

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

In the Matter of the Accusation Against:

**JOSE O. SANCHEZ dba A SOLUTION  
SMOG & AUTO**  
405 N. Waterman  
San Bernardino, CA 92410

Case No. 79/16-54

Automotive Repair Dealer Registration No.  
ARD 269994  
Smog Check Station License No.  
RC 269994

and

**RAUL R. PEREZ**  
2515 Sandra Dr.  
Jurupa Valley, CA 92509

Smog Check Inspector License No.  
EO 637156

Respondents.

DECISION

The attached Stipulated Revocation of License and Order, as to Respondent Perez only, 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

July 26, 2016

DATED:

6/23/2016



KURT HERPLER  
Supervising Attorney  
Division of Legal Affairs  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 WILLIAM D. GARDNER  
Deputy Attorney General  
4 State Bar No. 244817  
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*Attorneys for Complainant*  
7

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

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Smog Check Inspector License No. EO 637156  
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Case No. 79/16-54

**STIPULATED REVOCATION OF  
LICENSE AND ORDER**

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IT IS HEREBY STIPULATED AND AGREED by and between the parties to this  
Stipulated Revocation of License and Order that the following matters are true:

PARTIES TO STIPULATION

1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair. He  
brought this action solely in his official capacity and is represented in this matter by Kamala D.  
Harris, Attorney General of the State of California, by William D. Gardner, Deputy Attorney  
General.







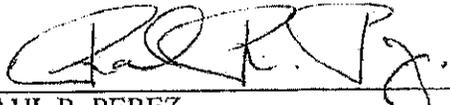
1 79/16-54 shall be deemed to be true, correct and admitted by Respondent when the Director  
2 determines whether to grant or deny the application.

3 5. Respondent shall pay the agency its costs of investigation and enforcement in the  
4 amount of \$2,336.25 prior to issuance of a new or reinstated license.

5 ACCEPTANCE

6 I have carefully read the Stipulated Revocation of License and Order. I understand the  
7 stipulation and the effect it will have on my Smog Check Inspector License. I enter into this  
8 Stipulated Revocation of License and Order voluntarily, knowingly, and intelligently, and agree  
9 to be bound by the Decision and Order of the Director of Consumer Affairs.

10  
11 DATED: May 5<sup>th</sup>, 2016

  
12 RAUL R. PEREZ  
Respondent

13  
14 ENDORSEMENT

15 The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted  
16 for consideration by the Director of Consumer Affairs.

17 Dated:

Respectfully submitted,

18 KAMALA D. HARRIS  
Attorney General of California  
19 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General

20  
21 WILLIAM D. GARDNER  
22 Deputy Attorney General  
23 *Attorneys for Complainant*

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6 I have carefully read the Stipulated Revocation of License and Order. I understand the  
7 stipulation and the effect it will have on my Smog Check Inspector License. I enter into this  
8 Stipulated Revocation of License and Order voluntarily, knowingly, and intelligently, and agree  
9 to be bound by the Decision and Order of the Director of Consumer Affairs.

10  
11 DATED: \_\_\_\_\_

RAUL R. PEREZ  
Respondent

13 ENDORSEMENT

14  
15 The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted  
16 for consideration by the Director of Consumer Affairs.

17 Dated: 5/5/16

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
ARMANDO ZAMBRANO  
Supervising Deputy Attorney General

  
WILLIAM D. GARDNER  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 79/16-54**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 WILLIAM D. GARDNER  
Deputy Attorney General  
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9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
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Case No. Case No. 79/16-54

12 **JOSE O. SANCHEZ dba A SOLUTION**  
**SMOG & AUTO**  
13 405 N. Waterman  
San Bernardino, CA 92410

**ACCUSATION**

14 Automotive Repair Dealer Registration No.  
15 ARD 269994  
16 Smog Check Station License No. RC 269994

17 and

18 **RAUL R. PEREZ**  
2515 Sandra Dr.  
Jurupa Valley, CA 92509

19 Smog Check Inspector License No. EO 637156

20 Respondents.  
21

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23 Complainant alleges:

24 **PARTIES**

25 1. Petitioner is duly appointed and serving as the Chief of the Bureau, and files this  
26 Petition in his official capacity.

