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8

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

12 In the Matter of the Accusation Against:
13 **QUALITY TUNE UP #40**
3846 Fruitridge Road
14 Sacramento, CA 95820-4858
MIGUEL PEREZ, OWNER
15 Automotive Repair Dealer
Registration No. AE 183857
16 Smog Check Station License No. RE 183857

Case No. 79/08-24

ACCUSATION
(SMOG CHECK)

17 **MIGUEL PEREZ**
7686 Bluebrook Way
18 Sacramento, CA 95823
Advanced Emission Specialist Technician
19 License No. EA 314602

20 Respondents.
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22 Sherry Mehl ("Complainant") alleges:

23 **PARTIES**

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

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Automotive Repair Dealer Registration

2. On or about May 23, 1995, the Bureau issued Automotive Repair Dealer Registration Number AE 183857 ("registration") to Miguel Perez ("Respondent Perez"), doing business as Quality Tune Up #40. The registration will expire on May 31, 2008, unless renewed.

Smog Check Station License

3. On or about May 31, 1995, the Bureau issued Smog Check Station Number RE 183857 ("station license") to Respondent Perez. The station license will expire on May 31, 2008, unless renewed.

Advanced Emission Specialist Technician License

4. On a date uncertain in 1996, the Bureau issued Advanced Emission Specialist Technician License Number EA 314602 ("technician license") to Respondent Perez. The technician license was delinquent from October 31, 2004, to November 2, 2004, and from October 31, 2006, to November 14, 2006. Respondent Perez's technician license will expire on October 31, 2008, unless renewed.

STATUTORY PROVISIONS

5. Business and Professions Code ("Code") section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

(4) Any other conduct which constitutes fraud.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner

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1 the right of the automotive repair dealer to operate his or her other places of
2 business.

3 (c) Notwithstanding subdivision (b), the director may invalidate
4 temporarily or permanently, the registration for all places of business operated in
5 this state by an automotive repair dealer upon a finding that the automotive repair
6 dealer has, or is, engaged in a course of repeated and willful violations of this
7 chapter, or regulations adopted pursuant to it.

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

12 7. Health and Safety Code section 44002 provides, in pertinent part, that the
13 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
14 the Motor Vehicle Inspection Program.

15 8. Health and Safety Code section 44072.2 states:

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

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

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

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

26 9. Health and Safety Code section 44072.6 provides, in pertinent part, that
27 the expiration or suspension of a license by operation of law, or by order or decision of the
28 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall
not deprive the Director of jurisdiction to proceed with disciplinary action.

10 10. Health and Safety Code section 44072.8 states that when a license has
11 been revoked or suspended following a hearing under this article, any additional license issued
12 under this chapter in the name of the licensee may be likewise revoked or suspended by the
13 director.

1 applicable laws and regulations. In fact, the vehicle could not have passed the smog inspection
2 because the vehicle's EGR valve had been rendered inoperable.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Fraud)

5 15. Respondent Perez's registration is subject to disciplinary action pursuant
6 to Code section 9884.7, subdivision (a)(4), in that on or about April 4, 2007, he committed acts
7 which constitute fraud by issuing electronic Certificate of Compliance No. MQ465562 for the
8 1991 Chevrolet Corsica without performing a bona fide inspection of the emission control
9 devices and systems on the vehicle, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (Violations of the Motor Vehicle Inspection Program)

13 16. Respondent Perez's station license is subject to disciplinary action
14 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about April 4,
15 2007, regarding the 1991 Chevrolet Corsica, he failed to comply with the following sections of
16 that Code:

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

19 b. **Section 44015, subdivision (b)**: Respondent Perez issued electronic
20 Certificate of Compliance No. MQ465562 for the vehicle without properly testing and inspecting
21 the vehicle to determine if it was in compliance with Health & Safety Code section 44012.

