

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

In the Matter of the Accusation Against:

OAKLAND TEST ONLY SMOG CENTER

ALEX PEREZ, Owner

1204 49th Avenue

Oakland, CA 94601

Automotive Repair Dealer Registration

No. ARD 246554

Smog Check, Test Only, Station License

No. TC 246554

and

ALEX PEREZ

2041 45th Avenue

Oakland, CA 94601

Advanced Emission Specialist Technician

License No. EA 148678

Respondents.

Case No. 79/12-04

OAH No. 2011091118

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 2/14/12.

DATED: 1/9/12



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
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
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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:

13 **OAKLAND TEST ONLY SMOG CENTER**
1204 49th Avenue
14 Oakland, CA 94601
ALEX PEREZ, OWNER
15 **Automotive Repair Dealer Registration**
No. ARD 246554
16 **Smog Check Test Only Station License**
No. TC 246554

17 and

18 **ALEX PEREZ**
2041 45th Avenue
19 Oakland, CA 94601
20 **Advanced Emission Specialist Technician License**
No. EA 148678

21 Respondents.
22

Case No. 79/12-04

OAH No. 2011091118

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

25 PARTIES

26 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She
27 brought this action solely in her official capacity and is represented in this matter by Kamala D.
28

1 Harris, Attorney General of the State of California, by Aspasia A. Papavassiliou, Deputy Attorney
2 General.

3 2. Respondent Alex Perez, individually and as owner of Oakland Test Only Smog
4 Center, is representing himself in this proceeding and has chosen not to exercise his right to be
5 represented by counsel.

6 3. On or about August 14, 2006, the Bureau of Automotive Repair issued Automotive
7 Repair Dealer Registration No. ARD 246554 to Respondent Alex Perez as owner of Oakland Test
8 Only Smog Center. The Automotive Repair Dealer Registration was in full force and effect at all
9 times relevant to the charges brought in Accusation No. 79/12-04 and will expire on July 31,
10 2012, unless renewed.

11 4. On or about August 22, 2006, the Bureau of Automotive Repair issued Smog Check
12 Test Only Station License No. TC 246554 to Respondent Alex Perez as owner of Oakland Test
13 Only Smog Center. The Smog Check Test Only Station License was in full force and effect at all
14 times relevant to the charges brought in Accusation No. 79/12-04 and will expire on July 31,
15 2012, unless renewed.

16 JURISDICTION

17 5. Accusation No. 79/12-04 was filed before the Director of Consumer Affairs
18 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
19 Respondent. The Accusation and all other statutorily required documents were properly served
20 on Respondent on August 12, 2011. Respondent timely filed his Notice of Defense contesting the
21 Accusation. A copy of Accusation No. 79/12-04 is attached as exhibit A and incorporated by
22 reference.

23 ADVISEMENT AND WAIVERS

24 6. Respondent has carefully read, and understands the charges and allegations in
25 Accusation No. 79/12-04. Respondent has also carefully read, and understands the effects of this
26 Stipulated Settlement and Disciplinary Order.

27 7. Respondent is fully aware of his legal rights in this matter, including the right to a
28 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at

1 his own expense; the right to confront and cross-examine the witnesses against him; the right to
2 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
3 the attendance of witnesses and the production of documents; the right to reconsideration and
4 court review of an adverse decision; and all other rights accorded by the California
5 Administrative Procedure Act and other applicable laws.

6 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
7 every right set forth above.

8 CULPABILITY

9 9. Respondent admits the truth of each and every charge and allegation in Accusation
10 No. 79/12-04.

11 10. Respondent agrees that his Automotive Repair Dealer Registration is subject to
12 discipline and he agrees to be bound by the Director's probationary terms as set forth in the
13 Disciplinary Order below.

14 CIRCUMSTANCES IN MITIGATION

15 11. Respondent Alex Perez has never been the subject of any disciplinary action. He is
16 admitting responsibility at an early stage in the proceedings.

17 RESERVATION

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

22 CONTINGENCY

23 13. This stipulation shall be subject to approval by the Director of Consumer Affairs or
24 his designee. Respondent understands and agrees that counsel for Complainant and the staff of
25 the Bureau of Automotive Repair may communicate directly with the Director and staff of the
26 Department of Consumer Affairs regarding this stipulation and settlement, without notice to or
27 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
28 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director

1 considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and
2 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
3 this paragraph, it shall be inadmissible in any legal action between the parties, and the Director
4 shall not be disqualified from further action by having considered this matter.

