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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. 79/12-83

13 **QUALITY TUNE-UP #40**  
14 **3846 Fruitridge Road**  
15 **Sacramento, CA 95820-4858**  
16 **MIGUEL PEREZ, OWNER**  
17 **Automotive Repair Dealer Registration No.**  
18 **ARD 183857**  
19 **Smog Check Station License No. RC 183857,**

**A C C U S A T I O N**  
**S M O G C H E C K**

and

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

Respondents.

22 Complainant alleges:

23 **PARTIES**

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

26 **Automotive Repair Dealer Registration**

27 2. On a date uncertain in 1995, the Bureau issued Automotive Repair Dealer  
28 Registration Number ARD 183857 ("registration") to Miguel Perez ("Respondent"), doing

1 business as Quality Tune-Up #40. The registration was in full force and effect at all times  
2 relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

3 **Smog Check Station License**

4 3. On or about May 31, 1995, the Bureau issued Smog Check Station License Number  
5 RC 183857 ("station license") to Respondent. The station license was in full force and effect at  
6 all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

7 **Advanced Emission Specialist Technician License**

8 4. On a date uncertain in 1996, the Bureau issued Advanced Emission Specialist  
9 Technician License Number EA 314602 ("technician license") to Respondent. The technician  
10 license was in full force and effect at all times relevant to the charges brought herein and will  
11 expire on October 31, 2012, unless renewed.

12 **STATUTORY PROVISIONS**

13 5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent  
14 part:

15 (a) The director, where the automotive repair dealer cannot show there  
16 was a bona fide error, may deny, suspend, revoke, or place on probation the  
17 registration of an automotive repair dealer for any of the following acts or omissions  
18 related to the conduct of the business of the automotive repair dealer, which are done  
19 by the automotive repair dealer or any automotive technician, employee, partner,  
20 officer, or member of the automotive repair dealer.

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

24 (4) Any other conduct that constitutes fraud.

25 (b) Except as provided for in subdivision (c), if an automotive repair  
26 dealer operates more than one place of business in this state, the director pursuant to  
27 subdivision (a) shall only suspend, revoke, or place on probation the registration of  
28 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 the right of the  
automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or  
place on probation the registration for all places of business operated in this state by  
an automotive repair dealer upon a finding that the automotive repair dealer has, or is,  
engaged in a course of repeated and willful violations of this chapter, or regulations  
adopted pursuant to it.

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

5           7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"  
6 "commission," "committee," "department," "division," "examining committee," "program," and  
7 "agency." "License" includes certificate, registration or other means to engage in a business or  
8 profession regulated by the Code.

9           8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
10 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
11 the Motor Vehicle Inspection Program.

12           9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

20           10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
21 expiration or suspension of a license by operation of law, or by order or decision of the Director  
22 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
23 the Director of jurisdiction to proceed with disciplinary action.

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

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

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1 **COST RECOVERY**

2 12. Code section 125.3 provides, in pertinent part, that a Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **UNDERCOVER OPERATION – JUNE 6, 2011**

7 13. On or about June 6, 2011, a Bureau undercover operator drove a Bureau-documented  
8 1995 Chevrolet Caprice to Respondent's facility and requested a smog inspection. The vehicle  
9 could not pass the visual portion of a smog inspection because the vehicle's positive crankcase  
10 ventilation system ("PCV") was missing. The operator signed a work order but did not receive  
11 copy of the document prior to the smog inspection. Carlos Rios, a licensed technician, performed  
12 the smog inspection and issued electronic Certificate of Compliance No. OE062122C for that  
13 vehicle. The operator paid \$59.99 for the smog inspection and received a copy of Invoice No. 40-  
14 44202 and the Vehicle Inspection Report ("VIR").

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Misleading Statements)**

17 14. Respondent has subjected his registration to discipline under Code section 9884.7,  
18 subdivision (a)(1), in that on or about June 6, 2011, he made statements which he knew or which  
19 by exercise of reasonable care he should have known were untrue or misleading when he issued  
20 electronic Certificate of Compliance No. OE062122C for the 1995 Chevrolet Caprice, certifying  
21 that the vehicle was in compliance with applicable laws and regulations when, in fact, the  
22 vehicle's PCV system was missing.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Fraud)**

25 15. Respondent has subjected his registration to discipline under Code section 9884.7,  
26 subdivision (a)(4), in that on or about June 6, 2011, he committed acts which constitute fraud by  
27 issuing electronic Certificate of Compliance No. OE062122C for the 1995 Chevrolet Caprice  
28 without performing a bona fide inspection of the emission control devices and systems on that

1 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
2 Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Violation of the Motor Vehicle Inspection Program)**

5 16. Respondent has subjected his station license to discipline under Health and Safety  
6 Code section 44072.2, subdivision (a), in that on or about June 6, 2011, regarding the 1995  
7 Chevrolet Caprice, he violated sections of that Code, as follows:

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

11 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests  
12 on that vehicle in accordance with procedures prescribed by the department.

13 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of  
14 Compliance No. OE062122C without properly testing and inspecting the vehicle to determine if it  
15 was in compliance with section 44012 of that Code.

