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

10 In the Matter of the Accusation and Petition to Revoke Probation
Against:

Case No. 79/22-8347

11 **KATHERINE ROSE CAPDEPON**
12 **DBA HOLIDAY SMOG AND MUFFLER**
13 **1671 Capitola Road**
Santa Cruz, CA 95062

**ACCUSATION AND
PETITION TO REVOKE
PROBATION**

14 **Mailing Address**
15 **P.O. Box 3423**
Santa Cruz, CA 95063

16 **Automotive Repair Dealer Registration No. ARD 297110**
Smog Check Station License No. RC 297110,

17 **JASON NEAL ROOD**
18 **1671 Capitola Rd.**
Santa Cruz, CA 95062

19 **Smog Check Inspector License No. EO 143627**
20 **Smog Check Repair Technician License No. EI 143627,**

21 **RUBEN DIAZ GODINEZ**
22 **aka RUBEN GODINEZ**
81 College Rd.
Watsonville, CA 95076

23 **Smog Check Inspector License No. EO 146996**
24 **Smog Check Repair Technician (EI) License No. EI 146996,**

25 **GABRIEL LAWRENCE CUZICK**
26 **326 A Gault St.**
Santa Cruz, CA 95062

27 **Smog Check Inspector (EO) License No. EO 149470**
28 **Smog Check Repair Technician (EI) License No. EI 149470,**

and

MARK ALLEN FOSTER
12786 Boulder St.
Boulder Creek, CA 95006

Smog Check Inspector License No. EO 634633
Smog Check Repair Technician License No. EI 634633

Respondents.

PARTIES

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

2. On or about April 16, 2020, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 297110 to Katherine Rose Capdepon dba Holiday Smog and Muffler (Respondent Capdepon). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2023, unless renewed.

3. On or about May 5, 2020, the Bureau of Automotive Repair issued Smog Check Station License Number RC 297110 to Respondent Capdepon. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2023, unless renewed.

4. In 2003, the Bureau issued Advanced Emission Specialist Technician License Number EA 143627 to Jason Neal Rood (Respondent Rood). The Advanced Emission Specialist Technician License was cancelled on January 17, 2014. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to respondent's election, as Smog Check Inspector License Number EO 143627 effective January 17, 2014, and Smog Check Repair Technician License Number EI 143627, effective February 5, 2015. The Smog Check Inspector license were in full force and effect at all times relevant to the

1 charges brought herein and will expire on December 31, 2023, unless renewed. The Smog Check
2 Repair Technician License expired on December 31, 2015, and has not been renewed.

3 5. In 2003, the Bureau issued Advanced Emission Specialist Technician License
4 Number EA 146996 to Ruben Diaz Godinez aka Ruben Godinez (Respondent Godinez). The
5 Advanced Emission Specialist Technician License was cancelled on May 7, 2013. Pursuant to
6 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
7 renewed, pursuant to respondent's election, as Smog Check Inspector License Number EO
8 146996 and Smog Check Repair Technician License No. EI 146996, effective May 7, 2013. The
9 Smog Check Inspector license were in full force and effect at all times relevant to the charges
10 brought herein and will expire on May 31, 2023, unless renewed. The Smog Check Repair
11 Technician License expired on May 31, 2021, and has not been renewed.

12 6. In 2004, the Bureau issued Advanced Emission Specialist Technician License
13 Number EA 149470 to Gabriel Lawrence Cuzick (Respondent Cuzick). The Advanced Emission
14 Specialist Technician License was cancelled on October 10, 2016. Pursuant to California Code of
15 Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
16 respondent's election, as Smog Check Inspector License Number EO 149470 and Smog Check
17 Repair Technician License No. EI 149470, effective October 10, 2016. The Smog Check
18 Inspector license were in full force and effect at all times relevant to the charges brought herein
19 and will expire on June 30, 2024, unless renewed. The Smog Check Repair Technician License
20 expired on June 30, 2018, and was cancelled on August 1, 2022.

21 7. On or about August 10, 2012, the Bureau issued Advanced Emission Specialist
22 Technician License Number EA 634633 to Mark Allen Foster (Respondent Foster). The
23 Advanced Emission Specialist Technician License was cancelled on August 25, 2014. Pursuant
24 to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
25 renewed, pursuant to respondent's election, as Smog Check Inspector License Number EO
26 634633 and Smog Check Repair Technician License No. EI 634633, effective August 25, 2014.
27 The Smog Check Inspector and Smog Check Repair Technician licenses were in full force and
28

1 effect at all times relevant to the charges brought herein and will expire on October 31, 2024,
2 unless renewed.

