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

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

In the Matter of the Accusation Against: **OAKLAND TEST ONLY SMOG CENTER** **229 International Boulevard** **Oakland, CA 94606** **ALEX PEREZ, OWNER** **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 **ACCUSATION** **SMOG CHECK**

Complainant alleges:

PARTIES

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

///

///

Automotive Repair Dealer Registration

2. On or about August 14, 2006, the Bureau issued Automotive Repair Dealer Number ARD 246554 ("registration") to Alex Perez ("Respondent") doing business as Oakland Test Only Smog Center. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.

Smog Check Test Only Station License

3. On or about August 22, 2006, the Bureau issued Smog Check Test Only Station License Number TC 246554 ("station license") to Respondent. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.

Advanced Emission Specialist Technician License

4. On a date uncertain in 2004, the Bureau issued Advanced Emission Specialist Technician License Number EA 148678 ("technician license") to Respondent. The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

STATUTORY PROVISIONS

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

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation 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.
>
> (3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.
>
> (4) Any other conduct that 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 suspend, revoke, or place on probation 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 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.

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

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

7. Code section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written 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)"

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

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

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

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

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

12. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the 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.

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

> 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.

///

///

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

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

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

18. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about April 15, 2010, regarding the 1994 Toyota Corolla, 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.

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

c. **Section 44015, subdivision (b)**: Respondent issued electronic Certificate of Compliance No. NS608015C without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

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

FOURTH CAUSE FOR DISCIPLINE

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

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

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

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic Certificate of Compliance No. NS608015C even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about April 15, 2010, regarding the 1994 Toyota Corolla, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NS608015C for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

21. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about April 15, 2010, regarding the 1994 Toyota Corolla, 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.

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

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

///

///

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

SEVENTH CAUSE FOR DISCIPLINE

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

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

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

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

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

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

23. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about April 15, 2010, regarding the 1994 Toyota Corolla, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NS608015C 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.

UNDERCOVER OPERATION – JULY 1, 2010

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

NINTH CAUSE FOR DISCIPLINE

(Misleading Statements)

25. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about July 1, 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. NU628774C for the 1993 Honda Accord, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's ignition timing was mis-adjusted.

TENTH CAUSE FOR DISCIPLINE

(Failed to Provide a Copy of a Signed Document)

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

ELEVENTH CAUSE FOR DISCIPLINE

(Fraud)

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

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.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate Prior to Repairs)

28. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about July 1, 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.

THIRTEENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

29. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about July 1, 2010, regarding the 1993 Honda Accord, 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.

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

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

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

///

///

///

FOURTEENTH CAUSE FOR DISCIPLINE

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

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

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

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic Certificate of Compliance No. NU628774C even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

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

FIFTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

SIXTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

32. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about July 1, 2010, regarding the 1993 Honda Accord, 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.

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

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

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

SEVENTEENTH CAUSE FOR DISCIPLINE

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

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

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

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

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

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

EIGHTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

34. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about July 1, 2010, regarding the 1993 Honda Accord, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NU628774C 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.

UNDERCOVER OPERATION – JULY 22, 2010

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

NINETEENTH CAUSE FOR DISCIPLINE

(Misleading Statements)

36. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about July 22, 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. NU933971C for the 1995 Nissan Altima, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's ignition timing was mis-adjusted.

///

///

///

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.

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

c. **Section 44015, subdivision (b)**: Respondent issued electronic Certificate of Compliance No. NU933971C without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

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

TWENTY-FOURTH CAUSE FOR DISCIPLINE

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

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

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

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic Certificate of Compliance No. NU933971C even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

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

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

42. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about July 22, 2010, regarding the 1995 Nissan Altima, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NU933971C for that vehicle without

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

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

43. Respondent has subjected his technician 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.

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

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

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

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

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

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

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

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

c. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS for electronic Certificate of Compliance No. NU933971C by entering "Pass" for ignition timing and fuel evaporative controls functional test when, in fact, the ignition timing was mis-adjusted and the low pressure fuel evaporative test had not been performed.

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

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

45. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about July 22, 2010, regarding the 1995 Nissan Altima, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NU933971C 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.

PRIOR CITATIONS

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

a. On September 5, 2007, the Bureau issued Citation No. C08-0205 to Respondent against his registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a non-functional EGR valve. The Bureau assessed a civil penalty of $500. Respondent complied with this citation on October 9, 2007.

b. On January 14, 2008, the Bureau issued Citation No. C08-0609 to Respondent against his registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a missing TAC heat shroud hot air tube assembly. The Bureau assessed a civil penalty of $1,000. Respondent complied with this citation on February 25, 2008.

c. On September 5, 2007, the Bureau issued Citation No. M08-0206 to Respondent against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a non-functional EGR valve. Respondent was required to attend an 8-hour training course. Respondent complied with this citation on September 26, 2007.

d. On January 14, 2008, the Bureau issued Citation No. M08-0610 to Respondent against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing TAC heat shroud hot air tube assembly. Respondent was required to attend a 16-hour training course. Respondent complied with this citation on February 20, 2008.

OTHER MATTERS

47. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this

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

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

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

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

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

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

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

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

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

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

SF2010900537
10717999.doc