16 **FOURTH CAUSE FOR DISCIPLINE**

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

18 17. Respondent has subjected his station license to discipline under Health and Safety  
19 Code section 44072.2, subdivision (c), in that on or about June 6, 2011, regarding the 1995  
20 Chevrolet Caprice, he violated sections of the California Code of Regulations, title 16, as follows:

21 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of  
22 Compliance No. OE062122C even though that vehicle had not been inspected in accordance with  
23 section 3340.42 of that Code.

24 b. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
25 inspections on that vehicle in accordance with the Bureau's specifications.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit)**

3 18. Respondent subjected his station license to discipline under Health and Safety Code  
4 section 44072.2, subdivision (d), in that on or about June 6, 2011, regarding the 1995 Chevrolet  
5 Caprice, he committed acts involving dishonesty, fraud or deceit whereby another was injured by  
6 issuing electronic Certificate of Compliance No. OE062122C for that vehicle without performing  
7 a bona fide inspection of the emission control devices and system on the vehicle, thereby  
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
9 Inspection Program.

10 **UNDERCOVER OPERATION – JUNE 20, 2011**

11 19. On or about June 20, 2011, a Bureau undercover operator drove a Bureau-  
12 documented 1996 Pontiac Grand Prix to Respondent's facility and requested a smog inspection.  
13 The vehicle could not pass the visual portion of a smog inspection because the vehicle's  
14 evaporative emissions system ("EVAP") was missing. The operator signed a work order but did  
15 not receive copy of the document prior to the smog inspection. Respondent performed the smog  
16 inspection and issued electronic Certificate of Compliance No. OE305106C for that vehicle. The  
17 operator paid \$49.95 for the smog inspection and received a copy of Invoice No. 44480 and the  
18 VIR.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Misleading Statements)**

21 20. Respondent has subjected his registration to discipline under Code section 9884.7,  
22 subdivision (a)(1), in that on or about June 20, 2011, he made statements which he knew or which  
23 by exercise of reasonable care he should have known were untrue or misleading when he issued  
24 electronic Certificate of Compliance No. OE305106C for the 1996 Pontiac Grand Prix, certifying  
25 that the vehicle was in compliance with applicable laws and regulations when, in fact, the  
26 vehicle's EVAP system was missing.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 21. Respondent has subjected his registration to discipline under Code section 9884.7,  
4 subdivision (a)(4), in that on or about June 20, 2011, he committed acts which constitute fraud by  
5 issuing electronic Certificate of Compliance No. OE305106C for the 1996 Pontiac Grand Prix  
6 without performing a bona fide inspection of the emission control devices and systems on that  
7 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
8 Motor Vehicle Inspection Program.

9 **EIGHTH CAUSE FOR DISCIPLINE**

10 **(Violation of the Motor Vehicle Inspection Program)**

11 22. Respondent has subjected his station license to discipline under Health and Safety  
12 Code section 44072.2, subdivision (a), in that on or about June 20, 2011, regarding the 1996  
13 Grand Prix, he violated sections of that 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 that vehicle in accordance with procedures prescribed by the department.

19 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of  
20 Compliance No. OE305106C without properly testing and inspecting the vehicle to determine if it  
21 was in compliance with section 44012 of that Code.

22 **NINTH CAUSE FOR DISCIPLINE**

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

24 23. Respondent has subjected his station license to discipline under Health and Safety  
25 Code section 44072.2, subdivision (c), in that on or about June 20, 2011, regarding the 1996  
26 Pontiac Grand Prix, he violated sections of the California Code of Regulations, title 16, as  
27 follows:

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1 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of  
2 Compliance No. OE305106C even though that vehicle had not been inspected in accordance with  
3 section 3340.42 of that Code.

4 b. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
5 inspections on that vehicle in accordance with the Bureau's specifications.

6 **TENTH CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud or Deceit)**

8 24. Respondent subjected his station license to discipline under Health and Safety Code  
9 section 44072.2, subdivision (d), in that on or about June 20, 2011, regarding the 1996 Pontiac  
10 Grand Prix, he committed acts involving dishonesty, fraud or deceit whereby another was injured  
11 by issuing electronic Certificate of Compliance No. OE305106C for that vehicle without  
12 performing a bona fide inspection of the emission control devices and system on the vehicle,  
13 thereby depriving the People of the State of California of the protection afforded by the Motor  
14 Vehicle Inspection Program.

15 **ELEVENTH CAUSE FOR DISCIPLINE**

16 **(Violations of the Motor Vehicle Inspection Program)**

17 25. Respondent has subjected his technician license to discipline under Health and Safety  
18 Code section 44072.2, subdivision (a), in that on or about June 20, 2011, regarding the 1996  
19 Pontiac Grand Prix, he violated sections of that Code, as follows:

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

23 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests  
24 on that vehicle in accordance with procedures prescribed by the department.

25 c. **Section 44032:** Respondent failed to perform tests of the emission control devices  
26 and systems on that vehicle in accordance with section 44012 of that Code.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

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

3 26. Respondent has subjected his technician license to discipline under Health and Safety  
4 Code section 44072.2, subdivision (c), in that on or about June 20, 2011, regarding the 1996  
5 Pontiac Grand Prix, he violated sections of the California Code of Regulations, title 16, as  
6 follows:

7 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle  
8 in accordance with Health and Safety Code section 44012.

