

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

In the Matter of the Accusation Against:

SMOG TIME

4360 Campus Drive, Suite E
Newport Beach, California 92660

ISHRAT MALIK, Owner

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

and

DANNY MENDOZA

802 Flower Street
Santa Ana, California 92703

Advanced Emission Specialist Technician
License No. EA 144353

Respondents.

Case No. 79/09-73

DECISION

The attached Stipulated Revocation and Disciplinary Order As To Respondent Danny Mendoza is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Danny Mendoza, Advanced Emission Specialist Technician License No. EA 144353.

This Decision shall become effective 7/2/09.

DATED: June 2, 2009

P. J. Harris

PATRICIA HARRIS
Acting Chief Deputy Director
Department of Consumer Affairs

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN, State Bar No. 103312
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5
6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2617
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79/09-73

13 **SMOG TIME**
4360 Campus Drive, Suite E
14 Newport Beach, California 92660
ISHRAT MALIK, OWNER
15
16 Automotive Repair Dealer Registration
No. ARD 221752
17 Smog Check Test Only Station No. TC 221752,

**STIPULATED REVOCATION
AND DISCIPLINARY ORDER
AS TO RESPONDENT DANNY
MENDOZA**

18 and
19 **DANNY MENDOZA**
802 Flower Street
Santa Ana, California 92703
20
21 Advanced Emission Specialist Technician
No. EA 144353

Respondents.

22
23 IT IS HEREBY STIPULATED AND AGREED by and between Complainant and
24 Respondent Danny Mendoza that the following matters are true:

25 PARTIES

26 1. Complainant Sherry Mehl (Complainant) is the Chief of the Bureau of
27 Automotive Repair (Bureau). She brought this action solely in her official capacity and is
28 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,

1 by G. Michael German, Deputy Attorney General.

2 2. Respondent Danny Mendoza is represented by Maria L. Mendoza, P.O. Box 1630
3 Gonzales, CA 93926, (phone and fax 831-443-9522).

4 3. On a date uncertain in 2001, the Bureau issued Advanced Emission Specialist
5 Technician Number EA 144353 (technician license) to Respondent. The technician license will
6 expire on September 30, 2009, unless renewed. Respondent's technician license was in full
7 force and effect at all times relevant to the charges brought herein.

8 JURISDICTION

9 4. Accusation No. 79/09-73 was filed before the Director of Consumer Affairs
10 (Director), for the Bureau, and is currently pending against Respondents. The Accusation and all
11 other statutorily required documents were properly served on Respondents on February 20, 2009.
12 On February 26, 2009, Respondent timely filed his Notice of Defense contesting the Accusation.
13 A true and correct copy of Accusation No. 79/09-73 is attached as exhibit A and incorporated
14 herein by reference.

15 ADVISEMENT AND WAIVERS

16 5. Respondent has carefully read, fully discussed with counsel, and understand the
17 charges and allegations in Accusation No. 79/09-73. Respondent has also carefully read, fully
18 discussed with counsel, and understands the effects of this Stipulated Revocation and
19 Disciplinary Order.

20 6. Respondent is fully aware of his legal rights in this matter, including the right to a
21 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
22 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
23 to the issuance of subpoenas to compel the attendance of witnesses and the production of
24 documents; the right to reconsideration and court review of an adverse decision; and all other
25 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation contained in
3 Accusation No. 79/09-73.

4 10. Respondent agrees that his technician license is subject to discipline and agrees to
5 be bound by the Director's imposition of discipline as set forth in the Disciplinary Order below.

6 CONTINGENCY

7 11. This stipulation shall be subject to approval by the Director of Consumer Affairs
8 or her designee. Respondent understands and agrees that counsel for Complainant and the staff
9 of the Bureau may communicate directly with the Director and staff of the Department of
10 Consumer Affairs regarding this stipulation and settlement, without notice to or participation by
11 Respondent. By signing the stipulation, Respondent understands and agrees that he may not
12 withdraw his agreement or seek to rescind the stipulation prior to the time the Director considers
13 and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the
14 Stipulated Revocation and Disciplinary Order shall be of no force or effect, except for this
15 paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall
16 not be disqualified from further action by having considered this matter.

17 12. The parties understand and agree that facsimile copies of this Stipulated
18 Revocation and Disciplinary Order, including facsimile signatures thereto, shall have the same
19 force and effect as the originals.

20 13. In consideration of the foregoing admissions and stipulations, the parties agree
21 that the Director may, without further notice or formal proceeding, issue and enter the following
22 Disciplinary Order:

23 DISCIPLINARY ORDER

24 IT IS HEREBY ORDERED that Advanced Emission Specialist Technician license No.
25 EA 144353 (technician license) issued to Respondent Danny Mendoza is revoked.

26 1. The revocation of Respondent's technician license shall constitute the imposition
27 of discipline against Respondent. This stipulation and order constitutes a record of the discipline
28 and shall become a part of Respondent's license history with the Bureau.

1 2. Respondent shall lose all rights and privileges as a licensed smog technician as of
2 the effective date of the Director's Decision and Order.

3 3. Respondent shall cause to be delivered to the Bureau his wall license and pocket
4 license certificate, if issued, on or before the effective date of the Decision and Order.

5 4. Respondent shall not petition for reinstatement or apply for any new registration
6 or license with the Bureau for a period of one year from the effective date of this Decision and
7 Order. If Respondent ever applies for licensure or petitions for reinstatement in the state of
8 California, the Bureau shall treat it as a new application for licensure. Respondent must comply
9 with all the laws, regulations and procedures for licensure in effect at the time the application or
10 petition is filed.