3 8. In a disciplinary action titled "In the Matter of the Accusation against Holiday Smog,
4 et al," Case No. 79/18-1702, the Bureau issued a Decision and Order effective February 6, 2020,
5 in which Respondent Foster's Smog Check Inspector License and Smog Check Repair Technician
6 License were revoked. However, the revocations were stayed and Respondent's Licenses were
7 placed on probation for five (5) years with certain terms and conditions. A copy of that Decision
8 and Order is attached as Exhibit A and is incorporated by reference.

9 9. In a disciplinary action titled "In the Matter of the Accusation against Holiday Smog,
10 et al," Case No. 79/18-1702, the Bureau issued a Decision and Order effective February 6, 2020,
11 in which Respondent Cuzick's Smog Check Inspector License and Smog Check Repair
12 Technician License were revoked. However, the revocations were stayed and Respondent's
13 Licenses were placed on probation for two (5) years with certain terms and conditions. A copy of
14 that Decision and Order is attached as Exhibit B and is incorporated by reference.

15 **JURISDICTION PROVISIONS FOR ACCUSATION**

16 10. This Accusation is brought before the Director of the Department of Consumer
17 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

18 **STATUTORY PROVISIONS FOR ACCUSATION**

19 11. Section 118, subdivision (b), of the Business and Professions Code (Code) provides
20 that the suspension/expiration/surrender/cancellation of a license shall not deprive the
21 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
22 within which the license may be renewed, restored, reissued or reinstated.

23 12. Section 9884.7 of the Code states:

24 (a) The director, if the automotive repair dealer cannot show there was a bona
25 fide error, may deny, suspend, revoke, or place on probation the registration of an
26 automotive repair dealer for any of the following acts or omissions related to the
27 conduct of the business of the automotive repair dealer, which are done by the
28 automotive repair dealer or any automotive technician, employee, partner, officer, or
member of the automotive repair dealer:

(1) Making or authorizing in any manner or by any means whatever any
statement written or oral which is untrue or misleading, and which is known, or which

by the exercise of reasonable care should be known, to be untrue or misleading.

...

(4) Any other conduct that constitutes fraud.

...

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

...

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

...

(e) For purposes of this section, "fraud" includes, but is not limited to, violations of this chapter involving misrepresentations and all of the following:

(1) Any act or omission that is included within the definition of either "actual fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573 of the Civil Code.

(2) A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact.

(3) A promise or representation not made honestly and in good faith.

(4) An intentional failure to disclose a material fact.

(5) Any act in violation of Section 484 of the Penal Code.

13. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

14. Section 44002 of the Health and Safety Code provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

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

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed

testing in all other program areas, and shall ensure all of the following:

...

16. Section 44032 of the Health and Safety Code 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. Section 44059 of the Health and Safety Code states:

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

18. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with any investigation of, or action or disciplinary proceedings against the licensee, or to render a decision suspending or revoking the license.

19. Section 44072.8 of the Health and Safety Code states:

When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

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

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

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. 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.

...

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

21. Section 44072.10, subdivision (c), of the Health and Safety Code states:

(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.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

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

REGULATORY PROVISIONS FOR ACCUSATION

22. California Code of Regulations, title 16, section 3340.24, states:

(a) Any disciplinary or reinstatement proceeding under this article involving licensed stations, licensed technicians, or fleet owners licensed pursuant to section 44020 of the Health and Safety Code shall be conducted in accordance with chapter 5 (commencing with section 11500) of division 3, Title 2 of the Government Code.

...

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

...

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

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

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

...

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

...

(b) A licensed station shall not sell or otherwise transfer unused certificates to

another licensed station, to a new owner of the business, or to any person other than a customer whose vehicle has been inspected in accordance with the procedures specified in section 3340.42 of this article.

(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.

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

...

(c) No person shall enter any vehicle identification information or emission control system identification data for any vehicle other than the one being tested into the EIS or OIS. Nor shall any person enter into the EIS or OIS any false information about the vehicle being tested.

...

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

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

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

...

