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

13 In the Matter of the Accusation Against:

Case No. 79/09-73

14 **SMOG TIME**

4360 Campus Drive, Suite E
15 Newport Beach, California 92660
ISHRAT MALIK, OWNER

A C C U S A T I O N

S M O G C H E C K

16 Automotive Repair Dealer Registration
No. ARD 221752
17 Smog Check Test Only Station No. TC 221752,

18 and

19 **DANNY MENDOZA**

802 Flower
20 Santa Ana, California 92703

Advanced Emission Specialist Technician
21 No. EA 144353

22 Respondents.

23
24 Sherry Mehl ("Complainant") alleges:

25 **PARTIES**

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

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

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

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

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

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

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

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

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

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

28 10. 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.

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11. 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.”

12. 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.

STATION INSPECTION - JUNE 18, 2008

13. On or about June 18, 2008, a Bureau representative went to Respondent Smog Time’s station to perform a quality assurance inspection. While in the parking lot of the facility, the representative observed Respondent Mendoza performing a smog inspection on a Honda Accord between 0908 hours and 0920 hours. Respondent removed the Honda Accord from the testing area. The representative accessed the Vehicle Information Database, which revealed that on June 18, 2008, between 0908 hours and 0920 hours, Respondent Mendoza issued Certificate of Compliance No. VR298982 to a 1988 Chevrolet pickup, California License Plate No. 4F20219; however, that vehicle was not in the testing bay at the time of the smog inspection. The Honda Accord was used to certify the 1988 Chevrolet pickup.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

14. Respondent Smog Time has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about June 18, 2008, 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. VR298982C for the 1988 Chevrolet pickup, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle had been clean piped.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 17. Respondent Smog Time has subjected his station license to discipline
4 under Health and Safety Code section 44072.2, subdivision (c), in that on or about June 18, 2008,
5 regarding the 1988 Chevrolet pickup, he violated sections of the California Code of Regulations,
6 title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent Smog Time falsely or
8 fraudulently issued electronic Certificate of Compliance No. VR298982C for that vehicle
9 without performing a bona fide inspection of the emission control devices and systems on that
10 vehicle as required by Health and Safety Code section 44012.

11 b. **Section 3340.35, subdivision (c):** Respondent Smog Time issued
12 electronic Certificate of Compliance No. VR298982C for that vehicle even though the vehicle
13 had not been inspected in accordance with section 3340.42 of that Code.

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

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 18. Respondent Smog Time subjected his station license to discipline under
19 Health and Safety Code section 44072.2, subdivision (d), in that on or about June 18, 2008,
20 regarding the 1988 Chevrolet pickup, he committed acts involving dishonesty, fraud or deceit
21 whereby another was injured by issuing electronic Certificate of Compliance No. VR298982C
22 for that vehicle without performing a bona fide inspection of the emission control devices and
23 systems on the vehicle, thereby depriving the People of the State of California of the protection
24 afforded by the Motor Vehicle Inspection Program.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 19. Respondent Mendoza has subjected his technician license to discipline
4 under Health and Safety Code section 44072.2, subdivision (a), in that on or about June 18, 2008,
5 regarding the 1988 Chevrolet pickup, he violated sections of that Code, as follows:

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

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

12 c. **Section 44032:** Respondent Mendoza failed to perform tests of the
13 emission control devices and systems on that vehicle in accordance with section 44012 of that
14 Code, in that the vehicle had been clean piped.

15 d. **Section 44059:** Respondent Mendoza entered false information for
16 electronic Certificate of Compliance No. VR298982C by certifying that the vehicle had been
17 inspected as required when, in fact, it had not.

18 **SEVENTH CAUSE FOR DISCIPLINE**

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

20 20. Respondent Mendoza has subjected his technician license to discipline
21 under Health and Safety Code section 44072.2, subdivision (c), in that on or about June 18, 2008,
22 regarding the 1988 Chevrolet pickup, he violated sections of the California Code of Regulations,
23 title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent Mendoza falsely or
25 fraudulently issued electronic Certificate of Compliance No. VR298982C for that vehicle
26 without performing a bona fide inspection of the emission control devices and systems on the
27 vehicle as required by Health and Safety Code section 44012.

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

3 c. Section 3340.41, subdivision (c): Respondent Mendoza entered false
4 information into the Emission Inspection System for electronic Certificate of Compliance No.
5 VR298982C for that vehicle by entering vehicle identification information or emission control
6 information for a vehicle other than the vehicle being tested.

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

9 **EIGHTH CAUSE FOR DISCIPLINE**

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

11 21. Respondent Mendoza has subjected his technician license to discipline
12 under Health and Safety Code section 44072.2, subdivision (d), in that on or about June 18,
13 2008, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
14 issuing electronic Certificate of Compliance No. VR298982C for the 1988 Chevrolet pickup
15 without performing a bona fide inspection of the emission control devices and systems on that
16 vehicle, thereby depriving the People of the State of California of the protection afforded by the
17 Motor Vehicle Inspection Program.

18 **OTHER MATTERS**

19 22. Under Code section 9884.7, subdivision (c), the director may invalidate
20 temporarily or permanently or refuse to validate, the registrations for all places of business
21 operated in this state by Ishrat Malik doing business as Smog Time, upon a finding that he has, or
22 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
23 an automotive repair dealer.

24 23. Under Health and Safety Code section 44072.8, if Smog Check Test Only
25 Station License Number TC 221752, issued to Ishrat Malik doing business as Smog Time, is
26 revoked or suspended, any additional license issued under this chapter in the name of said
27 licensee may be likewise revoked or suspended by the director.

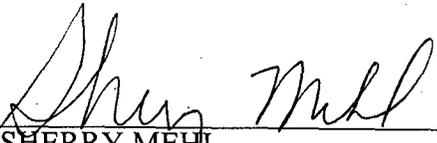
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7. Ordering Ishrat Malik and Danny Mendoza to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 2/17/09


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