

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

In the Matter of the Accusation Against:

**GLENDORA TEST ONLY & SMOG
HANNIBAL DABBOUS, Partner
HELLAL DABBOUS, Partner**
857 E. Arrow Highway
Glendora, California 91740

Automotive Repair Dealer Registration
No. ARD 247613
Smog Check, Test Only, Station License
No. TC 247613

Respondent.

Case No. 79/09-89

OAH No. 2009050162

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

The suspension of Automotive Repair Dealer Registration Number ARD 247613 and smog Check, Test Only, Station Number TC 247613 shall commence on the effective date of this Decision.

This Decision shall become effective 2/8/10.

IT IS SO ORDERED this 19th day of January, 2010.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

**GLENDORA TEST ONLY & SMOG,
HANNIBAL DABBOUS, PARTNER,
HELLAL DABBOUS, PARTNER,**

Automotive Repair Dealer Registration
No. ARD 247613

Smog Check Test Only Station
No. TC 247613

Respondent.

Case No. 79/09-89

OAH No. 2009050162

PROPOSED DECISION

This matter came on regularly for hearing on October 6, 2009, at Los Angeles, California, before David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California. Respondent Glendora Test Only & Smog was present by its partner, Hallel Dabbous, and was represented by Donna L. Ortlieb, Attorney at Law. Complainant Sherry Mehl was represented by Supervising Deputy Attorney General Gregory J. Salute.

Evidence was presented by way of testimony, documents and stipulation. The record was closed and the matter was submitted for decision on October 6, 2009.

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. The Accusation was brought by Complainant Sherry Mehl in her official capacity as Bureau Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

2. Automotive Repair Dealer Registration: On December 1, 2006, the Bureau issued Automotive Repair Dealer Registration Number ARD 247613 to Glendora Test Only & Smog (Respondent) with Hannibal Dabbous and Hallel Dabbous as partners. The registration expired on October 31, 2009, unless renewed.

3. Smog Check Test Only Station License: On December 5, 2006, the Bureau issued Smog Check Test Only Station Number TC 247613 to Respondent. The station license expired on October 31, 2009, unless renewed.

4. Respondent stipulated to the truth of the factual allegations set forth in the Accusation. Those allegations, at paragraphs 13 through 20, are repeated below.

“13. On October 20, 2008, a Bureau undercover using the alias Roberto Vasquez (‘operator’) drove a Bureau-documented 1999 Suzuki Grand Vitara to Respondent’s facility for a smog inspection. The vehicle could not pass a smog inspection because the vehicle’s evaporative system canister was missing. The operator was not provided with a copy of the estimate prior to the performance of the smog inspection. Garabet H. Sandjian, a licensed technician, performed the smog inspection and issued electronic Certificate of Compliance No. VT890381, certifying that he had tested and inspected the 1999 Suzuki Grand Vitara and that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection because the vehicle’s evaporative system canister was missing.

“14. Respondent’s registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1),¹ in that on or about October 20, 2008, Respondent made or authorized statements which it knew or in the exercise of reasonable care it should have known to be untrue or misleading by issuing electronic Certificate of Compliance No. VT890381 for the 1999 Suzuki Grand Vitara, certifying that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection because the vehicle’s evaporative canister was missing.

“15. Respondent’s registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(4), in that on or about October 20, 2008, it committed acts which constitute fraud by issuing electronic Certificate of Compliance No. VT890381 for the 1999 Suzuki Grand Vitara 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.

“16. Respondent’s registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(6), in that on or about October 20, 2008, Respondent failed to comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimate for parts and labor for a specific job.

“17. Respondent’s station license is subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about October 20, 2008, regarding the 1999 Suzuki Grand Vitara, Respondent failed to comply with the following sections of that Code:

¹ All statutory references are to the Business and Professions Code, unless otherwise indicated.

“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 those vehicles in accordance with procedures prescribed by the department.

“c. Section 44015, subdivision (b): Respondent issued electronic Certificate of Compliance No. VT890381 for that vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Safety Code section 44012.