27 2. On or about August 20, 2012, the Bureau of Automotive Repair issued Automotive  
28 Repair Dealer Registration Number ARD 269994 to Jose O. Sanchez, dba A Solution Smog &

1 Auto. The Automotive Repair Dealer Registration was in full force and effect at all times  
2 relevant to the charges brought herein and will expire on August 31, 2016, unless renewed.

3 3. On or about April 13, 2015, the Bureau of Automotive Repair issued Smog Check  
4 Station License Number RC 269994 to Jose O. Sanchez, dba A Solution Smog & Auto. The  
5 Smog Check Station License was in full force and effect at all times relevant to the charges  
6 brought herein and will expire on August 31, 2016, unless renewed.

7 4. On or about July 28, 2014, the Bureau of Automotive Repair issued Smog Check  
8 Inspector's License Number EO 637156 to Raul R. Perez. On March 4, 2016, an Interim  
9 Suspension Order was issued against Respondent's Smog Check Inspector's License pending a  
10 decision and order in these proceedings. Respondent's Smog Check Inspector's will expire on  
11 September 30, 2016, unless renewed.

12 JURISDICTION

13 5. Business and Professions Code ("BPC") section 9884.13 provides, in pertinent part,  
14 that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed  
15 with a disciplinary proceeding against an automotive repair dealer or to render a decision  
16 temporarily or permanently invalidating (suspending or revoking) a registration.

17 6. Section 9889.1 of the BPC provides, in pertinent part, that the Director may suspend  
18 or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the  
19 Automotive Repair Act.

20 7. Section 9889.7 of the BPC provides, in pertinent part, that the expiration or  
21 suspension of a license by operation of law or by order or decision of the Director or a court of  
22 law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to  
23 proceed with any disciplinary proceedings.

24 8. Health and Safety Code ("HSC") section 44002 provides, in pertinent part, that the  
25 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
26 the Motor Vehicle Inspection Program.

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1           14. Section 44032 of the HSC states, in pertinent part, that: (1) no person may perform  
2 tests or repairs of emission control devices or systems of motor vehicles required by the Motor  
3 Vehicle Inspection Program unless the person performing the test or repair is a licensed qualified  
4 smog check technician; and (2) all tests must be conducted in accordance with section 44012 (i.e.  
5 Motor Vehicle Inspection Program Requirements).

6           15. Section 44059 of the HSC provides:

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

11           16. Section 44072.2 of the HSC states, in pertinent part:

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

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

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

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

21           (e) Has misrepresented a material fact in obtaining a license.

22           (f) Aids or abets unlicensed persons to evade the provisions of this chapter."

23           17. Section 44072.8 of the HSC states that when a license has been revoked or suspended  
24 following a hearing under this article, any additional license issued under this chapter in the name  
25 of the licensee may be likewise revoked or suspended by the director.

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1 REGULATORY PROVISIONS

2 18. California Code of Regulations, title 16, section 3340.15, subdivision (b), states, in  
3 pertinent part, that “[a] licensed inspector and/or repair technician shall be present during all  
4 hours the station is open for the business.”

5 19. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),  
6 states:

7 “The bureau may suspend or revoke the license of or pursue other legal action against a  
8 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a  
9 certificate of noncompliance.”

10 20. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check  
11 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any  
12 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of  
13 this article and has all the required emission control equipment and devices installed and  
14 functioning correctly.”

15 21. CCR, title 16, section 3340.41, subdivision (b), provides: “No person shall enter into  
16 the emissions inspection system any access or qualification number other than as authorized by  
17 the bureau, nor in any way tamper with the emissions inspection system.”

