

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

In the Matter of the Accusation Against:

PEREZ TEST ONLY
GILBERT PEREZ, OWNER
21854 Mission Blvd., Unit A
Hayward, CA 94541

Automotive Repair Dealer Registration
No. ARD 259605

Smog Check Test Only Station License No.
TC 259605

and

GILBERT PEREZ
22733 7th Street, No. 3
Hayward, CA 94541

Advanced Emission Specialist Technician
License No. EA 145507, to be
redesignated upon renewal as Smog
Check Inspector License No. EO 145507
and/or Smog Check Repair Technician
License No. EI 145507

Respondents.

Case No. 79/12-62

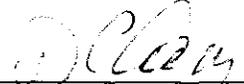
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective

June 24, 2014.

DATED: June 2, 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 ASPASIA A. PAPAVALASSILOU
Deputy Attorney General
4 State Bar No. 196360
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2199
Facsimile: (510) 622-2270
7 E-mail: Aspasia.Papavassiliou@doj.ca.gov
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:

Case No. 79/12-62

13 **PEREZ TEST ONLY**
GILBERT PEREZ, OWNER
14 21854 Mission Blvd., Unit A
Hayward, CA 94541

SMOG CHECK

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 **Automotive Repair Dealer**
16 **Registration No. ARD 259605**

17 **Smog Check Test Only Station**
18 **License No. TC 259605**

19 and

20 **GILBERT PEREZ**
22733 7th Street, No. 3
Hayward, CA 94541

21 **Advanced Emission Specialist Technician**
22 **License No. EA 145507, to be redesignated**
23 **upon renewal as Smog Check Inspector**
24 **License No. EO 145507 and/or Smog Check**
Repair Technician License No. EI 145507

Respondents.

25
26
27 ///

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 PARTIES

4 1. Patrick Dorais (Complainant) is the Acting Chief of the Bureau of Automotive Repair
5 (Bureau). He replaces former Bureau Chief Sherry Mehl as Complainant and continues this
6 action solely in his official capacity. He is represented in this matter by Kamala D. Harris,
7 Attorney General of the State of California, by Aspasia A. Papavassiliou, Deputy Attorney
8 General.

9 2. Gilbert Perez, individually and as Owner of Perez Test Only (Respondent), is
10 representing himself in this proceeding and has chosen not to exercise its right to be represented
11 by counsel.¹

12 3. On or about February 15, 2012, in the criminal case *People v. Gilbert Perez*, Alameda
13 County Superior Court Case No. 439750, the Court issued a temporary order that prohibited
14 Respondent Gilbert Perez from engaging in smog check activity or other conduct authorized by
15 his Bureau-issued licenses. The order was to remain in effect until resolution of the criminal case
16 or this related administrative proceeding. On or about November 13, 2012, Respondent Gilbert
17 Perez pled no contest to a misdemeanor violation of Vehicle Code section 4463 (Intent to
18 Prejudice, Damage, or Defraud) and was placed on three years court probation. The terms of
19 Respondent's criminal probation prohibit Respondent from operating a smog business and require
20 him to surrender his licenses to the Bureau.

21 **Automotive Repair Dealer Registration**

22 4. On or about October 7, 2009, the Bureau issued Automotive Repair Dealer
23 Registration Number ARD 259605 to Perez Test Only with Gilbert Perez, Owner (Respondent
24 Perez Test Only). The Automotive Repair Dealer Registration expired on September 30, 2012,
25 and has not been renewed.

26
27 ¹ "Respondent" in this stipulation, unless otherwise specified, refers to both Respondent
28 Perez Test Only and Respondent Gilbert Perez.

1 the attendance of witnesses and the production of documents; the right to reconsideration and
2 court review of an adverse decision; and all other rights accorded by the California
3 Administrative Procedure Act and other applicable laws.

4 10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
5 every right set forth above.

6 CULPABILITY

7 11. Respondent admits the truth of each and every charge and allegation in Accusation
8 No. 79/12-62.

9 12. Respondent agrees that his Automotive Repair Dealer Registration, Smog Check
10 Station Test Only License, and Advanced Emission Specialist Technician License are subject to
11 discipline and he agrees to be bound by the Director's imposition of discipline as set forth in the
12 Disciplinary Order below.

13 RESERVATION

14 13. The admissions made by Respondent in this stipulation are only for the purposes of
15 this proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of
16 Automotive Repair, or other professional licensing agency is involved, and shall not be
17 admissible in any other criminal or civil proceeding.

18 CONTINGENCY

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

1 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
2 agree to be bound by the Decision and Order of the Director of Consumer Affairs.

3
4 DATED: 2-25-2014


GILBERT PEREZ, individually and as Owner of
PEREZ TEST ONLY
Respondent

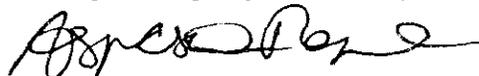
7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Director of Consumer Affairs.

