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

11 In the Matter of the Accusation Against:	Case No. 79/12-62
12 <b>PEREZ TEST ONLY</b>	SMOG CHECK
13 <b>GILBERT PEREZ, OWNER</b>	<b>A C C U S A T I O N</b>
14 21854 Mission Blvd., Unit A Hayward, CA 94541	
15 <b>Automotive Repair Dealer</b>	
16 <b>Registration No. ARD 259605</b>	
17 <b>Smog Check Test Only Station</b>	
18 <b>License No. TC 259605</b>	
19 and	
20 <b>GILBERT PEREZ</b>	
21 22733 7th Street, No. 3	
22 Hayward, CA 94541	
23 <b>Advanced Emission Specialist Technician</b>	
<b>License No. EA 145507</b>	
Respondents.	

24 Complainant alleges:

25 **PARTIES**

26 1. Sherry Mehl (Complainant) brings this Accusation solely in her official capacity as  
27 the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.







1 those results for the vehicles they certified. This process used by Respondents is called "clean-  
2 piping."<sup>1</sup> The three clean-piped vehicles are described below.

3 **Table**

<b>Date and Test Times</b>	<b>Vehicle Certified</b>	<b>Vehicle Actually Tested</b>	<b>Certificate Issued</b>
06/18/2011 11:15 a.m. to 11:21 a.m.	<b>1997 Chevrolet Lumina (4HWW204)</b>	Unknown	OE309851
07/22/2011 03:42 p.m. to 03:49 p.m.	<b>1992 Pontiac Grand AM (3AMY840)</b>	Unknown	WX307159
08/25/2011 04:05 p.m. to 04:12 p.m.	<b>1984 Buick Regal (6JBY450)</b>	Unknown	OG331129

11  
12 **FIRST CAUSE FOR DISCIPLINE**  
13 **(Automotive Repair Dealer Registration)**  
14 **(Misleading Statements)**

15 15. Respondent Perez Test Only has subjected its Automotive Repair Dealer Registration  
16 to discipline under Code section 9884.7, subdivision (a)(1), in that on or about June 18, 2011,  
17 July 22, 2011, and August 25, 2011, Respondent made statements which it knew or which by  
18 exercise of reasonable care should have known were untrue or misleading when it issued  
19 electronic certificates of compliance for the three vehicles as set forth in the Table, above,  
20 certifying that those vehicles were in compliance with applicable laws and regulations when, in  
21 fact, the vehicles had been clean piped.

22 **SECOND CAUSE FOR DISCIPLINE**  
23 **(Automotive Repair Dealer Registration)**  
24 **(Fraud)**

25 16. Respondent Perez Test Only has subjected its Automotive Repair Dealer Registration  
26 to discipline under Code section 9884.7, subdivision (a)(4), in that on or about June 18, 2011,

27 <sup>1</sup> "Clean piping" is sampling the tailpipe emissions and/or the RPM readings of a vehicle  
28 that passes smog requirements and using those emissions for the purpose of illegally issuing  
smog certifications to vehicles that are not in compliance or are not present in the smog check  
area during the time of the certification.

1 July 22, 2011, and August 25, 2011, it committed acts which constitute fraud by issuing  
2 electronic certificates of compliance for the three vehicles set forth in the Table, above, without  
3 performing bona fide inspections of the emission control devices and systems on those vehicles,  
4 thereby depriving the People of the State of California of the protection afforded by the Motor  
5 Vehicle Inspection Program.

6 **THIRD CAUSE FOR DISCIPLINE**  
7 **(Smog Check Test Only Station License)**  
8 **(Violation of the Motor Vehicle Inspection Program)**

9 17. Respondent Perez Test Only has subjected its Smog Check Test Only Station License  
10 to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about  
11 June 18, 2011, July 22, 2011, and August 25, 2011, regarding the three vehicles set forth in the  
12 Table, above, Respondent failed to comply with the Motor Vehicle Inspection Program by  
13 violating the following sections of the Health and Safety 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 those vehicles in accordance with procedures prescribed by the department.

19 c. **Section 44015, subdivision (b):** Respondent issued electronic certificates of  
20 compliance without properly testing and inspecting the vehicles to determine if they were in  
21 compliance with section 44012 of that Code.

22 **FOURTH CAUSE FOR DISCIPLINE**  
23 **(Smog Check Test Only Station License)**  
24 **(Violations of Regulations Under Motor Vehicle Inspection Program)**

25 18. Respondent Perez Test Only has subjected its Smog Check Test Only Station License  
26 to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about  
27 June 18, 2011, July 22, 2011, and August 25, 2011, regarding the vehicles set forth in the Table,  
28 above, Respondent failed to comply with regulations under the Motor Vehicle Inspection  
Program by violating the following sections of California Code of Regulations, title 16:

1 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
2 electronic certificates of compliance without performing bona fide inspections of the emission  
3 control devices and systems on those vehicles as required by Health and Safety Code section  
4 44012.

5 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
6 compliance even though those vehicles had not been inspected in accordance with section  
7 3340.42 of that Code.