18 22. CCR, title 16, section 3340.42, sets forth specific emissions test methods and  
19 procedures which apply to all vehicles inspected in the State of California

20 COST RECOVERY

21 23. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board  
22 “may request the administrative law judge to direct a licensee found to have committed a  
23 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
24 investigation and enforcement of the case

25 DATA ANALYSIS OF CLEAN PLUGGING ACTIVITIES

26  
27 24. On March 9, 2015, the Bureau implemented a policy change requiring the use of  
28 an On-Board Diagnostic Inspection System (OIS) in testing of 2000 model year and newer gas

1 powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer  
2 diesel powered vehicles 14,000 GVW and under. The OIS Bureau Test Data lists differences in  
3 Vehicle Identification Numbers (VIN) for vehicles that have received smog inspections, in  
4 addition to communication Protocol and Parameter ID (PID) differences with vehicles that have  
5 been certified correctly that are the same make and model vehicles.

6 25. On or about September 28, 2015, Bureau representative Alfred Denno initiated an  
7 investigation in which he reviewed specific OIS Test Data for A Solution Smog & Auto.  
8 Representative Denno's investigation revealed that the data related to certain vehicles certified by  
9 A Solution Smog & Auto contained a pattern of unmistakable discrepancies between the  
10 information transmitted during the inspections and documented information known about the  
11 subject vehicles. Specifically, representative Denno compared the data received from the certified  
12 vehicles to data from vehicles of the same year, make, and model and determined that the data  
13 from at least twelve (12) of the certified vehicles contained the following unmistakable  
14 discrepancies: (1) all of the vehicles were missing eVINs; (2) all of the vehicles transmitted the  
15 same incorrect vehicle communication protocol of I9140808; and (3) all of the vehicles  
16 transmitted incorrect PID counts. These documented discrepancies confirm that the vehicles  
17 receiving smog certificates from A Solution Smog & Auto were fraudulently tested during the  
18 smog inspection using the clean plugging method.<sup>1</sup> The following chart (i.e., Table 1) illustrates  
19 the documented clean plugging activities of Respondents between August 24, 2015, and October  
20 5, 2015.

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26 <sup>1</sup> Clean plugging refers to the use of another vehicle's properly functioning On Board  
27 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic  
28 readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that  
are not in smog compliance and/or not present for testing.

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Table 1

Test Date and Time*	Vehicle Certified & License No.	Certificate No.	Details
08/24/2015 1347-1355 hours	2006 Chevrolet Malibu 6VJX043	YT843771C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
08/25/2015 1142-1207 hours	2007 Chevrolet Silverado K3500 (No plate registered.)	YT843775C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
08/31/2015 0941-0947 hours	2006 Dodge Magnum SE 7FNE059	YT843796C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
08/31/2015 1207-1216 hours	2008 Ford Fusion SE (No plate registered.)	YT843798C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.

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8/31/2015 1334-1341 hours	2007 Jaguar XK 6UBC774	PW095201C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
09/02/2015 1322-1330 hours	2007 Chrysler PT Cruiser 5UQZ701	PW095212C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
09/04/2015 1030-1038 hours	2005 Chevrolet Impala 5RRK696	PW095220C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
09/04/2015 1314-1318 hours	2009 Dodge Journey SE 6HFS191	PW095222C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
09/09/2015 1412-1422 hours	2006 Mitsubishi Eclipse SE 5WFFV200	PW095231C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.

1 2 3 4 5	09/11/2015 0929-0939 hours	2007 Ford F150 30244A1	PW095237C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
6 7 8 9 10 11	09/11/2015 1027-1035 hours	2006 Toyota Tacoma 8M22292	PW095238C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.
12 13 14 15 16	10/05/2015 1427-1447 hours	2005 Mercedes Benz C230K 5LVA639	PW966077C	Test data does not support this vehicle in that eVIN was missing, incorrect communication protocol detected and incorrect PID count registered. Test performed by Respondent Perez.

\* Test times are in military time.

**FIRST CAUSE FOR DISCIPLINE**

**(Misleading Statements)**

26. Respondent Jose O. Sanchez, dba A Solution Smog & Auto ("Respondent Sanchez"), has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable care should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had not been so inspected. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 24 and 25, inclusive, as though set forth fully herein.

