

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 SHANA A. BAGLEY  
Deputy Attorney General  
4 State Bar No. 169423  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2129  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 79/11-59

13 **MILLBRAE AUTO SERVICE AND TUNE, INC., DBA**  
14 **SPEEDEE OIL CHANGE & TUNE UP**  
390 El Camino Real  
15 Millbrae, CA 94030  
16 **TONY MAK, AKA**  
**TONY GESHEN MAK, AKA**  
**TONY GE SHEN MAK, PRESIDENT**  
Automotive Repair Dealer Registration No. ARD 239780  
Smog Check Station License No. RC 239780

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

17 **TONY GESHEN MAK, AKA**  
18 **TONY MAK, AKA**  
19 **TONY GE SHEN MAK**  
5500 Anza Street  
20 San Francisco, CA 94121  
Advanced Emission Specialist Technician License  
21 No. EA 142885

22 Respondents.

23 Complainant alleges:

24 **PARTIES**

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

27 ///

28 ///



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

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

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

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

17 9. Section 44072.2 of the Health and Safety Code states:

18 The director may suspend, revoke, or take other disciplinary action  
19 against 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  
25 this 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.

///

///

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  
3 this article, any additional license issued under this chapter in the name of the  
licensee may be likewise revoked or suspended by the director.

4 **COST RECOVERY**

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

9 **UNDERCOVER OPERATION –JANUARY 6, 2010**

10 13. On or about January 6, 2010, a Bureau undercover operator drove a Bureau-  
11 documented 1994 Toyota Corolla to Respondent's facility and requested a smog inspection. The  
12 operator filled out, signed, and received a copy of Work Order No. 268526. The vehicle could  
13 not pass the functional portion of a smog inspection because the vehicle's ignition timing was  
14 adjusted beyond the manufacturer's specifications. Chuong Hoang Pham, a licensed technician,  
15 performed the smog inspection and issued electronic Certificate of Compliance No. WF655813  
16 for that vehicle even though the vehicle could not have passed the functional portion of the smog  
17 inspection. The operator paid \$68.24 for the smog inspection and received a copy of Invoice No.  
18 268526 and the Vehicle Inspection Report ("VIR").

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Misleading Statements)**

21 14. Respondent has subjected its registration to discipline under Code section 9884.7,  
22 subdivision (a)(1), in that on or about January 6, 2010, it made statements which it knew or which  
23 by exercise of reasonable care it should have known were untrue or misleading when it issued  
24 electronic Certificate of Compliance No. WF655813 for the 1994 Toyota Corolla, certifying that  
25 the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's  
26 ignition timing was adjusted beyond the manufacturer's specifications.

27 ///

28 ///





1 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
2 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)  
3 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a  
4 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the  
5 manufacturer's specifications. The Bureau assessed a civil penalty of \$500. Respondent  
6 complied with this citation on February 11, 2009.

7 b. On April 23, 2009, the Bureau issued Citation No. C09-1227 to Respondent against  
8 its registration and station licenses for violations of Health and Safety Code section 44012,  
9 subdivision (f) (failure to perform a visual/functional check of emission control devices) and  
10 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
11 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with  
12 missing air injection components. The Bureau assessed a civil penalty of \$1,000. Respondent  
13 appealed the citation on June 3, 2009. On November 29, 2009, a Decision was rendered  
14 upholding the citation. Respondent complied with this citation on November 30, 2009.

15 c. On November 2, 2009, the Bureau issued Citation No. C2010-0434 to Respondent  
16 against its registration and station licenses for violations of Health and Safety Code section  
17 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
18 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
19 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a  
20 missing pulse air injection reactor system. The Bureau assessed a civil penalty of \$2,000.  
21 Respondent complied with this citation on January 12, 2010.

22 **OTHER MATTERS**

23 20. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
24 or permanently or refuse to validate, the registrations for all places of business operated in this  
25 state by Millbrae Auto Service and Tune, Inc., doing business as Speedee Oil Change & Tune Up,  
26 upon a finding that it has, or is, engaged in a course of repeated and willful violations of the laws  
27 and regulations pertaining to an automotive repair dealer.

28 ///

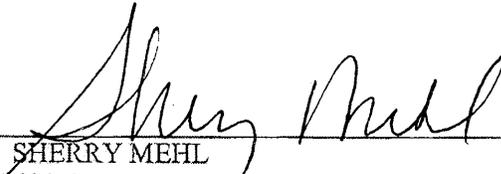


1           7.     Ordering Millbrae Auto Service and Tune, Inc., doing business as Speedee Oil  
2 Change & Tune Up and Tony Mak, also known as Tony Geshen Mak and Tony Ge Shen Mak to  
3 pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement  
4 of this case, pursuant to Business and Professions Code section 125.3; and,

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

6  
7  
8 DATED: \_\_\_\_\_

1/25/11



SHERRY MEHL

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

*Complainant*

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 SF2010200908  
10643267.doc