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

11 In the Matter of the Accusation Against:

Case No. 79/12-160

12 **HOLIDAY SMOG**  
13 **1671 Capitola Road**  
**Santa Cruz, CA 95062**  
14 **Mailing Address:**  
**P.O. Box 3524**  
15 **Santa Cruz, California 95063**  
**SHERRY FOSTER, PARTNER**  
16 **MIKE FOSTER, PARTNER**  
**Automotive Repair Dealer Registration No.**  
17 **ARD 237873**  
**Smog Check Test Only Station License No.**  
18 **TC 237873,**

**A C C U S A T I O N**  
**S M O G C H E C K**

19 Respondent.

20  
21 Complainant alleges:

22 **PARTIES**

23 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity  
24 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

25 **Automotive Repair Dealer Registration**

26 2. On a date uncertain in 2005, the Bureau issued Automotive Repair Dealer  
27 Registration Number ARD 237873 ("registration") to Holiday Smog ("Respondent") with Sherry

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1 Foster and Mike Foster as partners. The registration was in full force and effect at all times  
2 relevant to the charges brought herein and will expire on February 28, 2013, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about April 12, 2005, the Bureau issued Smog Check Test Only Station  
5 License Number TC 237873 ("station license") to Respondent. The station license was in full  
6 force and effect at all times relevant to the charges brought herein and will expire on February 28,  
7 2013, unless renewed.

8 **STATUTORY PROVISIONS**

9 4. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent  
10 part:

11 (a) The director, where the automotive repair dealer cannot show there  
12 was a bona fide error, may deny, suspend, revoke, or place on probation the  
13 registration of an automotive repair dealer for any of the following acts or omissions  
14 related to the conduct of the business of the automotive repair dealer, which are done  
15 by the automotive repair dealer or any automotive technician, employee, partner,  
16 officer, or member of the automotive repair dealer.

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

20 (4) Any other conduct that constitutes fraud.

21 (b) Except as provided for in subdivision (c), if an automotive repair  
22 dealer operates more than one place of business in this state, the director pursuant to  
23 subdivision (a) shall only suspend, revoke, or place on probation the registration of  
24 the specific place of business which has violated any of the provisions of this chapter.  
25 This violation, or action by the director, shall not affect in any manner the right of the  
26 automotive repair dealer to operate his or her other places of business.

27 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or  
28 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.

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1 5. Code section 118, subdivision (b) states:

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

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

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

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

18 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

29 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
30 expiration or suspension of a license by operation of law, or by order or decision of the Director

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1 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
2 the Director of jurisdiction to proceed with disciplinary action.

3 11. Section 44072.8 of the Health and Safety Code states:

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

6 **COST RECOVERY**

7 12. Code section 125.3 provides, in pertinent part, that a Board may request the  
8 administrative law judge to direct a licensee found to have committed a violation or violations of  
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case.

11 **UNDERCOVER OPERATION – NOVEMBER 3, 2011**

12 13. On or about November 3, 2011, a Bureau undercover operator drove a Bureau-  
13 documented 1999 Mazda B3000 truck to Respondent's facility and requested a smog inspection.  
14 The vehicle could not pass the visual portion of a smog inspection because the vehicle's positive  
15 crankcase ventilation valve (PCV) was missing. The operator signed a work order and was  
16 provided with a copy of the document prior to the smog inspection. Vincent Malone, a licensed  
17 smog technician, performed the smog inspection and issued electronic Certificate of Compliance  
18 No. OI209036C for that vehicle. The operator paid Respondent \$50 for the smog inspection and  
19 received a copy of Invoice No. 47918 and the Vehicle Inspection Report.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Misleading Statements)**

22 14. Respondent has subjected its registration to discipline under Code section 9884.7,  
23 subdivision (a)(1), in that on or about November 3, 2011, it made statements which it knew or  
24 which by exercise of reasonable care it should have known were untrue or misleading when it  
25 issued electronic Certificate of Compliance No. OI209036C for the 1999 Mazda B3000 truck,  
26 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,  
27 the vehicle's PCV was missing.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 15. Respondent has subjected its registration to discipline under Code section 9884.7,  
4 subdivision (a)(4), in that on or about November 3, 2011, it committed acts which constitute fraud  
5 by issuing electronic Certificate of Compliance No. OI209036C for the 1999 Mazda B3000 truck,  
6 without performing a bona fide inspection of the emission control devices and systems on that  
7 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
8 Motor Vehicle Inspection Program.