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

10 **FIFTH CAUSE FOR DISCIPLINE**  
11 **(Smog Check Test Only Station License)**  
12 **(Dishonesty, Fraud, or Deceit)**

13 19. Respondent Perez Test Only has subjected its Smog Check Test Only Station License  
14 to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about  
15 June 18, 2011, July 22, 2011, and August 25, 2011, regarding the three vehicles set forth in the  
16 Table above, Respondent committed acts involving dishonesty, fraud or deceit whereby another  
17 was injured by issuing electronic certificates of compliance for those vehicles without performing  
18 bona fide inspections of the emission control devices and system on those vehicles, thereby  
19 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
20 Inspection Program.

21 **SIXTH CAUSE FOR DISCIPLINE**  
22 **(Advanced Emission Specialist Technician License)**  
23 **(Violations of the Motor Vehicle Inspection Program)**

24 20. Respondent Gilbert Perez has subjected his Advanced Emission Specialist Technician  
25 License to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or  
26 about June 18, 2011, July 22, 2011, and August 25, 2011, regarding the three vehicles set forth in  
27 the Table above, Respondent failed to comply with the Motor Vehicle Inspection Program by  
28 violating the following sections of the Health and Safety Code:

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



1 License to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or  
2 about June 18, 2011, July 22, 2011, and August 25, 2011, regarding the three vehicles set forth in  
3 the Table above, Respondent committed acts involving dishonesty, fraud or deceit whereby  
4 another was injured by issuing electronic certificates of compliance for the vehicles, without  
5 performing bona fide inspections of the emission control devices and systems on those vehicles,  
6 thereby depriving the People of the State of California of the protection afforded by the Motor  
7 Vehicle Inspection Program.

### 8 DISCIPLINE CONSIDERATIONS

9 23. To help determine the appropriate level of discipline to be imposed, if any,  
10 Complainant further alleges that the Bureau cited Respondent Gilbert Perez for violation of  
11 Health and Safety Code section 44032 (failure to follow inspection procedures) and California  
12 Code of Regulations, title 16, section 3340.30, subdivision (a) (failure to follow test/repair  
13 procedures) on two prior occasions, as follows:

14 a. On or about October 7, 2008, Respondent Gilbert Perez was issued Citation No. M09-  
15 0311, for which he completed an 8-hour course on or about November 13, 2008; and

16 b. On or about December 29, 2008, Respondent Gilbert Perez was issued Citation No.  
17 M09-0766, for which he completed a 16-hour training course on or about February 26, 2009.

### 18 OTHER MATTERS

19 24. Under Health and Safety Code section 44072.10, subdivision (c)(1), the Director shall  
20 revoke the license of any smog check technician or station licensee who participates in the  
21 fraudulent inspection of vehicles by clean-piping.

22 25. Under Code section 9884.7, subdivision (c), the Director may refuse to validate, or  
23 may invalidate temporarily or permanently, the registrations for all places of business operated in  
24 this state by Gilbert Perez upon a finding that he has, or is, engaged in a course of repeated and  
25 willful violations of the laws and regulations pertaining to an automotive repair dealer.

26 26. Under Health & Safety Code section 44072.8, if Smog Check Test Only Station  
27 License Number TC 259605, issued to Gilbert Perez doing business as Perez Test Only, is  
28 revoked or suspended, any additional license issued under that chapter in the name of Gilbert

1 Perez may be likewise revoked or suspended by the director.

2 27. Under Health & Safety Code section 44072.8, if Advanced Emission Specialist  
3 Technician License Number EA 145507, issued to Gilbert Perez, is revoked or suspended, any  
4 additional license issued under this chapter in the name of Gilbert Perez may be likewise revoked  
5 or suspended by the director.

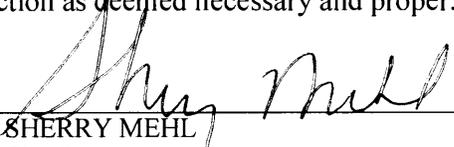
6 **PRAYER**

7 THEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
8 Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 9 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
10 259605, issued to Perez Test Only, with Gilbert Perez, Owner;
- 11 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
12 registration issued to Gilbert Perez;
- 13 3. Revoking or suspending Smog Check Test Only Station License Number TC 259605,  
14 issued to Perez Test Only, with Gilbert Perez, Owner;
- 15 4. Revoking or suspending Advanced Emission Specialist Technician License Number  
16 EA 145507, issued to Gilbert Perez;
- 17 5. Revoking or suspending any additional license issued under Chapter 5 of the Health  
18 and Safety Code in the name of Gilbert Perez;
- 19 6. Ordering Gilbert Perez to pay the Bureau of Automotive Repair the reasonable costs  
20 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
21 section 125.3; and,
- 22 7. Taking such other and further action as deemed necessary and proper.

23 DATED: \_\_\_\_\_

1/23/12

  
24 SHERRY MEHL  
25 Chief  
26 Bureau of Automotive Repair  
27 Department of Consumer Affairs  
28 State of California  
Complainant

SF2011203201