(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer. The OBD test failure criteria are specified in section 3340.42.2.

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

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

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

27. California Code of Regulations, title 16, section 3340.45¹, stated:

¹ This regulation and the Smog Check Manual have been updated. This was the version of the Regulation and applicable Smog Check Manual at the time of the alleged violations.

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

3 . . .

4 (2) Smog Check Manual, dated November 2, 2017, which is hereby
5 incorporated by reference. This manual shall become effective on August 2, 2018.

6 28. California Code of Regulations, title 16, section 3371, states:

7 No dealer shall publish, utter, or make or cause to be published, uttered, or
8 made any false or misleading statement or advertisement which is known to be false
9 or misleading, or which by the exercise of reasonable care should be known to be
10 false or misleading. Advertisements and advertising signs shall clearly show the
11 following:

12 . . .

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

14 No automotive repair dealer or individual in charge shall, in filling out an
15 estimate, invoice, or work order, or record required to be maintained by section
16 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or
17 information which will cause any such document to be false or misleading, or where
18 the tendency or effect thereby would be to mislead or deceive customers, prospective
19 customers, or the public.

20 **COST RECOVERY FOR ACCUSATION**

21 30. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licensee found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
25 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
26 included in a stipulated settlement.

27 **SMOG PROGRAM AND CLEAN PLUGGING ALLEGATIONS AT HOLIDAY SMOG** 28 **AND MUFFLER**

31 31. California's Smog Check Program requires the owners of most motor vehicles in
32 California to take and pass a Smog Check inspection and receive a Certificate of Compliance
33 every two years when renewing their registration and also when the vehicle's title is transferred.
34 These inspections are performed by Smog Check inspectors at Smog Check Stations, both of
35 which are licensed by the Bureau of Automotive Repair (BAR).

1 32. The Smog Check inspection in certain Enhanced areas of the State is an Acceleration
2 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
3 as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons, Carbon
4 Monoxide, Oxides of Nitrogen, Carbon Dioxide, and Oxygen. The inspection involves a test of
5 the vehicle's tailpipe emissions on a dynamometer. In Basic areas of the State, or depending on a
6 vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed
7 Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a
8 dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute
9 (RPM).

10 33. The inspector also performs visual and functional tests on the vehicle as outlined in
11 the Smog Check Manual. The visual inspection of the emission control components verifies the
12 required emission control devices are present and properly connected. Functional tests are also
13 performed which, depending on the vehicle, may include checking the ignition timing,
14 malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low pressure test
15 of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas
16 cap.

17 34. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
18 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission
19 Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and
20 1998 and newer diesel vehicles. Most older vehicles require the ASM or TSI test on the EIS.
21 Gas powered vehicles with a gross vehicle weight rating over 14,000 pounds require an
22 inspection on the EIS.

23 35. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a
24 computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a
25 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
26 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
27 vehicle. The bar code scanner is used to input technician information, the vehicle identification
28

1 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
2 Reports.

3 36. Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN,
4 which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module
5 (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the
6 PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the
7 number of specific data values each PCM uses related to emissions controls.

8 37. As part of the BAR-OIS smog inspections, the technician also performs a visual and
9 functional test on the vehicle being inspected. The visual inspection of the emission control
10 components verifies the required emission control devices are present and properly connected and
11 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
12 makes the determination whether or not the vehicle passes the inspection based on the results of
13 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
14 compliance is issued. The information from the smog inspection is then transmitted to the
15 Vehicle Information Data (VID).

16 38. The Bureau can access the VID to view test data on smog check inspections
17 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
18 particular vehicle which has been tested.

19 39. The Bureau has become aware of methods some Smog Check stations and Smog
20 Check inspectors use to issue smog certificates to vehicles that will not pass a Smog Check test
21 on their own, or in some instances, are not even present during the time the test is performed.

22 40. One method is known as "clean plugging." "Clean plugging" is the act of using one
23 vehicle's properly functioning OBDII system, or another source, to generate passing data readings
24 or diagnostic information for the purpose of issuing a smog certificate of compliance to a vehicle
25 that is not in smog compliance and/or not being tested. The vehicle being certified is not the one
26 being tested.