1 **SECOND CAUSE FOR DISCIPLINE**

2 (Fraud)

3 27. Respondent Sanchez has subjected his registration to discipline under BPC section  
4 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud by issuing electronic  
5 certificates of compliance for the vehicles set forth in Tables 1, above, without performing bona  
6 fide inspections of the emission control devices and systems on those vehicles, thereby depriving  
7 the People of the State of California of the protection afforded by the Motor Vehicle Inspection  
8 Program. Complainant refers to, and by this reference incorporates, the allegations contained in  
9 paragraphs 24 and 25, inclusive, as though set forth fully herein.

10 **THIRD CAUSE FOR DISCIPLINE**

11 (Material Violation of Automotive Repair Act)

12 28. Respondent Sanchez has subjected his registration to discipline under BPC section  
13 9884.7, subdivision (a)(6), in that he failed in a "material respect to comply with the provisions of  
14 this chapter or regulations adopted pursuant to it" when he issued electronic certificates of  
15 compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections  
16 of the emission control devices and systems on those vehicles, thereby depriving the People of the  
17 State of California of the protection afforded by the Motor Vehicle Inspection Program.  
18 Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs  
19 24 and 25, inclusive, as though set forth fully herein.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 (Violation of the Motor Vehicle Inspection Program)

22 29. Respondent Sanchez has subjected his station license to discipline under HSC section  
23 44072.2, subdivision (a), in that, with respect to the vehicles set forth in Table 1, above,  
24 Respondent violated the following sections of the HSC:

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

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1 SEVENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 32. Respondent Raul R. Perez ("Respondent Perez") has subjected his smog check  
4 inspector license to discipline under HSC section 44072.2, subdivision (a), in that he violated the  
5 following sections of the HSC with respect to the vehicles set forth in Table, 1 above:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
7 performed on those vehicles in accordance with procedures prescribed by the department.

8 b. **Section 44032:** Respondent failed to perform tests of the emission control devices  
9 and systems on those vehicles in accordance with section 44012 of the HSC, in that the vehicles  
10 had been clean plugged.

11 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates  
12 of compliance by certifying that those vehicles had been inspected as required when, in fact, they  
13 had not.

14 EIGHTH CAUSE FOR DISCIPLINE

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

16 33. Respondent Perez has subjected his smog check inspector license to discipline under  
17 HSC section 44072.2, subdivision (c), in that he violated the following sections of the CCR, title  
18 16, with respect to the vehicles set forth in Table 1, above:

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

22 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test those  
23 vehicles in accordance with HSC section 44012.

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

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

1 NINTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 34. Respondent Perez has subjected his smog check inspector license to discipline under  
4 HSC section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or  
5 deceit whereby another was injured by issuing electronic certificates of compliance for the  
6 vehicles set forth in Table 1, above, without performing bona fide inspections of the emission  
7 control devices and systems on those vehicles, thereby depriving the People of the State of  
8 California of the protection afforded by the Motor Vehicle Inspection Program.

9 PRAAYER

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

12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
13 269994, issued to Jose O. Sanchez, dba A Solution Smog & Auto;

14 2. Revoking or suspending Smog Check Station License Number RC 269994, issued to  
15 Jose O. Sanchez, dba A Solution Smog & Auto;

16 3. Revoking or suspending Smog Check Inspector License No. EO 637156, issued to  
17 Raul R. Perez;

18 4. Revoking or suspending any and all licenses issued under Articles 5 and 6 of the  
19 Automotive Repair Act in the name of Jose O. Sanchez or Raul R. Perez pursuant to section  
20 9889.9 of the Business and Professions Code;

21 5. Revoking or suspending any and all licenses issued under the Motor Vehicle  
22 Inspection Program in the name of Jose O. Sanchez or Raul R. Perez pursuant to section 44072.8  
23 of the Health and Safety Code;

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- 1           6.    Ordering that Jose O. Sanchez and Raul R. Perez are jointly and severally responsible  
2 for paying the Bureau of Automotive Repair the reasonable costs of the investigation and  
3 enforcement of this case, pursuant to Business and Professions Code section 125.3;  
4           7.    Taking such other and further action as deemed necessary and proper.

5  
6  
7 DATED: 3-11-16

*PATRICK DORAIS by [Signature]*  
PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*D. G. BALDWIN*  
Complainant

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