9 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS  
10 for electronic Certificate of Compliance No. OE305106C by entering "Pass" for the visual  
11 inspection of the fuel evaporative controls when, in fact, the vehicle could not pass that portion of  
12 the inspection because the vehicle's EVAP was missing.

13 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
14 inspections on that vehicle in accordance with the Bureau's specifications.

15 **THIRTEENTH CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud or Deceit)**

17 27. Respondent has subjected his technician license to discipline under Health and Safety  
18 Code section 44072.2, subdivision (d), in that on or about June 20, 2011, regarding the 1996  
19 Pontiac Grand Prix, he committed acts involving dishonesty, fraud or deceit whereby another was  
20 injured by issuing electronic Certificate of Compliance No. OE305106C without performing a  
21 bona fide inspection of the emission control devices and systems on that vehicle, thereby  
22 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
23 Inspection Program.

24 **PRIOR DISCIPLINE**

25 28. Effective February 27, 2009, pursuant to the Decision in Accusation No. 79/08-24,  
26 Respondent's Automotive Repair Dealer Registration No. ARD 183857, Smog Check Station  
27 License No. RC 183857, and Advanced Emission Specialist Technician License No. EA 314602

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1 were revoked. However, the revocations were stayed and Respondent's licenses were placed on  
2 probation for a period of two (2) years with terms and condition.

3 **PRIOR CITATIONS**

4 29. To determine the degree of penalty, if any, to be imposed upon Respondent,  
5 Complainant alleges as follows:

6 a. On March 15, 2006, the Bureau issued Citation No. C06-0552 to Respondent against  
7 his registration and station licenses for violations of Health and Safety Code section 44012,  
8 subdivision (f) (failure to perform a visual/functional check of emission control devices) and  
9 California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing  
10 a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of  
11 compliance to a Bureau vehicle with a missing air injection system. The Bureau assessed a civil  
12 penalty of \$500. Respondent complied with this citation on April 25, 2006.

13 b. On July 18, 2006, the Bureau issued Citation No. C07-0008 to Respondent against his  
14 registration and station licenses for violations of Health and Safety Code section 44012,  
15 subdivision (f) (failure to perform a visual/functional check of emission control devices) and  
16 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
17 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a  
18 missing PCV system. The Bureau assessed a civil penalty of \$1,000. Respondent complied with  
19 this citation on August 22, 2006.

20 c. On November 27, 2006, the Bureau issued Citation No. C07-0329 to Respondent  
21 against his registration and station licenses for violations of Health and Safety Code section  
22 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
23 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
24 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a  
25 missing air injection system. The Bureau assessed a civil penalty of \$2,000. Respondent  
26 complied with this citation on January 11, 2007.

27 d. On July 18, 2005, the Bureau issued Citation No. M07-0009 to Respondent against  
28 his technician license for violations of Health and Safety Code section 44032, (qualified

1 technicians shall perform tests of emission control systems and devices in accordance with  
2 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section  
3 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
4 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
5 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing PCV  
6 system. Respondent was required to attend an 8-hour training course. Respondent complied with  
7 this citation on September 8, 2006.

8 **OTHER MATTERS**

9 30. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,  
10 or may invalidate temporarily or permanently, the registrations for all places of business operated  
11 in this state by Miguel Perez, upon a finding that he has, or is, engaged in a course of repeated  
12 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

13 31. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License  
14 Number RC 183857, issued to Miguel Perez, doing business as Quality Tune Up #40, is revoked  
15 or suspended, any additional license issued under this chapter in the name of said licensee may be  
16 likewise revoked or suspended by the director.

17 32. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist  
18 Technician License Number EA 314602, issued to Miguel 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 **PRAYER**

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

24 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration  
25 Number ARD 183857, issued to Miguel Perez, doing business as Quality Tune-Up #40;

26 2. Revoking, suspending or placing on probation any other automotive repair dealer  
27 registration issued to Miguel Perez;

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- 1           3.    Revoking or suspending Smog Check Station License Number RC 183857, issued to
- 2 Miguel Perez, Quality Tune-Up #40;
- 3           4.    Revoking or suspending any additional license issued under Chapter 5 of the Health
- 4 and Safety Code in the name of Miguel Perez;
- 5           5.    Revoking or suspending Advanced Emission Specialist Technician License Number
- 6 EA 314602, issued to Miguel Perez;
- 7           6.    Revoking or suspending any additional license issued under Chapter 5 of the Health
- 8 and Safety Code in the name of Miguel Perez;
- 9           7.    Ordering Miguel Perez to pay the Bureau of Automotive Repair the reasonable costs
- 10 of the investigation and enforcement of this case, pursuant to Business and Professions Code
- 11 section 125.3; and,
- 12           8.    Taking such other and further action as deemed necessary and proper.

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DATED: 2/23/12      John Wallauch by Doug Balata  
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*  
Doug Balata  
Assist. Chief

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