27 41. The Bureau initiated an investigation of Respondent Capdepon's smog check station
28 Holiday Smog and Muffler. Respondents performed eight smog inspections using clean-plugging

methods. The smog inspections were personally performed by Respondent Godinez, Respondent Rood, and Respondent Foster, at Respondent Capdepon's Smog Station Holiday Smog and Muffler. Respondent Godinez, Respondent Rood, Respondent Foster, and Respondent Capdepon's issued eight certificates of compliance to the eight vehicles that were not tested. Six of the vehicles were clean plugged by Respondent Rood. Respondent Foster and Respondent Godinez clean plugged one vehicle each.

42. A Bureau representative reviewed data for the clean-plugged vehicles inspected by Respondents. The data revealed that the eight vehicles that were purportedly tested by Respondents were not and could not have been connected to the DAD when they were being certified because the OBD-II data purportedly transmitted by those vehicles could not have been transmitted by those vehicles.

43. Respondents clean plugged and issued certificates of compliance to the following vehicles:

a) Clean Plug# 1 - 2013 Toyota Prius C (Inspected by Respondent Godinez)

Certificate # RY255073C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (March 5, 2021)	Not reported	I914	17
Expected OBD II Value	JTDKDTB35D1034425	ICAN11bt5	39/26

b) Clean Plug #2 – 2004 BMW 530I (Inspected by Respondent Rood)

Certificate # SE032498C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (July 17, 2021)	WBAEV53424KM37914	I914	22 1
Expected OBD II Value	WBANA73594B064029	KWPF	22, 22 1, 22 14, or 22 7

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c) Clean Plug #3— 2011 Toyota Prius (Inspected by Respondent Rood)

Certificate # SE889317C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (August 12, 2021)	5TBET341X5S468767	ICAN11bt5	45
Expected OBD II Value	JTDKN3DU2B5342211	ICAN11bt5	39 24

d) Clean Plug #4— 2008 Toyota Corolla CE (Inspected by Respondent Rood)

Certificate # SE994273C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (August 17, 2021)	5TFBV54199X085905	ICAN11bt5	47
Expected OBD II Value	1NXBR32E08Z942512	ICAN11bt5	37 or 39

e) Clean Plug #5—2011 GMC Sierra C1500 (Inspected by Respondent Rood)

Certificate # IN161680C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (September 29, 2021)	1GC0WLE71LF236549	ICAN11bt5	59 4 3
Expected OBD II Value	1GTN1TEX4BZ438948	ICAN11bt5	43 7

f) Clean Plug #6— 2003 Mazda Protégé PR5 (Inspected by Respondent Rood)

Certificate # SI652287C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (November 2, 2021)	JM1DE1LY2D0160400	ICAN29bt5	43
Expected OBD II Value	Not expected	I914	18

g) Clean Plug #7— 2007 BMW 328 I SULEV (Inspected by Respondent Rood)

Certificate # SI889405C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (November 9, 2021)	WBAPH53549A434969	ICAN11bt5	46 11
Expected OBD II Value	WBAVC53597FZ75652	KWPF	20 5, 22, or 22 8

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h) Clean Plug #8— 2005 Chevrolet Malibu LS (Inspected by Respondent Foster)

Certificate # IN962338C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (February 12, 2022)	1GKEK13T33J102648	JVPW	22
Expected OBD II Value	1G1ZT548X5F152893	INCAN11bt5	45

44. The 2004 BMW 530I that was certified in clean plug two was owned by Respondent Rood. Respondent Rood inspected his 2004 BMW 530I on July 8, 2021 just nine days prior to clean plug two. Respondent Rood's 2004 BMW 530I failed that inspection. The vehicle failed the OBII functional portion of the inspection.

45. The vehicle Respondent Rood used in clean plug two to certify his 2004 BMW 530I was owned by Respondent Cuzick. Respondent Cuzick's vehicle was a 2004 BMW 330I. Respondent Cuzick allowed Respondent Rood to use his (Respondent Cuzick's) 2004 BMW 330I to certify Respondent Rood's 2004 BMW 530I.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements - Registration)

46. Respondent Capdepon has subjected her Automotive Repair Dealer Registration to discipline under Code section 9884.7, subdivision (a)(1), in that Respondent Capdepon made statements which she knew or which by exercise of reasonable care should have known were untrue or misleading, as set forth above in paragraphs 41-45, above. Respondent purported to test vehicles, and certified that the vehicles passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using clean-plugging methods.