5 14. The parties understand and agree that facsimile copies of this Stipulated Settlement
6 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
7 effect as the originals.

8 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
9 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
10 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
11 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
12 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
13 writing executed by an authorized representative of each of the parties.

14 16. In consideration of the foregoing admissions and stipulations, the parties agree that
15 the Director may, without further notice or formal proceeding, issue and enter the following
16 Disciplinary Order:

17 **DISCIPLINARY ORDER**

18 IT IS ORDERED that Automotive Repair Dealer Registration No. ARD 246554, issued to
19 Respondent Alex Perez as owner of Oakland Test Only Smog Center, is invalidated; Smog Check
20 Test Only Station License No. TC 246554, issued to Respondent Alex Perez as owner of Oakland
21 Test Only Smog Center, is revoked; and Advanced Emission Specialist Technician License No.
22 EA 148678, issued to Respondent Alex Perez, is revoked. However, the invalidation and
23 revocations are stayed and Respondent is placed on probation for three (3) years on the following
24 terms and conditions.

25 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 246554 issued
26 to Respondent Alex Perez as owner of Oakland Test Only Smog Center, Smog Check Test Only
27 Station License No. TC 246554 issued to Respondent Alex Perez as owner of Oakland Test Only
28 Smog Center, and Advanced Emission Specialist Technician License No. EA 148678, issued to

1 Respondent Alex Perez are suspended for 15 consecutive days beginning on the effective date of
2 the decision.

3 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
4 automotive inspections, estimates and repairs.

5 3. **Post Sign.** In the case of the Automotive Repair Dealer and Smog Check Test Only
6 License suspension, post a prominent sign, provided by the Bureau, indicating the beginning and
7 ending dates of the suspension and indicating the reason for the suspension. The sign shall be
8 conspicuously displayed in a location open to and frequented by customers and shall remain
9 posted during the entire period of actual suspension.

10 4. **Reporting.** Respondent or Respondent's authorized representative must report in
11 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
12 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
13 maintaining compliance with the terms and conditions of probation.

14 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
15 any financial interest which any partners, officers, or owners of the Respondent facility may have
16 in any other business required to be registered pursuant to Section 9884.6 of the Business and
17 Professions Code.

18 6. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
19 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

20 7. **Jurisdiction.** If an accusation is filed against Respondent during the term of
21 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
22 until the final decision on the accusation, and the period of probation shall be extended until such
23 decision.

24 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
25 Respondent has failed to comply with the terms and conditions of probation, the Department may,
26 after giving notice and opportunity to be heard, temporarily or permanently invalidate
27 Respondent's Automotive Repair Dealer registration and suspend or revoke his Smog Check Test
28 Only Station License and Advanced Emission Specialist Technician License.

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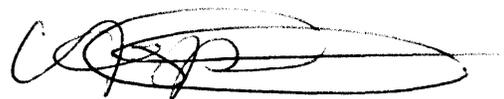
ENDORSEMENT

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

Dated: 11/21/11

Respectfully submitted,

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



ASPASIA A. PAPA VASSILIOU
Deputy Attorney General
Attorneys for Complainant

SF201090053

Exhibit A

Accusation No. 79/12-04

1 KAMALA D. HARRIS
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2 DIANN SOKOLOFF
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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. 79112-04

13 **OAKLAND TEST ONLY SMOG CENTER**
229 International Boulevard
14 Oakland, CA 94606
ALEX PEREZ, OWNER
Automotive Repair Dealer Registration
15 No. ARD 246554
Smog Check Test Only Station License
16 No. TC 246554

ACCUSATION
SMOG CHECK

17 and

18 **ALEX PEREZ**
2041 45th Avenue
19 Oakland, CA 94601
Advanced Emission Specialist Technician License
20 No. EA 148678

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

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

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1 the specific place of business which has violated any of the provisions of this chapter.
2 This violation, or action by the director, shall not affect in any manner the right of the
3 automotive repair dealer to operate his or her other places of business.