“d. Section 44059: Respondent willfully made false entries for electronic Certificate of Compliance No. VT890381, by certifying that the vehicle had been inspected as required when, in fact, it had not.

“18. Respondent’s station license is subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about October 20, 2008, regarding the 1999 Suzuki Grand Vitara, Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

“a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued electronic Certificate of Compliance No. VT890381 for that vehicle, in that the vehicle could not pass the visual portion of the smog inspection because the vehicle’s evaporative system canister was missing.

“b. Section 3340.35, subdivision (c): Respondent issued electronic Certificate of Compliance No. VT890381 for that vehicle even though that vehicle had not been inspected in accordance with section 3340.42.

“c. Section 3340.42: Respondent failed to conduct the required smog tests on that vehicle in accordance with the Bureau’s specifications.

“19. Respondent’s station license is subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about October 20, 2008, Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic Certificate of Compliance No. VT890381 for the 1999 Suzuki Grand [Vitara] 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.

“20. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges as follows:

“a. On or about May 10, 2007, the Bureau issued Citation No. C07-0863 against Respondent’s registration and station licenses for violations of Health & Safety Code

section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover vehicle when the ignition timing was adjusted beyond the manufacturer's specifications. The Bureau assessed civil penalties totaling \$500 against Respondent for the violations. Respondent complied with this citation on July 16, 2007.

"b. On or about August 3, 2007, the Bureau issued Citation No. C08-0091 against Respondent's registration and station licenses for violations of Health & Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing pulse air injection system. The Bureau assessed civil penalties totaling \$1,000 against Respondent for the violations. Respondent complied with this citation on September 17, 2007.

"c. On or about December 17, 2007, the Bureau issued Citation No. C08-0566 against Respondent's registration and smog station licenses for violations of Health & Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover vehicle with a missing positive crankcase ventilation system. The Bureau assessed civil penalties totaling \$2,000 against Respondent for the violations. Respondent complied with this citation on February 4, 2008."

5. The Bureau seeks recovery of its reasonable costs of investigation and prosecution, summarized as follows:

a. Investigator costs: 19.5 hours, at rates ranging from \$72.68 to \$77.32 per hour, subtotal \$1,486.86;

b. Deputy Attorney General costs: The document containing this evidence, Exhibit 5, is for a case unrelated to this matter and, apparently, was submitted in error. The error was not discovered until after the record was closed. Therefore, there is no evidence of the costs attributable to work performed by the Deputy Attorney General.

The total reasonable costs proven are \$1,486.86.

6. Hannibal Dabbous, a medical doctor, and his brother formed Respondent partnership and purchased the station in 2006. Neither partner had any prior experience owning or operating a gas station and smog check station. They hired the smog check technician, Kevin Cheng, who had worked for the prior owner. After the first citation was

issued, Dr. Dabbous counseled Cheng to be more careful. After the second citation was issued, the partners fired Cheng and hired another technician. After the third citation was issued, the partners fired him and hired a third technician. Dr. Dabbous counseled this new technician that they had been issued three citations and they wanted him to be very careful in performing his job. With respect to all three citations, Dr. Dabbous attended conferences with representatives of the Bureau during which, among other things, he was given copies of the applicable laws and regulations and was instructed to assure that proper smog check inspections were performed.

7. Dr. Dabbous was present in the station about one-half day per week and his brother, Hellal Dabbous, was there every day for three to four hours. Dr. Dabbous closely supervised the latest technician for a week, and created a one-page report that the technician faxed to him every day to list, among other things, the number of cars that passed and the number that failed smog tests. Dr. Dabbous was satisfied that the technician was doing his job correctly, in part, because the daily reports showed a consistent number of cars, from 14 to 17 percent, failed the smog test.

8. There was no evidence of any other supervision over the technician. The partners did not review reports of the smog tests performed by the technician and did not confer with other technicians or business consultants to determine if there were other ways to supervise the technicians.

9. Dr. Dabbous presented evidence of a commendation for his service as a physician. He also owns a liquor store in Covina, since 2000, and there is no record of violations relating to that business.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judges makes the following legal conclusions:

1. The Bureau has authority to proceed against a licensee even after the license has expired, under Code section 9884.13 and Health and Safety Code section 44072.6.
2. Under Code section 9884.7, subdivision (a), the Bureau may discipline the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

[¶] . . . [¶]

“(4) Any other conduct which constitutes fraud.