SECOND CAUSE FOR DISCIPLINE

(Fraud - Registration)

47. Respondent Capdepon has subjected her Automotive Repair Dealer Registration to discipline under Code section 9884.7, subdivision (a)(4), in that she committed acts which constitute fraud, as set forth above in paragraph 41-45, above.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit – Smog Station License)**

3 48. Respondent Capdepon has subjected her Smog Check Station License to discipline
4 under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that she
5 committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing
6 electronic certificates of compliance for vehicles without performing bona fide inspections of the
7 emission control devices and systems on the vehicles, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
9 in paragraphs 41-45, above.

10 **FOURTH CAUSE FOR DISCIPLINE**

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

12 49. Respondent Capdepon has subjected her Smog Check Station License to discipline
13 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
14 violated sections of that Code and applicable regulations, through conduct described in
15 paragraphs 41-45, as follows:

16 a. **Section 44012:** Respondent failed to ensure that smog inspections were performed
17 on vehicles in accordance with procedures prescribed by the department.

18 b. **Section 44059:** Respondent willfully made false statements in issuing the Smog
19 Certificates of compliance and on the Vehicle Inspection Reports

20 c. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
21 electronic certificates of compliance to certain vehicles without performing bona fide inspections
22 of the emission control devices and systems on those vehicles.

23 d. **Section 3340.30, subdivision (a):** Respondent failed to inspect the vehicles in
24 accordance with Health and Safety Code section 44012 and California code of Regulations title
25 16, section 3340.42.

26 e. **Section 3340.41, subdivision (c):** Respondent entered vehicle identification
27 information for a vehicle other than the one being tested into the BAR-OIS.
28

1 f. **Section 3340.42:** Respondent failed to conduct the required smog tests and
2 inspections on certain vehicles in accordance with the Bureau's specifications.

3 g. **Section 3340.45** Respondent violated the procedures contained in the Smog Check
4 Manual by entering vehicle identification information for a vehicle that was not being tested.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Dishonesty, Fraud or Deceit – Smog Inspector License)**

7 50. Respondent Godinez has subjected his Smog Check Inspector License and Smog
8 Check Repair Technician License to discipline under Health and Safety Code sections 44072.10
9 and 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit,
10 whereby another was injured by issuing electronic certificates of compliance for vehicles without
11 performing bona fide inspections of the emission control devices and systems on the vehicles,
12 thereby depriving the People of the State of California of the protection afforded by the Motor
13 Vehicle Inspection Program, as set forth above in paragraphs 41-43, above.

14 **SIXTH CAUSE FOR DISCIPLINE**

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

16 51. Respondent Godinez has subjected his Smog Check Inspector License and Smog
17 Check Repair Technician License to discipline under Health and Safety Code sections 44072.10
18 and 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and applicable
19 regulations, through conduct described in paragraphs 41-43, as follows:

20 a. **Section 44012:** Respondent failed to ensure that smog inspections were performed
21 on vehicles in accordance with procedures prescribed by the department.

22 b. **Section 44059:** Respondent willfully made false statements in issuing the Smog
23 Certificates of compliance and on the Vehicle Inspection Reports

24 c. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
25 electronic certificates of compliance to certain vehicles without performing bona fide inspections
26 of the emission control devices and systems on those vehicles.

1 d. **Section 3340.30, subdivision (a):** Respondent failed to inspect the vehicles in
2 accordance with Health and Safety Code section 44012 and California code of Regulations title
3 16, section 3340.42.

4 e. **Section 3340.41, subdivision (c):** Respondent entered vehicle identification
5 information for a vehicle other than the one being tested into the BAR-OIS.

6 f. **Section 3340.42:** Respondent failed to conduct the required smog tests and
7 inspections on certain vehicles in accordance with the Bureau's specifications.

8 g. **Section 3340.45** Respondent violated the procedures contained in the Smog Check
9 Manual by entering vehicle identification information for a vehicle that was not being tested.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 **(Dishonesty, Fraud or Deceit – Smog Inspector License)**

12 52. Respondent Rood has subjected his Smog Check Inspector License and Smog Check
13 Repair Technician License to discipline under Health and Safety Code sections 44072.10 and
14 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby
15 another was injured by issuing electronic certificates of compliance for vehicles without
16 performing bona fide inspections of the emission control devices and systems on the vehicles,
17 thereby depriving the People of the State of California of the protection afforded by the Motor
18 Vehicle Inspection Program, as set forth above in paragraphs 41-45, above.