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

9
10 6. Code section 118, subdivision (b) states:

11 The suspension, expiration, or forfeiture by operation of law of a license
12 issued by a board in the department, or its suspension, forfeiture, or cancellation by
13 order of the board or by order of a court of law, or its surrender without the written
14 consent of the board, shall not, during any period in which it may be renewed,
15 restored, reissued, or reinstated, deprive the board of its authority to institute or
16 continue a disciplinary proceeding against the licensee upon any ground provided by
17 law or to enter an order suspending or revoking the license or otherwise taking
18 disciplinary action against the licensee on any such ground.

19
20 7. Code section 9884.9 states, in pertinent part:

21 (a) The automotive repair dealer shall give to the customer a written
22 estimated price for labor and parts necessary for a specific job. No work shall be done
23 and no charges shall accrue before authorization to proceed is obtained from the
24 customer. No charge shall be made for work done or parts supplied in excess of the
25 estimated price without the oral or written consent of the customer that shall be
26 obtained at some time after it is determined that the estimated price is insufficient and
27 before the work not estimated is done or the parts not estimated are supplied. Written
28 consent or authorization for an increase in the original estimated price may be
provided by electronic mail or facsimile transmission from the customer. The bureau
may specify in regulation the procedures to be followed by an automotive repair
dealer if an authorization or consent for an increase in the original estimated price is
provided by electronic mail or facsimile transmission. If that consent is oral, the
dealer shall make a notation on the work order of the date, time, name of person
authorizing the additional repairs and telephone number called, if any, together with a
specification of the additional parts and labor and the total additional cost, and shall
do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the
notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or
initials to an acknowledgment of notice and consent, if there is an oral consent of the
customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original
estimated price.

(signature or initials)"

1 8. 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 9. 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 10. 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 11. 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
15 director thereof, does any of the following:

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

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

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

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

27 13. Section 44072.8 of the Health and Safety Code states:

28 When a license has been revoked or suspended following a hearing under
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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COST RECOVERY

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

UNDERCOVER OPERATION – APRIL 15, 2010

15. On or about April 15, 2010, a Bureau undercover operator drove a Bureau-documented 1994 Toyota Corolla to Respondent’s facility and requested a smog inspection. The vehicle could not pass the visual portion of a smog inspection because the vehicle’s ignition timing was mis-adjusted. The operator signed a work order/estimate and was provided with a copy of that document prior to the smog inspection. Respondent performed the smog inspection and issued electronic Certificate of Compliance No. NS608015C for that vehicle. The operator paid \$69.95 for the smog inspection and received a copy of an invoice dated April 15, 2010, and the Vehicle Inspection Report (“VIR”).

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

16. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about April 15, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic Certificate of Compliance No. NS608015C for the 1994 Toyota Corolla, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle’s ignition timing was mis-adjusted.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

17. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about April 15, 2010, he committed acts which constitute fraud by issuing electronic Certificate of Compliance No. NS608015C for the 1994 Toyota Corolla, 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 18. Respondent has subjected his station license to discipline under Health and Safety
6 Code section 44072.2, subdivision (a), in that on or about April 15, 2010, regarding the 1994
7 Toyota Corolla, 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. NS608015C without properly testing and inspecting the vehicle to determine if it
15 was in compliance with section 44012 of that Code.

16 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
17 Compliance No. NS608015C by certifying that the vehicle had been inspected as required when,
18 in fact, it had not.

19 **FOURTH CAUSE FOR DISCIPLINE**

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

21 19. Respondent has subjected his station license to discipline under Health and Safety
22 Code section 44072.2, subdivision (c), in that on or about April 15, 2010, regarding the 1994
23 Toyota Corolla, he violated sections of the California Code of Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
25 electronic Certificate of Compliance No. NS608015C without performing a bona fide inspection
26 of the emission control devices and systems on that vehicle as required by Health and Safety
27 Code section 44012.

1 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
2 Compliance No. NS608015C by certifying that the vehicle had been inspected as required when,
3 in fact, it had not.

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

6 22. Respondent has subjected his technician license to discipline under Health and Safety
7 Code section 44072.2, subdivision (c), in that on or about April 15, 2010, regarding the 1994
8 Toyota Corolla, he violated sections of the California Code of Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
10 electronic Certificate of Compliance No. NS608015C without performing a bona fide inspection
11 of the emission control devices and systems on that vehicle as required by Health and Safety
12 Code section 44012.

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

15 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the
16 Emission Inspection System ("EIS") for electronic Certificate of Compliance No. NS608015C by
17 entering "Pass" for ignition timing and fuel evaporative controls functional test when, in fact, the
18 ignition timing was mis-adjusted and the low pressure fuel evaporative test had not been
19 performed.

