

DEPARTMENT OF MOTOR VEHICLES  
LICENSING OPERATIONS DIVISION  
1377 Fell Street, 2nd Floor  
San Francisco, CA 94117-2296



Telephone: (415) 557-1170 FAX: (415) 557-7375

**ADMINISTRATIVE PER SE - .08% BAC**  
**NOTIFICATION OF FINDINGS AND DECISION & ORDER OF SET ASIDE**

.....  
.....  
**San Rafael,, CA 94903**

DRIVER LICENSE OR FILE NO. .....
ARREST DATE .....

The stay of the suspension against your driving privilege has been ended. The suspension resulting from the arrest on ....., is hereby set aside.

..... is hereinafter also known as "Respondent."

The following findings and determinations are the results of your hearing on **November 21, 2003**.

**FINDINGS OF FACT**

i

**Probable Cause:**

On or about Tuesday, ..... at 10:45 PM, Officer M. Dunoas, Badge # 17187, of the Marin CHP, had conducted a welfare check on Respondent for the following reason:

Officer Dunoas also reported that he had observed Respondent driving a motor vehicle under the following circumstances:

Based on the observation of driving, and the details of the indicated investigation into Respondent's welfare, it is determined that, Officer Dunoas had probable cause to contact Respondent.

The evidentiary basis for the finding on the probable cause issue is:

- \* DMV Exhibits: DS-367 & Arrest Report.

ii

**Objective Symptoms:**

Subsequent to making contact with Respondent, Officer Dunoas formed the belief that Respondent was intoxicated after having observed the following objective symptoms of intoxication:

- \* Bloodshot and watery eyes.
- \* Odor of alcoholic beverage.
- \* Unsteady gait.

The evidentiary basis for the finding on the objective symptoms of intoxication issue is:

- \* The DS-367 (Officer's Sworn Statement).

iii

**Reasonable Cause:**

Based on the preceding findings concerning probable cause, Officer Dunoas' determination of driving, the Officer's belief that Respondent was intoxicated due to the objective symptoms of intoxication, and the additional reported factor that the Officer used to form the belief of intoxication, it is hereby determined that Officer Dunoas had reasonable cause to believe that Respondent was driving a motor vehicle while under the influence of alcohol.

iv

**Lawful Arrest:**

On \_\_\_\_\_, at 11:08 PM Respondent was arrested for violation of Section 23152 of the Vehicle Code.

The determination that Respondent was arrested under the charge of driving under the influence, Section 23152 of the Vehicle Code, is based on:

- \* Explicit statements in DMV's documentary evidence.

As a result of the reasonable cause determination and the subsequent findings of an arrest taking place, it is hereby determined that Respondent was lawfully arrested for a violation of Section 23152 of the Vehicle Code.

V

**Chemical Test:**

As based on the evidence, it is hereby determined that Respondent submitted to and completed a chemical test of her breath, with results of 0.09 % B.A.C. at 11:48 PM on \_\_\_\_\_ and 0.08 % B.A.C. at 11:50 PM on \_\_\_\_\_.

The claim that the chemical test result does not reflect the true blood alcohol content (BAC) at the time of driving due to a rising BAC is supported based on the following: Based on the 3 reading of the breath test one being 0.06% and with the plus or minus factor on the Intoxilyzer 5000, a set aside action is appropriate.

As a result of the preceding finding the administrative action against Respondent's driving privilege cannot be upheld in this case.

VI

**Driving With B.A.C. At Or Above 0.08%:**

Based on the preceding it is determined that the preponderance of evidence in this case supports that Respondent was not driving a motor vehicle at the time that the concentration of alcohol in her blood was at or above 0.08%.

**DETERMINATION OF ISSUES**


- 1) The peace officer had reasonable cause to believe you were driving a motor vehicle in violation of Vehicle Code Section 23140, 23152, or 23153.
- 2) You were placed under lawful arrest.
- 3) You were not driving a motor vehicle when you had .08% or more by weight of alcohol in your blood.

**DECISION**

As a result of the preceding Findings & Determination, suspension of your driving privilege is hereby set aside as specified here in these documents.



**THIS ACTION IS INDEPENDENT OF ANY OTHER ACTION TAKEN BY THE COURT OR THIS DEPARTMENT**

DATE 12/12/2003	SIGNATURE OF AUTHORIZED DMV EMPLOYEE F QUATTLEBAUM 
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California Relay Telephone Service for the deaf or hearing impaired from TDD Phones: 1-800-735-2929; From Voice Phones: 1-800-735-2922

cc: \_\_\_\_\_, Attorney at Law  
\_\_\_\_\_  
San Rafael, CA 94901