11 5. If Respondent should ever apply or reapply for a new license or certification, or
12 petition for reinstatement of a license, all of the charges and allegations contained in Accusation
13 No. 79/09-73 shall be deemed to be true, correct, and admitted by Respondent for the purpose of
14 any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

15 6. Pursuant to Business & Professions Code section 125.3, the costs of investigation
16 and enforcement of this case are \$5,272.86 through April 9, 2009. The Board waives all but
17 \$1,022.86 of this cost recovery as to Respondent unless and until Respondent petitions for
18 reinstatement or applies for a new license, in which case Respondent shall pay \$1,022.86 in full
19 when petitioning or reapplying. The Board's partial waiver and deferral of these costs in no way
20 absolves Respondent of any responsibility he may or may not bear to his co-Respondents Smog
21 Time and Ishrat Malik, Owner, for their share of costs.

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ACCEPTANCE

I have carefully read the Stipulated Revocation and Disciplinary Order and understand the effect it will have on my technician license. I enter into this Stipulated Revocation and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

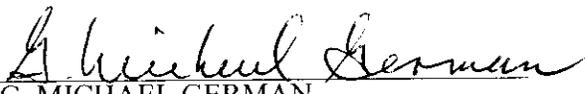
DATED: 5/12/09 
DANNY MENDOZA
Respondent

I have read and fully discussed with Respondent the terms and conditions and other matters contained in the above Stipulated Revocation and Disciplinary Order. I approve its form and content.

DATED: _____
MARIA L. MENDOZA
Attorney for Respondent Danny Mendoza

ENDORSEMENT

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

DATED: May 21, 2009 EDMUND G. BROWN JR., Attorney General
of the State of California

G. MICHAEL GERMAN
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

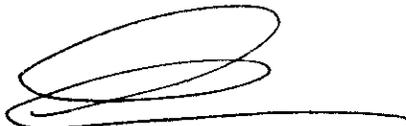
I have carefully read the Stipulated Revocation and Disciplinary Order and understand the effect it will have on my technician license. I enter into this Stipulated Revocation and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: _____

DANNY MENDOZA
Respondent

I have read and fully discussed with Respondent the terms and conditions and other matters contained in the above Stipulated Revocation and Disciplinary Order. I approve its form and content.

DATED: 05-08-09

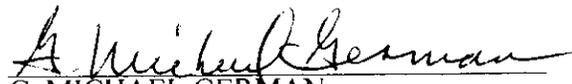


MARIA L. MENDOZA
Attorney for Respondent Danny Mendoza

ENDORSEMENT

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

DATED: May 21, 2009

EDMUND G. BROWN JR., Attorney General
of the State of California


G. MICHAEL GERMAN
Deputy Attorney General
Attorneys for Complainant

Exhibit A
Accusation No. 79/09-73

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER, State Bar No. 101336
Supervising Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9 **BEFORE THE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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14 Newport Beach, California 92660
ISHRAT MALIK, OWNER
15
Automotive Repair Dealer Registration
16 No. ARD 221752
Smog Check Test Only Station No. TC 221752,

ACCUSATION
SMOG CHECK

17 and

18 **DANNY MENDOZA**
19 802 Flower
Santa Ana, California 92703
20
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 **Automotive Repair Dealer Registration**

2 2. On or about May 21, 2002, the Bureau issued Automotive Repair Dealer
3 Registration Number ARD 221752 ("registration") to Ishrat Malik ("Respondent Smog Time")
4 doing business as Smog Time. The registration will expire on May 31, 2009, unless renewed.

5 **Smog Check Test Only Station License**

6 3. On or about May 31, 2002, the Bureau issued Smog Check Test Only
7 Station Number TC 221752 ("station license") to Respondent Smog Time. The station license
8 will expire on May 31, 2009, unless renewed.

9 **Advanced Emission Specialist Technician License**

10 4. On a date uncertain in 2001, the Bureau issued Advanced Emission
11 Specialist Technician Number EA 144353 ("technician license") to Danny Mendoza
12 ("Respondent Mendoza"). The technician license will expire on September 30, 2009, unless
13 renewed.

14 **STATUTORY PROVISIONS**

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

17 (a) The director, where the automotive repair dealer cannot show there was
18 a bona fide error, may refuse to validate, or may invalidate temporarily or
19 permanently, the registration of an automotive repair dealer for any of the
20 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.

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

24 (4) Any other conduct which constitutes fraud.

25 (b) Except as provided for in subdivision (c), if an automotive repair
26 dealer operates more than one place of business in this state, the director pursuant
27 to subdivision (a) shall only invalidate temporarily or permanently 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.

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

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

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

9 **STATION INSPECTION - JUNE 18, 2008**

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

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Misleading Statements)**

21 14. Respondent Smog Time has subjected his registration to discipline under
22 Code section 9884.7, subdivision (a)(1), in that on or about June 18, 2008, he made statements
23 which he knew or which by exercise of reasonable care he should have known were untrue or
24 misleading when he issued electronic Certificate of Compliance No. VR298982C for the 1988
25 Chevrolet pickup, certifying that the vehicle was in compliance with applicable laws and
26 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.

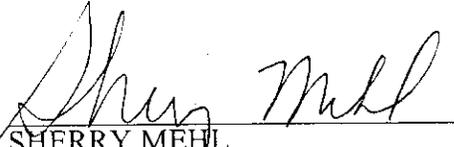
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7. Ordering Ishrat Malik and Danny Mendoza to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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