22 c. **Section 44059**: Respondent Perez willfully made false entries for
23 electronic Certificate of Compliance MQ465562, by certifying that the vehicle had been
24 inspected as required when, in fact, it had not.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

27 17. Respondent Perez's station license is subject to disciplinary action
28 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about April 4,

1 2007, regarding the 1991 Chevrolet Corsica, he failed to comply with provisions of California
2 Code of Regulations, title 16, as follows:

3 a. **Section 3340.24, subdivision (c)**: Respondent Perez falsely or
4 fraudulently issued electronic Certificate of Compliance No. MQ465562 for the vehicle, in that
5 the vehicle could not pass the smog inspection because the EGR valve had been rendered
6 inoperable.

7 b. **Section 3340.35, subdivision (c)**: Respondent Perez issued electronic
8 Certificate of Compliance No. MQ465562 for the vehicle, even though the vehicle had not been
9 inspected in accordance with section 3340.42.

10 c. **Section 3340.42**: Respondent Perez failed to conduct the required smog
11 tests on the vehicle in accordance with the Bureau's specifications.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 (Dishonesty, Fraud or Deceit)

14 18. Respondent Perez's station license is subject to disciplinary action
15 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about April 4,
16 2007, Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured
17 by issuing electronic Certificate of Compliance No. MQ465562 for the 1991 Chevrolet Corsica
18 without performing a bona fide inspection of the emission control devices and systems on the
19 vehicle, thereby depriving the People of the State of California of the protection afforded by the
20 Motor Vehicle Inspection Program.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 (Violations of the Motor Vehicle Inspection Program)

23 19. Respondent Perez's technician license is subject to disciplinary action
24 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about April 4,
25 2007, regarding the 1991 Chevrolet Corsica, he failed to comply with provisions of that Code, as
26 follows:

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1 a. **Section 44012, subdivision (f)**: Respondent Perez failed to perform
2 emission control tests on the vehicle in accordance with procedures prescribed by the department.

3 b. **Section 44032**: Respondent Perez failed to perform tests of the emission
4 control devices and systems on the vehicle in accordance with Health & Safety Code section
5 44012.

6 c. **Section 44059**: Respondent Perez willfully made false entries into the
7 Emission Inspection System ("EIS") for electronic Certificate of Compliance No. MQ465562 by
8 entering "Pass" in the unit for the EGR valve even though that system had been rendered
9 inoperable.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

12 20. Respondent Perez's technician license is subject to disciplinary action
13 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about April 4,
14 2007, regarding the 1991 Chevrolet Corsica, he failed to comply with provisions of California
15 Code of Regulations, title 16, as follows:

16 a. **Section 3340.30, subdivision (a)**: Respondent Perez failed to inspect and
17 test the vehicle in accordance with procedures prescribed by Health & Safety Code sections
18 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

19 b. **Section 3340.41, subdivision (c)**: Respondent Perez entered false
20 information into the EIS unit by entering "Pass" for the EGR valve, when in fact, the EGR valve
21 had been rendered inoperable.

22 c. **Section 3340.42**: Respondent Perez failed to conduct the required smog
23 tests on the vehicle in accordance with the Bureau's specifications.

24 **EIGHTH CAUSE FOR DISCIPLINE**

25 (Dishonesty, Fraud or Deceit)

26 21. Respondent Perez's technician license is subject to disciplinary action
27 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about April 4,
28 2007, regarding the 1991 Chevrolet Corsica, he committed dishonest, fraudulent or deceitful acts

1 whereby another is injured by issuing electronic Certificate of Compliance No. MQ465562 for
2 the vehicle without performing a bona fide inspection of the emission control devices and
3 systems on the vehicle, thereby depriving the People of the State of California of the protection
4 afforded by the Motor Vehicle Inspection Program.