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

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 23. Respondent has subjected his technician license to discipline under Health and Safety
25 Code section 44072.2, subdivision (d), in that on or about April 15, 2010, regarding the 1994
26 Toyota Corolla, he committed acts involving dishonesty, fraud or deceit whereby another was
27 injured by issuing electronic Certificate of Compliance No. NS608015C without performing a
28 bona fide inspection of the emission control devices and systems on that vehicle, thereby

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

3 **UNDERCOVER OPERATION – JULY 1, 2010**

4 24. On or about July 1, 2010, a Bureau undercover operator drove a Bureau-documented
5 1993 Honda Accord to Respondent's facility and requested a smog inspection. The vehicle could
6 not pass the smog inspection because the vehicle's ignition timing was mis-adjusted. The
7 operator signed a work order/estimate but was not provided with a copy of the document prior to
8 the smog inspection. Respondent performed the smog inspection and issued electronic Certificate
9 of Compliance No. NU628774C for that vehicle. The operator paid \$69.95 for the smog
10 inspection and received a copy of an invoice dated July 1, 2010, and the VIR.

11 **NINTH CAUSE FOR DISCIPLINE**

12 **(Misleading Statements)**

13 25. Respondent has subjected his registration to discipline under Code section 9884.7,
14 subdivision (a)(1), in that on or about July 1, 2010, he made statements which he knew or which
15 by exercise of reasonable care he should have known were untrue or misleading when he issued
16 electronic Certificate of Compliance No. NU628774C for the 1993 Honda Accord, certifying that
17 the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's
18 ignition timing was mis-adjusted.

19 **TENTH CAUSE FOR DISCIPLINE**

20 **(Failed to Provide a Copy of a Signed Document)**

21 26. Respondent has subjected his registration to discipline under Code section 9884.7,
22 subdivision (a)(3), in that on or about July 1, 2010, Respondent failed to provide the operator with
23 a copy of the work order as soon as he signed the document.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 27. Respondent has subjected his registration to discipline under Code section 9884.7,
27 subdivision (a)(4), in that on or about July 1, 2010, he committed acts which constitute fraud by
28 issuing electronic Certificate of Compliance No. NU628774C for the 1993 Honda Accord,

1 without performing a bona fide inspection of the emission control devices and systems on that
2 vehicle, thereby depriving the People of the State of California of the protection afforded by the
3 Motor Vehicle Inspection Program.

4 **TWELFTH CAUSE FOR DISCIPLINE**

5 **(Failure to Provide a Written Estimate Prior to Repairs)**

6 28. Respondent has subjected his registration to discipline under Code section 9884.7,
7 subdivision (a)(6), in that on or about July 1, 2010, Respondent failed to comply with Code
8 section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price
9 for parts and labor for a specific job regarding the smog inspection.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

12 29. Respondent has subjected his station license to discipline under Health and Safety
13 Code section 44072.2, subdivision (a), in that on or about July 1, 2010, regarding the 1993 Honda
14 Accord, he violated sections of that Code, as follows:

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

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

20 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
21 Compliance No. NU628774C without properly testing and inspecting the vehicle to determine if
22 it was in compliance with section 44012 of that Code.

23 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
24 Compliance No. NU628774C by certifying that the vehicle had been inspected as required when,
25 in fact, it had not.

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

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

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

8 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
9 Compliance No. NU628774C by certifying that the vehicle had been inspected as required when,
10 in fact, it had not.

11 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

13 33. Respondent has subjected his technician license to discipline under Health and Safety
14 Code section 44072.2, subdivision (c), in that on or about July 1, 2010, regarding the 1993 Honda
15 Accord, he violated sections of the California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic Certificate of Compliance No. NU628774C without performing a bona fide inspection
18 of the emission control devices and systems on that vehicle as required by Health and Safety
19 Code section 44012.

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

22 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
23 for electronic Certificate of Compliance No. NU628774C by entering "Pass" for ignition timing
24 and the fuel evaporative controls functional test when, in fact, the ignition timing was mis-
25 adjusted and the low pressure fuel evaporative test had not been performed.