[¶] . . . [¶]

“(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq.)] or regulations adopted pursuant to it.

3. Cause exists to suspend or revoke the registration of Respondent for violation of Code section 9884.7, subdivision (a)(1), for authorizing an untrue statement, in the form of a smog check report indicating that all necessary equipment was present when such statement was not true, as set forth in Factual Finding 4.

4. Cause exists to suspend or revoke the registration of Respondent for violation of Code section 9884.7, subdivision (a)(4), for conduct which constitutes fraud, as set forth in Factual Finding 4.

5. Cause exists to suspend or revoke the registration of Respondent for violation of section 9884.7, subdivision (a)(6), for failure to comply with the Automotive Repair Act, as set forth in Factual Finding 4.

6. Under Health and Safety Code section 44072.2, the director may suspend, revoke, or take other disciplinary action against a license if the licensee, or any partner 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.”

7. Cause exists to suspend or revoke the station license of Respondent for violation of Health and Safety Code section 44072.2, subdivision (a), for violation of the Motor Vehicle Inspection Program, as set forth in Factual Finding 4.

8. Cause exists to suspend or revoke the station license of Respondent for violation of Health and Safety Code section 44072.2, subdivision (c), for violation of regulations adopted by the Director, as set forth in Factual Finding 4.

9. Cause exists to suspend or revoke the station license of Respondent for violation of Health and Safety Code section 44072.2, subdivision (a), for committing an act involving dishonesty whereby another is injured, as set forth in Factual Finding 4.

10. Under Code section 125.3, the Bureau may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act in question to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

11. The evidence submitted in support of the request to recover costs, as set forth in Factual Finding 5, supports an award of reasonable costs of investigation and prosecution in the amount of \$1,486.86.

12. In consideration of the proper level of discipline to be imposed, the ALJ has consulted the Bureau's Guidelines for Disciplinary Penalties and Terms of Probation, available on the Bureau's website. This includes the factors in aggravation and in mitigation, as well as the proposed penalty guidelines. All of the circumstances herein support an outcome between the minimum and maximum recommended penalties for the two code sections for which violations were found. The public will be protected by a probationary order.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Automotive Repair Dealer Registration Number ARD 247613 (registration), and Smog Check Test Only Station Number TC 247613 (station license) of Respondent Glendora Test Only & Smog, are revoked; however, the revocations are stayed and the registration and station license are placed on probation for three years on the following terms and conditions.

1. Respondent shall pay costs to the Bureau of Automotive Repair in the amount of \$1,486.86.

2. The registration and station license are suspended for ten days.

3. Within 30 days of the effective date of this action, Respondent shall submit to the Bureau a written plan of action to address its failures to properly supervise its technicians.

4. Respondent shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

5. Respondent shall post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

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

7. Within 30 days of the effective date of this action, Respondent shall report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

8. Respondent shall provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

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

10. Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration and/or suspend or revoke the station license.

DATED: December 22, 2009.


DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 79/09-89

12 **GLENDORA TEST ONLY & SMOG**
857 E. Arrow Highway
13 Glendora, California 91740
HANNIBAL DABBOUS, PARTNER
14 **HELLAL DABBOUS, PARTNER**

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

15 Automotive Repair Dealer Registration
No. ARD 247613
16 Smog Check Test Only Station No. TC 247613

17 Respondent.
18

19 Sherry Mehl ("Complainant") alleges:

20 **PARTIES**

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

23 **Automotive Repair Dealer Registration**

24 2. On or about December 1, 2006, the Bureau issued Automotive Repair
25 Dealer Registration Number ARD 247613 ("registration") to Glendora Test Only & Smog
26 ("Respondent") with Hannibal Dabbous and Hellal Dabbous as partners. The registration will
27 expire on October 31, 2009, unless renewed.