19 **EIGHTH CAUSE FOR DISCIPLINE**

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

21 53. Respondent Rood has subjected his Smog Check Inspector License and Smog Check
22 Repair Technician License to discipline under Health and Safety Code sections 44072.10 and
23 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and applicable
24 regulations, through conduct described in paragraphs 41-45, as follows:

25 a. **Section 44012:** Respondent failed to ensure that smog inspections were performed
26 on vehicles in accordance with procedures prescribed by the department.

27 b. **Section 44059:** Respondent willfully made false statements in issuing the Smog
28 Certificates of compliance and on the Vehicle Inspection Reports

1 c. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
2 electronic certificates of compliance to certain vehicles without performing bona fide inspections
3 of the emission control devices and systems on those vehicles.

4 d. **Section 3340.30, subdivision (a):** Respondent failed to inspect the vehicles in
5 accordance with Health and Safety Code section 44012 and California code of Regulations title
6 16, section 3340.42.

7 e. **Section 3340.41, subdivision (c):** Respondent entered vehicle identification
8 information for a vehicle other than the one being tested into the BAR-OIS.

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

11 g. **Section 3340.45** Respondent violated the procedures contained in the Smog Check
12 Manual by entering vehicle identification information for a vehicle that was not being tested.

13 **NINTH CAUSE FOR DISCIPLINE**

14 **(Dishonesty, Fraud or Deceit – Smog Inspector License)**

15 54. Respondent Foster has subjected his Smog Check Inspector License and Smog Check
16 Repair Technician License to discipline under Health and Safety Code sections 44072.10 and
17 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby
18 another was injured by issuing electronic certificates of compliance for vehicles without
19 performing bona fide inspections of the emission control devices and systems on the vehicles,
20 thereby depriving the People of the State of California of the protection afforded by the Motor
21 Vehicle Inspection Program, as set forth above in paragraphs 41-43, above.

22 **TENTH CAUSE FOR DISCIPLINE**

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

24 55. Respondent Foster has subjected his Smog Check Inspector License and Smog Check
25 Repair Technician License to discipline under Health and Safety Code sections 44072.10 and
26 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and applicable
27 regulations, through conduct described in paragraphs 41-43, as follows:
28

1 a. **Section 44012:** Respondent failed to ensure that smog inspections were performed
2 on vehicles in accordance with procedures prescribed by the department.

3 b. **Section 44059:** Respondent willfully made false statements in issuing the Smog
4 Certificates of compliance and on the Vehicle Inspection Reports

5 c. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
6 electronic certificates of compliance to certain vehicles without performing bona fide inspections
7 of the emission control devices and systems on those vehicles.

8 d. **Section 3340.30, subdivision (a):** Respondent failed to inspect the vehicles in
9 accordance with Health and Safety Code section 44012 and California code of Regulations title
10 16, section 3340.42.

11 e. **Section 3340.41, subdivision (c):** Respondent entered vehicle identification
12 information for a vehicle other than the one being tested into the BAR-OIS.

13 f. **Section 3340.42:** Respondent failed to conduct the required smog tests and
14 inspections on certain vehicles in accordance with the Bureau's specifications.

15 g. **Section 3340.45** Respondent violated the procedures contained in the Smog Check
16 Manual by entering vehicle identification information for a vehicle that was not being tested.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

18 **(Dishonesty, Fraud, or Deceit – Smog Inspector License)**

19 56. Respondent Cuzick has subjected his Smog Check Inspector License and Smog
20 Check Repair Technician License to discipline under Health and Safety Code sections 44072.10
21 and 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit,
22 whereby another was injured by allowing Respondent Rood to use Respondent Cuzick's vehicle
23 to fraudulently certify Respondent Rood's vehicle via clean plugging methods. Respondent
24 Cuzick participated in the fraudulent inspection of a vehicle. The circumstances are further
25 described in paragraphs 41-45, above.

