

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

In the Matter of the Accusation Against:

MILLBRAE AUTO SERVICE AND TUNE, INC.
dba SPEEDEE OIL CHANGE & TUNE UP
TONY MAK, aka TONY GESHEN MAK,
aka TONY GE SHEN MARK, President
390 El Camino Real
Millbrae, CA 94030

Case No. 79/11-59

Automotive Repair Dealer Registration
No. ARD 239780
Smog Check Station License No. RC 239780

TONY GESHEN MAK
aka TONY MAK,
aka TONY GE SHEN MAK
5500 Anza Street
San Francisco, CA 94121

Advanced Emission Specialist Technician
License No. EA 142885

Respondent.

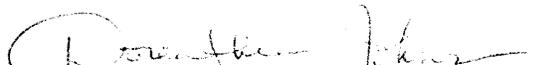
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

The suspension of Automotive Repair Dealer Registration No. ARD 239780 and Smog Check Station License No. RC 239780 shall commence on the effective date of this Decision.

This Decision shall become effective 12/30/11.

DATED: November 21, 2011


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
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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 SPEEDEE OIL CHANGE &
TUNE UP

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **390 El Camino Real**
Millbrae, CA 94030

15 **TONY MAK, AKA TONY GESHEN MAK,**
AKA TONY GE SHEN MAK, PRESIDENT

16 **Automotive Repair Dealer Registration No.**
17 **ARD 239780**

18 **Smog Check Station License No. RC 239780**

19 **TONY GESHEN MAK, AKA**

20 **TONY MAK, AKA**

21 **TONY GE SHEN MAK**

5500 Anza Street

22 **San Francisco, CA 94121**

23 **Advanced Emission Specialist Technician**

License No. EA 142885

24 Respondent.

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1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 PARTIES

4 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She
5 brought this action solely in her official capacity and is represented in this matter by Kamala D.
6 Harris, Attorney General of the State of California, by Shana A. Bagley, Deputy Attorney
7 General.

8 2. Respondent Millbrae Auto Service And Tune, Inc., DBA Speedee Oil Change &
9 Tune Up, with Tony Mak as President, (Respondent) is representing itself in this proceeding and
10 has chosen not to exercise its right to be represented by counsel.

11 3. On or about July 20, 2005, the Bureau of Automotive Repair issued Automotive
12 Repair Dealer Registration No. ARD 239780 to Tony Mak (Respondent). The Automotive
13 Repair Dealer Registration was in full force and effect at all times relevant to the charges brought
14 in Accusation No. 79/11-59 and will expire on May 31, 2012, unless renewed.

15 4. On or about August 4, 2005, the Bureau of Automotive Repair issued Smog Check
16 Station License No. RC 239780 to Respondent. The Smog Check Station License was in full
17 force and effect at all times relevant to the charges brought in Accusation No. 79/11-59 and will
18 expire on May 31, 2012, unless renewed.

19 5. On a date uncertain in 2003, the Bureau of Automotive Repair issued Advanced
20 Emission Specialist Technician License No. EA 142885 to Respondent Tony Geshen Mak, also
21 known as Tony Mak and Tony Ge Shen Mak. The Advanced Emission Specialist Technician
22 License was in full force and effect at all times relevant to the charges brought in Accusation No.
23 79/11-59 and will expire on August 31, 2011, unless renewed.

24 JURISDICTION

25 6. Accusation No. 79/11-59 was filed before the Director of Consumer Affairs
26 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
27 Respondent. The Accusation and all other statutorily required documents were properly served
28 on Respondent on January 28, 2011. Respondent timely filed its Notice of Defense contesting the

1 Accusation. A copy of Accusation No. 79/11-59 is attached as Exhibit "A" and incorporated in
2 this Stipulated Settlement and Disciplinary Order by reference.

3 ADVISEMENT AND WAIVERS

4 7. Respondent has carefully read, and understands the charges and allegations in
5 Accusation No. 79/11-59. Respondent has also carefully read, and understands the effects of this
6 Stipulated Settlement and Disciplinary Order.

7 8. Respondent is fully aware of its legal rights in this matter, including the right to a
8 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
9 its own expense; the right to confront and cross-examine the witnesses against them; the right to
10 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
11 the attendance of witnesses and the production of documents; the right to reconsideration and
12 court review of an adverse decision; and all other rights accorded by the California
13 Administrative Procedure Act and other applicable laws.

14 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
15 every right set forth above.

16 CULPABILITY

17 10. Respondent admits the truth of each and every charge and allegation in Accusation
18 No. 79/11-59.

19 11. Respondent agrees that its Automotive Repair Dealer Registration, Smog Check
20 Station License, and Advanced Emission Specialist Technician License are subject to discipline
21 and it agrees to be bound by the Director's probationary terms as set forth in the Disciplinary
22 Order below.