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1 **Smog Check Test Only Station License**

2 3. On or about December 5, 2006, the Bureau issued Smog Check Test Only
3 Station Number TC 247613 ("station license") to Respondent. The station license will expire on
4 October 31, 2009, unless renewed.

5 **STATUTORY PROVISIONS**

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

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

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

19 (4) Any other conduct which constitutes fraud.

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

27 (c) Notwithstanding subdivision (b), the director may invalidate
28 temporarily or permanently, 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.

3. Code section 9884.9, subdivision (a), states:

(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

1 the customer. The bureau may specify in regulation the procedures to be followed
2 by an automotive repair dealer if an authorization or consent for an increase in the
3 original estimated price is provided by electronic mail or facsimile transmission.
4 If that consent is oral, the dealer shall make a notation on the work order of the
5 date, time, name of person authorizing the additional repairs and telephone
6 number called, if any, together with a specification of the additional parts and
7 labor and the total additional cost, and shall do either of the following:

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

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

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

15 _____
16 (signature or initials)"

17 Nothing in this section shall be construed as requiring an automotive
18 repair dealer to give a written estimated price if the dealer does not agree to
19 perform the requested repair.

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

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

28 8. 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.

9. 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.

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

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

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

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

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

13 COST RECOVERY

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

18 UNDERCOVER OPERATION - OCTOBER 20, 2008

19 13. On October 20, 2008, a Bureau undercover using the alias Roberto
20 Vasquez ("operator") drove a Bureau-documented 1999 Suzuki Grand Vitara to Respondent's
21 facility for a smog inspection. The vehicle could not pass a smog inspection because the
22 vehicle's evaporative system canister was missing. The operator was not provided with a copy of
23 the estimate prior to the performance of the smog inspection. Garabet H. Sandjian, a licensed
24 technician, performed the smog inspection and issued electronic Certificate of Compliance No.
25 VT890381, certifying that he had tested and inspected the 1999 Suzuki Grand Vitara and that the
26 vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not
27 have passed the visual portion of the smog inspection because the vehicle's evaporative system
28 canister was missing.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 14. Respondent's registration is subject to discipline pursuant to Code section
4 9884.7, subdivision (a)(1), in that on or about October 20, 2008, Respondent made or authorized
5 statements which it knew or in the exercise of reasonable care it should have known to be untrue
6 or misleading by issuing electronic Certificate of Compliance No. VT890381 for the 1999
7 Suzuki Grand Vitara, certifying that the vehicle was in compliance with applicable laws and
8 regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection
9 because the vehicle's evaporative canister was missing.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 15. Respondent's registration is subject to discipline pursuant to Code section
13 9884.7, subdivision (a)(4), in that on or about October 20, 2008, it committed acts which
14 constitute fraud by issuing electronic Certificate of Compliance No. VT890381 for the 1999
15 Suzuki Grand Vitara without performing a bona fide inspection of the emission control devices
16 and systems on that vehicle, thereby depriving the People of the State of California of the
17 protection afforded by the Motor Vehicle Inspection Program.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Failure to Provide Written Estimate)**

20 16. Respondent's registration is subject to discipline pursuant to Code section
21 9884.7, subdivision (a)(6), in that on or about October 20, 2008, Respondent failed to comply
22 with Code section 9884.9, subdivision (a), by failing to provide the operator with a written
23 estimate for parts and labor for a specific job.

24 **FOURTH CAUSE FOR DISCIPLINE**

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

26 17. Respondent's station license is subject to discipline pursuant to Health &
27 Safety Code section 44072.2, subdivision (a), in that on or about October 20, 2008,

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1 regarding the 1999 Suzuki Grand Vitara, Respondent failed to comply with the following
2 sections of that Code:

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

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

8 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate
9 of Compliance No. VT890381 for that vehicle without properly testing and inspecting the vehicle
10 to determine if it was in compliance with Health & Safety Code section 44012.