9 **THIRD CAUSE FOR DISCIPLINE**

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

11 16. Respondent has subjected its station license to discipline under Health and Safety  
12 Code section 44072.2, subdivision (a), in that on or about November 3, 2011, regarding the 1999  
13 Mazda B3000 truck, it violated sections of that Code, as follows:

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

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

19 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of  
20 Compliance No. OI209036C without properly testing and inspecting the vehicle to determine if it  
21 was in compliance with section 44012 of that Code.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

24 17. Respondent has subjected its station license to discipline under Health and Safety  
25 Code section 44072.2, subdivision (c), in that on or about November 3, 2011, regarding the 1999  
26 Mazda B3000 truck, it violated sections of the California Code of Regulations, title 16, as  
27 follows:

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1 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of  
2 Compliance No. OI209036C even though that vehicle had not been inspected in accordance with  
3 section 3340.42 of that Code.

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

6 **FIFTH CAUSE FOR DISCIPLINE**

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

8 18. Respondent subjected its station license to discipline under Health and Safety Code  
9 section 44072.2, subdivision (d), in that on or about November 3, 2011, regarding the 1999  
10 Mazda B3000 truck, it committed acts involving dishonesty, fraud or deceit whereby another was  
11 injured by issuing electronic Certificate of Compliance No. OI209036C to that vehicle without  
12 performing a bona fide inspection of the emission control devices and systems on the vehicle,  
13 thereby depriving the People of the State of California of the protection afforded by the Motor  
14 Vehicle Inspection Program.

15 **PRIOR CITATIONS**

16 19. To determine the degree of penalty, if any, to be imposed upon Respondent  
17 Complainant alleges as follows:

18 a. On April 23, 2007, the Bureau issued Citation No. C07-0776 to Respondent against  
19 its registration and station licenses for violations of Health and Safety Code section 44012,  
20 subdivision (f) (failure to perform a visual/functional check of emission control devices) and  
21 California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing  
22 a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of  
23 compliance to a Bureau vehicle with a missing evaporative emissions charcoal canister. The  
24 Bureau assessed a civil penalty of \$500. Respondent appealed this citation on May 29, 2007, and  
25 paid the citation on August 16, 2007.

26 b. On July 29, 2008, the Bureau issued Citation No. C09-0097 to Respondent against its  
27 registration and station licenses for violations of Health and Safety Code section 44012,  
28 subdivision (f) (failure to perform a visual/functional check of emission control devices) and

1 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
2 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a  
3 missing pulse air reed valve assembly. The Bureau assessed a civil penalty of \$500. Respondent  
4 appealed this citation on August 18, 2008, and paid the citation on January 14, 2009.

5 c. On November 18, 2008, the Bureau issued Citation No. C09-0620 to Respondent  
6 against its registration and station licenses for violations of Health and Safety Code section  
7 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
8 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
9 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a non-  
10 functional linear EGR valve. The Bureau assessed a civil penalty of \$1,000. Respondent  
11 complied with this citation on January 14, 2009.

12 d. On July 7, 2011, the Bureau issued Citation No. C2012-0012 to Respondent against  
13 its registration and station licenses for violations of Health and Safety Code section 44012,  
14 subdivision (f) (failure to perform a visual/functional check of emission control devices).  
15 Respondent issued a certificate of compliance to a Bureau vehicle with a missing fuel evaporative  
16 canister. The Bureau assessed a civil penalty of \$1,500. Respondent appealed this citation on  
17 August 18, 2011, and paid the citation on August 22, 2011; however, the appeal is still pending.

18 **OTHER MATTERS**

19 20. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
20 or permanently or refuse to validate, the registrations for all places of business operated in this  
21 state by to Holiday Smog, upon a finding that it has, or is, engaged in a course of repeated and  
22 willful violations of the laws and regulations pertaining to an automotive repair dealer.

23 21. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station  
24 License Number TC 237873, issued to Holiday Smog, is revoked or suspended, any additional  
25 license issued under this chapter in the name of said licensee may be likewise revoked or  
26 suspended by the director.

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**PRAYER**

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

1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration Number ARD 237873, issued to Holiday Smog;
2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued to Holiday Smog;
3. Revoking or suspending Smog Check Test Only Station License Number TC 237873, issued to Holiday Smog;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Holiday Smog;
5. Ordering Holiday Smog 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; and,
6. Taking such other and further action as deemed necessary and proper.

DATED: June 5 2012

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

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