5 **PRIOR CITATIONS**

6 22. To determine the degree of discipline, if any, to be imposed on
7 Respondent Perez, Complainant alleges, as follows:

8 a. On or about March 15, 2006, the Bureau issued Citation No. C06-0552
9 against Respondent Perez, as owner of Quality Tune Up #40, Automotive Repair Dealer
10 Registration No. AE 183857, and Smog Check Station License No. RE 183857, for violations of
11 Health & Safety Code section 44012, subdivision (f) (failure to confirm that emission control
12 devices and systems were installed and functioning correctly), and California Code of
13 Regulations, title 16 ("Regulation"), section 3340.35, subdivision (c) (issuing a certificate of
14 compliance to a vehicle that was improperly tested). The Bureau assessed a fine of \$500 to
15 Respondent Perez. Respondent complied with this citation on April 25, 2006.

16 b. On or about July 18, 2006, the Bureau issued Citation No. C07-0008
17 against Respondent Perez, as owner of Quality Tune Up #40, Automotive Repair Dealer
18 Registration No. AE 183857, and Smog Check Station License No. RE 183857, for violations of
19 Health & Safety Code section 44012, subdivision (f) (failure to confirm that emission control
20 devices and systems were installed and functioning correctly), and Regulation, section 3340.35,
21 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). The
22 Bureau assessed a fine of \$1,000 to Respondent Perez. Respondent complied with this citation
23 on August 22, 2006.

24 c. On or about July 18, 2006, the Bureau issued Citation No. M07-0009
25 against Respondent Perez, Advanced Emission Specialist Technician License No. EA314602, for
26 violations of Health & Safety Code section 44032 (failure to confirm that emission control
27 devices and systems were installed and functioning correctly), and Regulation, section 3340.30,
28 subdivision (a) (failure to inspect vehicles in accordance with Health and Safety Code sections

1 44012, 44035 and Regulation 3340.42). The Bureau directed Respondent Perez to complete an
2 eight hour training course. Respondent complied with this citation on September 8, 2006.

3 d. On or about November 27, 2006, the Bureau issued Citation No. C07-
4 0329 against Respondent Perez, as owner of Quality Tune Up #40, Automotive Repair Dealer
5 Registration No. AE 183857, and Smog Check Station License No. RE 183857, for violations of
6 Health & Safety Code section 44012, subdivision (f) (failure to confirm that emission control
7 devices and systems were installed and functioning correctly), and Regulation, section 3340.35,
8 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). The
9 Bureau assessed a fine of \$2,000 to Respondent Perez. Respondent complied with this citation
10 on January 11, 2007.

11 **OTHER MATTERS**

12 23. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse
13 to validate or invalidate temporarily or permanently, the registrations for all places of business
14 operated in this state by Miguel Perez, doing business as Quality Tune Up #40, upon a finding
15 that he has, or is, engaged in a course of repeated and willful violations of the laws and
16 regulations pertaining to an automotive repair dealer.

17 24. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station
18 License Number RE 183857, issued to Respondent Perez, is revoked or suspended, any
19 additional license issued under this chapter in the name of said licensee may be likewise revoked
20 or suspended by the director.

21 25. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission
22 Specialist Technician License Number EA 314602, issued to Respondent Perez, is revoked or
23 suspended, any additional license issued under this chapter in the name of said licensee may be
24 likewise revoked or suspended by the director.

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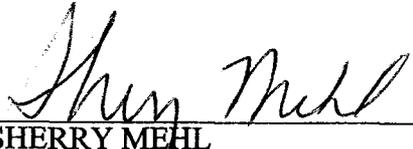
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PRAYER

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. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number AE 183857, issued to Miguel Perez, doing business as Quality Tune Up #40;
2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Miguel Perez;
3. Revoking or suspending Smog Check Station License Number RE 183857, issued to Miguel Perez, doing business as Quality Tune Up #40;
4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 314602, issued to Miguel Perez;
5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Miguel Perez;
6. Ordering Respondent Miguel Perez to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
7. Taking such other and further action as deemed necessary and proper.

DATED: 10-15-07



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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