10 Dated: 5-28-2014

Respectfully submitted,

11 KAMALA D. HARRIS
12 Attorney General of California
13 DIANN SOKOLOFF
Supervising Deputy Attorney General



14 ASPASIA A. PAPA VASSILIOU
15 Deputy Attorney General
Attorneys for Complainant

16 SF2012900633

Exhibit A

Accusation No. 79/12-62

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 ASPASIA A. PAPAVALASSILOU
Deputy Attorney General
4 State Bar No. 196360
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2199
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

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

2. On or about October 7, 2009, the Bureau issued Automotive Repair Dealer Registration Number ARD 259605 to Perez Test Only with Gilbert Perez, Owner (Respondent Perez Test Only). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on September 30, 2012, unless renewed.

Smog Check Test Only Station License

3. On or about October 12, 2009, the Bureau issued Smog Check Test Only Station License Number TC 259605 to Perez Test Only, with Gilbert Perez, Owner (Respondent Perez Test Only). The Smog Check Test Only Station License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on September 30, 2012, unless renewed.

Advanced Emission Specialist Technician License

4. In 2002, the Bureau issued Advanced Emission Specialist Technician License Number EA 145507 to Gilbert Perez (Respondent Gilbert Perez). The Advanced Emission Specialist Technician License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on March 31, 2012, unless renewed.

JURISDICTION

5. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau under authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

6. Code section 477 provides in pertinent part that as used in the Code, "board" includes "bureau" and "license" includes "registration."

7. Code section 9884.13 provides, in relevant 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.

1 11. Section 44072.2 of the Health and Safety Code states:

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

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

8 ...

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

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

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

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

15 **COST RECOVERY**

16 13. Section 125.3 of the Code provides, in pertinent part, that a board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 **FACTUAL BACKGROUND**

21 14. As revealed in a Bureau undercover investigation, on three separate occasions in
22 2011, Respondents Perez Test Only and Gilbert Perez issued electronic certificates of compliance
23 for vehicles that in fact were in the custody of the Bureau's Documentation Laboratory at the time
24 of the purported inspections. Information obtained from the Bureau's Vehicle Information
25 Database shows that Respondents issued the certificates on or about June 18, 2011, July 22, 2011,
26 and August 25, 2011, certifying that they had tested and inspected the vehicles and that the
27 vehicles were in compliance with applicable laws and regulations. Respondents performed the
28 smog inspections by using the tail pipe emissions of another vehicle or vehicles and substituted

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

3 **Table**

4

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
06/18/2011 11:15 a.m. to 11:21 a.m.	1997 Chevrolet Lumina [REDACTED]	Unknown	[REDACTED]
07/22/2011 03:42 p.m. to 03:49 p.m.	1992 Pontiac Grand AM [REDACTED]	Unknown	[REDACTED]
08/25/2011 04:05 p.m. to 04:12 p.m.	1984 Buick Regal [REDACTED]	Unknown	[REDACTED]

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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 ¹ "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 accordance with test procedures.

2 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
3 on those vehicles in accordance with procedures prescribed by the department.

4 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
5 and systems on those vehicles in accordance with section 44012 of that Code, in that the vehicle
6 had been clean piped.

7 **SEVENTH CAUSE FOR DISCIPLINE**
8 **(Advanced Emission Specialist Technician License)**
9 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

10 21. Respondent Gilbert Perez has subjected his Advanced Emission Specialist Technician
11 License to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or
12 about June 18, 2011, July 22, 2011, and August 25, 2011, regarding the three vehicles set forth in
13 the Table above, Respondent failed to comply with regulations under the Motor Vehicle
14 Inspection Program by violating the following sections of the California Code of Regulations,
15 title 16:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic certificates of compliance without performing bona fide inspections of the emission
18 control devices and systems on those vehicles as required by Health and Safety Code section
19 44012.

20 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test those
21 vehicles in accordance with Health and Safety Code section 44012.

22 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the
23 Emission Inspection System for the electronic certificates of compliance by entering vehicle
24 emission control information for vehicles other than the vehicles being certified.

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

27 **EIGHTH CAUSE FOR DISCIPLINE**
28 **(Advanced Emission Specialist Technician License)**
(Dishonesty, Fraud, or Deceit)

22. Respondent Gilbert Perez has subjected his Advanced Emission Specialist Technician

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.

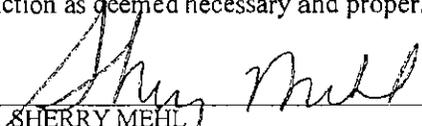
2 27. Under Health & Safety Code section 44072.8, if Advanced Emission Specialist
3 Technician License Number EA 145507, issued to Gilbert Perez, is revoked or suspended, any
4 additional license issued under this chapter in the name of Gilbert Perez may be likewise revoked
5 or suspended by the director.

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
Bureau of Automotive Repair
26 Department of Consumer Affairs
State of California
27 Complainant

28 SF2011203201