26 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

27 57. This Petition to Revoke Probation against Respondent Foster is brought before the
28 Director of the Department of Consumer Affairs (Director) for the Bureau of Automotive Repair

1 under Probation Term and Condition Number Six of the Decision and Order In the Matter of the
2 Accusation against Holiday Smog, et al, Case No. 79/18-1702. That term and condition states:

3 If Respondent violates or fails to comply with the terms and conditions of
4 probation in any respect, the Director, after giving notice and opportunity to be heard
5 may set aside the stay order and carry out the disciplinary order provided in the
6 decision. Once Respondent is served notice of BAR's intent to set aside the stay, the
7 Director shall maintain jurisdiction, and the period of probation shall be extended
8 until final resolution of the matter.

9 58. This Petition to Revoke Probation against Respondent Cuzick is brought before the
10 Director of the Department of Consumer Affairs (Director) for the Bureau of Automotive Repair
11 under Probation Term and Condition Number Six of the Decision and Order In the Matter of the
12 Accusation against Holiday Smog, et al, Case No. 79/18-1702. That term and condition states:

13 If Respondent violates or fails to comply with the terms and conditions of
14 probation in any respect, the Director, after giving notice and opportunity to be heard
15 may set aside the stay order and carry out the disciplinary order provided in the
16 decision. Once Respondent is served notice of BAR's intent to set aside the stay, the
17 Director shall maintain jurisdiction, and the period of probation shall be extended
18 until final resolution of the matter.

19 **FIRST CAUSE TO REVOKE PROBATION**

20 (Obey All Laws)

21 59. At all times after the effective date of Respondent Foster's probation, Condition One
22 stated:

23 Obey All Laws. During the period of Probation Respondent shall comply with all
24 federal and state statutes, regulations and rules governing all BAR registrations and
25 licenses held by Respondent.

26 60. Respondent's Foster's probation is subject to revocation because he failed to comply
27 with Probation Condition One, referenced above. Respondent violated state statutes, regulations
28 and rules governing the license held by Respondent as described in the Causes for Discipline,
above.

29 **SECOND CAUSE TO REVOKE PROBATION**

30 (Obey All Laws)

31 61. At all times after the effective date of Respondent Cuzick's probation, Condition One
32 stated:

Obey All Laws. During the period of Probation Respondent shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by Respondent.

62. Respondent Cuzick's probation is subject to revocation because he failed to comply with Probation Condition One, referenced above. Respondent Cuzick violated state statutes, regulations and rules governing the license held by Respondent Cuzick as described in the Causes for Discipline, above.

DISCIPLINARY CONSIDERATIONS

63. To determine the degree of discipline, if any, to be imposed on Respondent Capdepon, Complainant alleges that on or about March 23, 2021, in a prior action, the Bureau of Automotive Repair issued Citation Number C2021-358 to Respondent Capdepon. That Citation is now final.

64. To determine the degree of discipline, if any, to be imposed on Respondent Godinez, Complainant alleges that on or about October 29, 2010, in a prior action, the Bureau of Automotive Repair issued Citation Number M2011-515 to Respondent Godinez. That Citation is now final.

65. To determine the degree of discipline, if any, to be imposed on Respondent Godinez, Complainant alleges that on or about July 29, 2016, in a prior action, the Bureau of Automotive Repair issued Citation Number M2016-1498 to Respondent Godinez. That Citation is now final.

66. To determine the degree of discipline, if any, to be imposed on Respondent Godinez, Complainant alleges that on or about March 23, 2021, in a prior action, the Bureau of Automotive Repair issued Citation Number M2021-359 to Respondent Godinez. That Citation is now final.

67. To determine the degree of discipline, if any, to be imposed on Respondent Rood, Complainant alleges that on or about July 12, 2002, in a prior action, the Bureau of Automotive Repair issued Citation Number M03-87 to Respondent Rood. That Citation is now final.

68. To determine the degree of discipline, if any, to be imposed on Respondent Rood, Complainant alleges that on or about February 3, 2006, in a prior action, the Bureau of Automotive Repair issued Citation Number M06-461 to Respondent Rood. That Citation is now final.

69. To determine the degree of discipline, if any, to be imposed on Respondent Rood, Complainant alleges that on or about June 29, 2009, in a prior action, the Bureau of Automotive Repair issued Citation Number M2009-1439 to Respondent Rood. That Citation is now final.

70. To determine the degree of discipline, if any, to be imposed on Respondent Rood, Complainant alleges that on or about October 1, 2010, in a prior action, the Bureau of Automotive Repair issued Citation Number M2011-367 to Respondent Rood. That Citation is now final.