11 d. **Section 44059:** Respondent willfully made false entries for electronic
12 Certificate of Compliance No. VT890381, by certifying that the vehicle had been inspected as
13 required when, in fact, it had not.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Regulations Pursuant
16 to the Motor Vehicle Inspection Program)**

17 18. Respondent's station license is subject to discipline pursuant to Health &
18 Safety Code section 44072.2, subdivision (c), in that on or about October 20, 2008, regarding the
19 1999 Suzuki Grand Vitara, Respondent failed to comply with provisions of California Code of
20 Regulations, title 16, as follows:

21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
22 issued electronic Certificate of Compliance No. VT890381 for that vehicle, in that the vehicle
23 could not pass the visual portion of the smog inspection because the vehicle's evaporative system
24 canister was missing.

25 b. **Section 3340.35, subdivision (c):** Respondent issued electronic
26 Certificate of Compliance No. VT890381 for that vehicle even though that vehicle had not been
27 inspected in accordance with section 3340.42.

28 ///

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

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 19. Respondent's station license is subject to discipline pursuant to Health &
6 Safety Code section 44072.2, subdivision (d), in that on or about October 20, 2008, Respondent
7 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
8 Certificate of Compliance No. VT890381 for the 1999 Suzuki Grand without performing a bona
9 fide inspection of the emission control devices and systems on that vehicle, thereby depriving the
10 People of the State of California of the protection afforded by the Motor Vehicle Inspection
11 Program.

12 **PRIOR CITATIONS**

13 20. To determine the degree of discipline, if any, to be imposed on
14 Respondent, Complainant alleges as follows:

15 a. On or about May 10, 2007, the Bureau issued Citation No. C07-0863
16 against Respondent's registration and station licenses for violations of Health & Safety Code
17 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
18 devices according to procedures prescribed by the department), and California Code of
19 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
20 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
21 Bureau undercover vehicle when the ignition timing was adjusted beyond the manufacturer's
22 specifications. The Bureau assessed civil penalties totaling \$500 against Respondent for the
23 violations. Respondent complied with this citation on July 16, 2007.

24 b. On or about August 3, 2007, the Bureau issued Citation No. C08-0091
25 against Respondent's registration and station licenses for violations of Health & Safety Code
26 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
27 devices according to procedures prescribed by the department), and California Code of
28 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of

1 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
2 Bureau undercover vehicle with a missing pulse air injection system. The Bureau assessed civil
3 penalties totaling \$1,000 against Respondent for the violations. Respondent complied with this
4 citation on September 17, 2007.

5 c. On or about December 17, 2007, the Bureau issued Citation No.
6 C08-0566 against Respondent's registration and smog station licenses for violations of Health &
7 Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of
8 emission control devices according to procedures prescribed by the department), and California
9 Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a
10 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of
11 compliance to a Bureau undercover vehicle with a missing positive crankcase ventilation system.
12 The Bureau assessed civil penalties totaling \$2,000 against Respondent for the violations.
13 Respondent complied with this citation on February 4, 2008.

14 OTHER MATTERS

15 21. Pursuant to Code section 9884.7, subdivision (c), the Director may
16 invalidate temporarily or permanently or refuse to validate, the registrations for all places of
17 business operated in this state by Glendora Test Only & Smog upon a finding that it has, or is,
18 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
19 automotive repair dealer.

20 22. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test
21 and Repair Station License Number TC 247613, issued to Glendora Test Only & Smog, is
22 revoked or suspended, any additional license issued under this chapter in the name of said
23 licensee may be likewise revoked or suspended by the director.

24 PRAYER

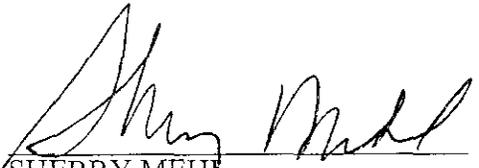
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

27 1. Temporarily or permanently invalidating Automotive Repair Dealer
28 Registration Number ARD 247613, issued to Glendora Test Only & Smog;

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2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Glendora Test Only & Smog;
3. Revoking or suspending Smog Check Test Only Station License Number TC 247613, issued to Glendora Test Only & Smog;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Glendora Test Only & Smog;
7. Ordering Glendora Test Only & Smog to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
8. Taking such other and further action as deemed necessary and proper.

DATED: 3/26/09


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