23 CIRCUMSTANCES IN MITIGATION

24 12. Respondent has never been the subject of any disciplinary action. It is admitting
25 responsibility at an early stage in the proceedings.

26 CONTINGENCY

27 13. This stipulation shall be subject to approval by the Director of Consumer Affairs or
28 his designee. Respondent understands and agrees that counsel for Complainant and the staff of

1 the Bureau of Automotive Repair may communicate directly with the Director and staff of the
2 Department of Consumer Affairs regarding this stipulation and settlement, without notice to or
3 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
4 it may not withdraw its agreement or seek to rescind the stipulation prior to the time the Director
5 considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and
6 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
7 this paragraph, it shall be inadmissible in any legal action between the parties, and the Director
8 shall not be disqualified from further action by having considered this matter.

9 14. The parties understand and agree that facsimile copies of this Stipulated Settlement
10 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
11 effect as the originals.

12 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
13 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
14 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
15 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
16 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
17 writing executed by an authorized representative of each of the parties.

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

21 **DISCIPLINARY ORDER**

22 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD239780,
23 issued to Respondent, Smog Check Station License No. RC239780, issued to Respondent, and
24 Advanced Emission Specialist Technician License No. EA 142885, issued to Respondent Tony
25 Mak, are revoked. However, the revocations are stayed and Respondent Millbrae Auto Service
26 And Tune, Inc., DBA Speedee Oil Change & Tune Up, with Tony Mak as President, and
27 Respondent Tony Mak are placed on probation for three (3) years on the following terms and
28 conditions.

1 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD239780, issued
2 to Respondent, is suspended for 10 days. Smog Check Station License No. RC239780, issued to
3 Respondent, is suspended for 10 days.

4 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
5 automotive inspections, estimates and repairs.

6 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
7 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
8 conspicuously displayed in a location open to and frequented by customers and shall remain
9 posted during the entire period of actual suspension.

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

14 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
15 any financial interest which any partners, officers, or owners of the Respondent facility may have
16 in any other business required to be registered pursuant to Section 9884.6 of the Business and
17 Professions Code.

18 6. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
19 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

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

24 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
25 Respondent has failed to comply with the terms and conditions of probation, the Department may,
26 after giving notice and opportunity to be heard temporarily or permanently invalidate the
27 registration revoke the licenses and/or registration.

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1 9. **Continuing Education Courses.** During the period of probation, Respondent shall
2 attend and successfully complete the Bureau's Advanced Clean Air Car Course. Said course shall
3 be completed and proof of completion submitted to the Bureau within 6 months of the effective
4 date of this decision and order. If proof of completion of the course is not furnished to the Bureau
5 within the 6-month period, Respondents' licenses and registrations shall be immediately
6 suspended until such proof is received.

7 10. **Restrictions.** During the period of probation, Respondent shall not perform any form
8 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,
9 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to
10 properly perform such work, and BAR has been given 10 days notice of the availability of the
11 equipment for inspection by a BAR representative.

12 11. **Cost Recovery.** Respondent shall pay to the Bureau, pursuant to Business and
13 Professions Code section 125.3, the costs of investigation and enforcement in this matter in the
14 amount of \$8,901.86. Payment to the Bureau of the full amount of cost recovery shall be
15 received no later than 6 months before probation terminates. Failure to complete payment of cost
16 recovery within this time frame shall constitute a violation of probation which may subject
17 Respondent's licenses and registration to outright revocation; however, the Director or the
18 Director's Bureau of Automotive Repair designee may elect to continue probation until such time
19 as reimbursement of the entire cost recovery amount has been made to the Bureau.

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Exhibit "A"

Accusation No. 79/11-59

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2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
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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
17
18 **TONY GESHEN MAK, AKA**
TONY MAK, AKA
TONY GE SHEN MAK
19 5500 Anza Street
San Francisco, CA 94121
20 Advanced Emission Specialist Technician License
No. EA 142885
21
22 Respondents.

Case No. 79/11-59

ACCUSATION
SMOG CHECK

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.

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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.

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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
3 this article, any additional license issued under this chapter in the name of the
4 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.

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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.

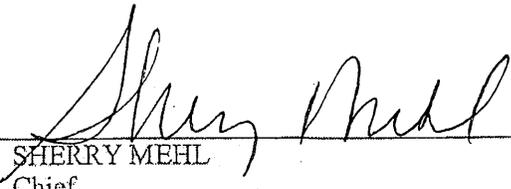
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7. Ordering Millbrae Auto Service and Tune, Inc., doing business as Speedee Oil Change & Tune Up and Tony Mak, also known as Tony Geshen Mak and Tony Ge Shen Mak to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement 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: 1/25/11



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