71. To determine the degree of discipline, if any, to be imposed on Respondent Rood, Complainant alleges that on or about September 1, 2011, in a prior action, the Bureau of Automotive Repair issued Citation Number M2012-199 to Respondent Rood. That Citation is now final.

OTHER MATTERS

47. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Capdepon, upon a finding that Respondent Capdepon has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

48. Pursuant to Health & Safety Code section 44072.8, if Respondent Capdepon's Station License is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

48. Pursuant to Health & Safety Code section 44072.8, if any of Respondent Godinez's Smog Check Inspector or Smog Check Repair Technician license is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

48. Pursuant to Health & Safety Code section 44072.8, if any of Respondent Rood's Smog Check Inspector or Smog Check Repair Technician license is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

48. Pursuant to Health & Safety Code section 44072.8, if any of Respondent Foster's Smog Check Inspector or Smog Check Repair Technician license is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

48. Pursuant to Health & Safety Code section 44072.8, if any of Respondent Cuzick's Smog Check Inspector or Smog Check Repair Technician license is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 297110, issued to Katherine Rose Capdepon dba Holiday Smog and Muffler;

2. Revoking or suspending Smog Check Station License Number RC 297110, issued to Katherine Rose Capdepon dba Holiday Smog and Muffler;

3. Revoking or suspending any additional Automotive Repair Dealer Registration(s) issued to Katherine Rose Capdepon;

4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to Katherine Rose Capdepon;

5. Ordering Katherine Rose Capdepon to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

6. Revoking or suspending Smog Check Inspector License Number EO 143627 issued to Jason Neal Rood;

7. Revoking or suspending Smog Check Repair Technician License Number EI 143627 issued to Jason Neal Rood;

1 8. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
2 Division 26 of the Health and Safety Code to Jason Neal Rood;

3 9. Ordering Jason Neal Rood to pay the Bureau of Automotive Repair the reasonable
4 costs of the investigation and enforcement of this case, pursuant to Business and Professions
5 Code section 125.3;

6 10. Revoking or suspending Smog Check Inspector License Number EO 146996 issued
7 to Ruben Diaz Godinez;

8 11. Revoking or suspending Smog Check Repair Technician License Number EI 146996
9 issued to Ruben Diaz Godinez;

10 12. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
11 Division 26 of the Health and Safety Code to Ruben Diaz Godinez;

12 13. Ordering Ruben Diaz Godinez to pay the Bureau of Automotive Repair the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3;

15 14. Revoking or suspending Smog Check Inspector License Number EO 634633 issued
16 to Mark Allen Foster;

17 15. Revoking or suspending Smog Check Repair Technician License Number EI 634633
18 issued to Mark Allen Foster;

19 16. Revoking the probation that was granted by the Director in Case No. 79/18-1702 and
20 imposing the disciplinary order that was stayed thereby revoking Smog Check Inspector License
21 Number EO 634633 and Smog Check Repair Technician License Number EI 634633 issued to
22 Mark Allen Foster;

23 17. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
24 Division 26 of the Health and Safety Code to Mark Allen Foster;

25 18. Ordering Mark Allen Foster to pay the Bureau of Automotive Repair the reasonable
26 costs of the investigation and enforcement of this case, pursuant to Business and Professions
27 Code section 125.3;

1 19. Revoking or suspending Smog Check Inspector License Number EO 149470 issued
2 to Gabriel Lawrence Cuzick;

3 20. Revoking or suspending Smog Check Repair Technician License Number EI 149470
4 issued to Gabriel Lawrence Cuzick;

5 21. Revoking the probation that was granted by the Director in Case No. 79/18-1702 and
6 imposing the disciplinary order that was stayed thereby revoking Smog Check Inspector License
7 Number EO 149470 and Smog Check Repair Technician License Number EI 149470 issued to
8 Gabriel Lawrence Cuzick;

9 22. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
10 Division 26 of the Health and Safety Code to Gabriel Lawrence Cuzick;

11 23. Ordering Gabriel Lawrence Cuzick to pay the Bureau of Automotive Repair the
12 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
13 Professions Code section 125.3; and

14 24. Taking such other and further action as deemed necessary and proper.
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16
17

18 DATED: As of Digital Signature Date

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

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