATION: 1989 Ford**

18 33. On January 13, 2014, the Bureau conducted an undercover operation at  
19 Respondent Owner's smog check-test only station, Rudy's Smog Check. The Bureau's vehicle, a  
20 1989 Ford, was modified to fail a proper smog inspection due to the installation of a non-  
21 functional Exhaust Gas Recirculation (EGR) valve on the intake manifold. A blockage plate had  
22 been installed to close off the EGR port of the intake manifold.

23 34. A Bureau undercover operator took the vehicle to Respondent Owner's smog  
24 check-test only station. The operator requested a smog check inspection. The operator did not  
25 sign or receive a written estimate. Respondent Holster and Respondent Garza performed the  
26 smog inspections that resulted in improperly issued certificate for the California Inspection and  
27 Maintenance (I/M) Smog Check inspection. After the smog test was completed, the operator  
28 completed and signed a work order, paid \$55.00, and was provided invoice [REDACTED]. The

1 operator was also issued a Vehicle Inspection Report (VIR) bearing Certificate of Compliance  
2 Number [REDACTED] and Respondent Holster's name as the smog technician who had performed  
3 the smog test.

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

9 **TWELFTH CAUSE FOR DISCIPLINE**

10 **(Misleading Statements)**

11 36. Respondent Owner has subjected her registration to discipline under Code section  
12 9884.7, subdivision (a)(1), in that on January 13, 2014, she made statements which she knew or  
13 which by exercise of reasonable care she should have known were untrue or misleading when  
14 she issued electronic Certificate of Compliance No. [REDACTED] for the 1989 Ford, certifying  
15 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle  
16 had a non-functional Exhaust Gas Recirculation (EGR) valve on the intake manifold.

17 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

19 37. Respondent Owner has subjected her registration to discipline under Code section  
20 9884.7, subdivision (a)(6), in that on January 13, 2014, she failed to comply with Code section  
21 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the  
22 smog inspection.

23 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

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

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

4 b. Section 44015, subdivision (b): Respondent Owner issued electronic  
5 Certificate of Compliance [REDACTED] without properly testing and inspecting the vehicle to  
6 determine if it was in compliance with section 44012 of that Code.

7 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

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

12 a. Section 3340.35, subdivision (c): Respondent Owner issued electronic  
13 Certificate of Compliance [REDACTED] even though the vehicle had not been inspected in  
14 accordance with H & S Code section 3340.42.

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

17 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

19 40. Respondent Owner has subjected her station license to discipline under H & S  
20 Code section 44072.2, subdivision (d), in that on January 13, 2014, regarding the 1989 Ford, she  
21 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing  
22 electronic Certificate of Compliance [REDACTED] for that vehicle without performing a bona  
23 fide inspection of the emission control devices and systems on the vehicle.

24 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

26 41. Respondent Holster has subjected his Smog Check Inspector License to discipline  
27 under H & S Code section 44072.2, subdivision (a), in that on January 13, 2014, regarding the  
28 1989 Ford, he violated the following sections of that Code:

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

5 b. **Section 44059:** Respondent Holster willfully made false entries for  
6 electronic Certificate of Compliance [REDACTED] by certifying that the vehicle had been  
7 inspected as required when, in fact, it had not.

8 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

10 42. Respondent Holster has subjected his Smog Check Inspector License to discipline  
11 under H & S Code section 44072.2, subdivision (c), in that on January 13, 2014, regarding the  
12 1989 Ford, he violated the following sections of the CCR:

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

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

17 **NINETEENTH CAUSE FOR DISCIPLINE**

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

19 43. Respondent Holster has subjected his Smog Check Inspector License to discipline  
20 under H & S Code section 44072.2, subdivision (d), in that on January 13, 2014, he committed  
21 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic  
22 Certificate of Compliance [REDACTED] for the 1989 Ford without performing a bona fide  
23 inspection of the emission control devices and systems on that vehicle.

24 **TWENTIETH CAUSE FOR DISCIPLINE**

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

26 44. Respondent Garza has subjected his Smog Check Inspector License to discipline  
27 under H & S Code section 44072.2, subdivision (a), in that on January 13, 2014, regarding the  
28 1989 Ford, he violated the following sections of that Code:



1 ignition to twenty degrees before top dead center (BTDC). A tamper indicator was placed to  
2 detect adjustments.

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

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

17 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

18 **(Misleading Statements)**

19 50. Respondent Owner has subjected her registration to discipline under Code section  
20 9884.7, subdivision (a)(1), in that on February 5, 2014, she made statements which she knew or  
21 which by exercise of reasonable care she should have known were untrue or misleading when  
22 she issued electronic Certificate of Compliance [REDACTED] for the 1990 Toyota, certifying  
23 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle  
24 had the adjustment of the ignition to twenty degrees before top dead center.