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

28

1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

3 34. Respondent has subjected his technician license to discipline under Health and Safety
4 Code section 44072.2, subdivision (d), in that on or about July 1, 2010, regarding the 1993 Honda
5 Accord, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
6 issuing electronic Certificate of Compliance No. NU628774C without performing a bona fide
7 inspection of the emission control devices and systems on that vehicle, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 **UNDERCOVER OPERATION – JULY 22, 2010**

11 35. On or about July 22, 2010, a Bureau undercover operator drove a Bureau-documented
12 1995 Nissan Altima to Respondent's facility and requested a smog inspection. The vehicle could
13 not pass the smog inspection because the vehicle's ignition timing was mis-adjusted. The
14 operator signed a work order/estimate but was not provided with a copy of the document prior to
15 the smog inspection. Respondent performed the smog inspection and issued electronic Certificate
16 of Compliance No. NU933971C for that vehicle. The operator paid \$69.95 for the smog
17 inspection and received a copy of an invoice dated July 22, 2010, and the VIR.

18 **NINETEENTH CAUSE FOR DISCIPLINE**

19 **(Misleading Statements)**

20 36. Respondent has subjected his registration to discipline under Code section 9884.7,
21 subdivision (a)(1), in that on or about July 22, 2010, he made statements which he knew or which
22 by exercise of reasonable care he should have known were untrue or misleading when he issued
23 electronic Certificate of Compliance No. NU933971C for the 1995 Nissan Altima, certifying that
24 the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's
25 ignition timing was mis-adjusted.

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TWENTIETH CAUSE FOR DISCIPLINE

(Failed to Provide a Copy of a Signed Document)

37. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(3), in that on or about July 22, 2010, Respondent failed to provide the operator with a copy of the work order as soon as he signed the document.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Fraud)

38. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about July 22, 2010, he committed acts which constitute fraud by issuing electronic Certificate of Compliance No. NU933971C for the 1995 Nissan Altima, without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate Prior to Repairs)

39. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about July 22, 2010, Respondent failed to comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for parts and labor for a specific job regarding the smog inspection.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

40. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about July 22, 2010, regarding the 1995 Nissan Altima, he violated sections of that Code, as follows:

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 accordance with test procedures.

1 performing a bona fide inspection of the emission control devices and system on the vehicle,
2 thereby depriving the People of the State of California of the protection afforded by the Motor
3 Vehicle Inspection Program.

4 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

6 43. Respondent has subjected his technician license to discipline under Health and Safety
7 Code section 44072.2, subdivision (a), in that on or about July 22, 2010, regarding the 1995
8 Nissan Altima, he violated sections of that Code, as follows:

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

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

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

16 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
17 Compliance No. NU933971C by certifying that the vehicle had been inspected as required when,
18 in fact, it had not.

19 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

21 44. Respondent has subjected his technician license to discipline under Health and Safety
22 Code section 44072.2, subdivision (c), in that on or about July 22, 2010, regarding the 1995
23 Nissan Altima, he violated sections of the California Code of Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
25 electronic Certificate of Compliance No. NU933971C without performing a bona fide inspection
26 of the emission control devices and systems on that vehicle as required by Health and Safety
27 Code section 44012.

1 state by to Alex Perez doing business as Oakland Test Only Smog Center, upon a finding that he
2 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
3 pertaining to an automotive repair dealer.

4 48. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
5 License Number TC 246554, issued to Alex Perez doing business as Oakland Test Only Smog
6 Center, is revoked or suspended, any additional license issued under this chapter in the name of
7 said licensee may be likewise revoked or suspended by the director.

8 49. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
9 Technician License Number EA 148678, issued to Alex Perez, is revoked or suspended, any
10 additional license issued under this chapter in the name of said licensee may be likewise revoked
11 or suspended by the director.

12 **PRAYER**

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

15 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
16 Registration Number ARD 246554, issued to Alex Perez doing business as Oakland Test Only
17 Smog Center;

18 2. Revoking, suspending, or placing on probation any other automotive repair dealer
19 registration issued in the name Alex Perez;

20 3. Revoking or suspending Smog Check Test Only Station License Number TC 246554,
21 issued to Alex Perez doing business as Oakland Test Only Smog Center;

22 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of Alex Perez;

24 5. Revoking or suspending Advanced Emission Specialist Technician License Number
25 EA 148678, issued to Alex Perez;

26 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
27 and Safety Code in the name of Alex Perez;

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7. Ordering Alex Perez to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

8. Taking such other and further action as deemed necessary and proper.

DATED: 7/8/11



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

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