

**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 Settlement and Disciplinary Order As To Respondents Smog Time and Ishrat Malik 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 Smog Time, Ishrat Malik, Owner, Automotive Repair Dealer Registration No. ARD 221752 and Smog Check Test Only Station License No. TC 221752.

The suspension of Automotive Repair Dealer Registration No. ARD 221752 and Smog Check, Test Only, Station License No. TC 221752 shall commence on the effective date of this Decision.

This Decision shall become effective 6/26/09.

DATED: May 18, 2009

P. J. Harris
PATRICIA HARRIS
Acting Chief Deputy Director
Department of Consumer Affairs

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of the State of California
2 JAMES M. LEDAKIS
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8 Attorneys for Complainant

9 **BEFORE THE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
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
Automotive Repair Dealer Registration
16 No. ARD 221752
Smog Check Test Only Station No. TC 221752,
17
and
18
DANNY MENDOZA
19 802 Flower Street
Santa Ana, California 92703
20
Advanced Emission Specialist Technician
21 No. EA 144353
22 Respondents.

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER
AS TO RESPONDENTS SMOG TIME
AND ISHRAT MALIK**

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. Respondents Smog Time and Ishrat Malik are represented by Ishrat Malik.

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

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

9 JURISDICTION

10 5. Accusation No. 79/09-73 was filed before the Director of Consumer Affairs
11 (Director), for the Bureau, and is currently pending against Respondents. The Accusation and all
12 other statutorily required documents were properly served on Respondents on February 20, 2009.
13 On February 25, 2009, Respondents timely filed their Notice of Defense contesting the
14 Accusation. A true and correct copy of Accusation No. 79/09-73 is attached as exhibit A and
15 incorporated herein by reference.

16 ADVISEMENT AND WAIVERS

17 6. Respondents have carefully read and understand the charges and allegations in
18 Accusation No. 79/09-73. Respondents have also carefully read and understand the effects of
19 this Stipulated Settlement and Disciplinary Order.

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

27 8. Respondents voluntarily, knowingly, and intelligently waive and give up each and
28 every right set forth above.

1 CULPABILITY

2 9. Respondents admit the truth of each and every charge and allegation contained in
3 Accusation No. 79/09-73.

4 10. Respondents agree that his ARD and station license are subject to discipline and
5 agree to be bound by the Director's imposition of discipline as set forth in the Disciplinary Order
6 below.

7 CONTINGENCY

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

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

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

24 DISCIPLINARY ORDER

25 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration Number ARD
26 221752 issued to Ishrat Malik doing business as Smog Time, and Smog Check Test Only Station
27 Number TC 221752 issued to Respondent Smog Time are revoked. However, the revocations
28 are stayed and Respondents are placed on probation for three years on the following terms and

1 conditions.

2 1. **Actual Suspension.** Respondents' ARD and station license are suspended for
3 fifteen business days beginning on the effective date of the Director's Decision and Order.

4 2. **Post Sign.** Respondents shall post a prominent sign, provided by the Bureau,
5 indicating the beginning and ending dates of the suspension and indicating the reason(s) for the
6 suspension. The sign shall be conspicuously displayed at Respondents' Newport Beach facility
7 in a location open to and frequented by customers and shall remain posted during the entire
8 period of actual suspension.

9 3. **Obey All Laws.** Respondents shall comply with all statutes, regulations and rules
10 governing automotive inspections, estimates and repairs.

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

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

19 6. **Random Inspections.** Respondents shall provide Bureau representatives
20 unrestricted access to inspect all vehicles (including parts) undergoing repairs at their Newport
21 Beach facility, up to and including the point of completion.

22 7. **Jurisdiction.** If an accusation or petition to revoke probation is filed against
23 Respondents during the term of probation, the Director shall have continuing jurisdiction over
24 these matters until the final decision on the accusation or petition to revoke probation, and the
25 period of probation shall be extended until such decision.

26 8. **Violation of Probation.** Should the Director determine that Respondents have
27 failed to comply with the terms and conditions of probation, the Department may, after giving
28 notice and opportunity to be heard, temporarily or permanently invalidate his ARD and/or station

1 license.

2 9. **Cost Recovery.** Pursuant to Business & Professions Code section 125.3, the
3 costs of investigation and enforcement of this case are \$5,272.86 through April 9, 2009. The
4 Board waives all but \$4,250.00 of this cost recovery as to Respondents, who shall pay this
5 amount in full not later than sixty days after the effective date of this Order. Payment shall be in
6 the form of a certified check, cashier's check or money order, payable to the Bureau of
7 Automotive Repair and shall be mailed or delivered to the Bureau of Automotive Repair, 10240
8 Systems Parkway, Sacramento, California, 95827, Attention: I & M Headquarters. The Board's
9 partial waiver of these costs in no way absolves co-Respondent Danny Mendoza of any
10 responsibility he may bear to Respondents Smog Time and Ishrat Malik, Owner, for their share
11 of costs. Failure to complete payment of cost recovery within this time frame shall constitute a
12 violation of probation which may subject Respondents' ARD and station license to outright
13 revocation; however, the Director or the Director's Bureau of Automotive Repair designee may
14 elect to continue probation until such time as reimbursement of the entire cost recovery amount
15 has been made to the Bureau.

16 ACCEPTANCE

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

21
22 DATED: 4/14/09

Ishrat Malik
SMOG TIME, ISHRAT MALIK,
Owner and Individually
Respondents

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ENDORSEMENT

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

DATED: April 24, 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

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2 ALFREDO TERRAZAS
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8 Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 79/09-73

14 **SMOG TIME**
4360 Campus Drive, Suite E
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15 **ISHRAT MALIK, OWNER**

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

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

18 and

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

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

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

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

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

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

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

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

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

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

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

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

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

STATION INSPECTION - JUNE 18, 2008

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

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

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

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

16 **FIFTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

9 **EIGHTH CAUSE FOR DISCIPLINE**

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

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

18 **OTHER MATTERS**

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

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

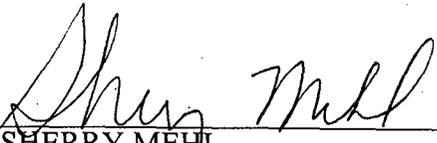
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7. Ordering Ishrat Malik and Danny Mendoza to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 2/17/09


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