25 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

27 51. Respondent Owner has subjected her registration to discipline under Code section  
28 9884.7, subdivision (a)(6), in that on February 5, 2014, she failed to comply with Code section

1 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for the  
2 smog inspection.

3 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

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

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

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

11 b. **Section 44015, subdivision (b):** Respondent Owner issued electronic  
12 Certificate of Compliance [REDACTED] without properly testing and inspecting the vehicle  
13 to determine if it was in compliance with section 44012 of that Code.

14 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

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

19 a. **Section 3340.35, subdivision (c):** Respondent Owner issued electronic  
20 Certificate of Compliance [REDACTED] even though the vehicle had not been inspected in  
21 accordance with H & S Code section 3340.42.

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

24 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

26 54. Respondent Owner has subjected her station license to discipline under H & S  
27 Code section 44072.2, subdivision (d), in that on February 5, 2014, regarding the 1990 Toyota,  
28 she committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing

1 electronic Certificate of Compliance [REDACTED] for that vehicle without performing a bona  
2 fide inspection of the emission control devices and systems on the vehicle.

3 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

5 55. Respondent Holster has subjected his Smog Check Inspector License to discipline  
6 under H & S Code section 44072.2, subdivision (a), in that on February 5, 2014, regarding the  
7 1990 Toyota, he violated the following sections of that Code:

8 a. **Section 44032:** Respondent Holster failed to perform tests of the emission  
9 control devices and systems on that vehicle in accordance with H & S Code section 44012, in  
10 that the vehicle had the adjustment of the ignition to twenty degrees before top dead center.

11 b. **Section 44059:** Respondent Holster willfully made false entries for  
12 electronic Certificate of Compliance [REDACTED] by certifying that the vehicle had been  
13 inspected as required when, in fact, it had not.

14 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

16 56. Respondent Holster has subjected his Smog Check Inspector License to discipline  
17 under H & S Code section 44072.2, subdivision (c), in that on February 5, 2014, regarding the  
18 1990 Toyota, he violated the following sections of the CCR:

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

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

23 **THIRTIETH CAUSE FOR DISCIPLINE**

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

25 57. Respondent Holster has subjected his Smog Check Inspector License to discipline  
26 under H & S Code section 44072.2, subdivision (d), in that on February 5, 2014, he committed  
27 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic

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1 Certificate of Compliance [REDACTED] for the 1990 Toyota without performing a bona fide  
2 inspection of the emission control devices and systems on that vehicle.

3 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

5 58. Respondent Garza has subjected his Smog Check Inspector License to discipline  
6 under H & S Code section 44072.2, subdivision (a), in that on February 5, 2014, regarding the  
7 1990 Toyota, he violated the following sections of that Code:

8 a. **Section 44032:** Respondent Garza failed to perform tests of the emission  
9 control devices and systems on that vehicle in accordance with H & S Code section 44012, in  
10 that the vehicle had the adjustment of the ignition to twenty degrees before top dead center.

11 b. **Section 44059:** Respondent Garza willfully made false entries for  
12 electronic Certificate of Compliance [REDACTED] by certifying that the vehicle had been  
13 inspected as required when, in fact, it had not.

14 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

16 59. Respondent Garza has subjected his Smog Check Inspector License to discipline  
17 under H & S Code section 44072.2, subdivision (c), in that on February 5, 2014, regarding the  
18 1990 Toyota, he violated the following sections of the CCR:

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

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

23 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

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

25 60. Respondent Garza has subjected his Smog Check Inspector License to discipline  
26 under H & S Code section 44072.2, subdivision (d), in that on February 5, 2014, he committed  
27 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic

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1 Certificate of Compliance [REDACTED] for the 1990 Toyota without performing a bona fide  
2 inspection of the emission control devices and systems on that vehicle.

3 **OTHER MATTERS**

4 61. Under Health and Safety Code section 44072.8, if Smog Check - Test Only  
5 Station License Number TC 269017, issued to Mary Ann Garza, doing business as Rudy's Smog  
6 Check, is revoked or suspended, Automotive Repair Dealer Registration Number ARD 269017  
7 and any additional license issued under this chapter in the name of said licensee may be likewise  
8 revoked or suspended by the director.

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

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

17 **PRAYER**

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

20 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
21 269017, issued to Mary Ann Garza, Owner of Rudy's Smog Check;

22 2. Revoking or suspending Smog Check-Test Only Station License Number TC  
23 269017, issued to Mary Ann Garza, Owner of Rudy's Smog Check;

24 3. Revoking or suspending Smog Check Inspector License Number EO 633118,  
25 issued to Daniel David Holster;

26 4. Revoking or suspending Smog Check Repair Technician License Number EI  
27 633118, issued to Daniel David Holster;

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1           5.     Revoking or suspending Smog Check Inspector License Number EO 144083,  
2 issued to Francisco Garza III;

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

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

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

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DATED: September 15, 2014 

PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

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