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

11  
12 In the Matter of the Accusation Against:

Case No. 79/10-68

13 **XSMOG, INC.,**  
14 **4645 University Avenue**  
**San Diego, CA 92105**  
15 **TAI TAN HO, PRESIDENT**  
**STEVEN TIEU, VP**  
16 **TAO TOM HO, SECRETARY**  
**THAO NGUYEN, TREASURER**  
17 **Automotive Repair Dealer Registration**  
**No. ARD 225965**  
18 **Smog Check Test Only Station License**  
**No. TC 225965**

**A C C U S A T I O N**

**S M O G C H E C K**

19 Respondent.

20  
21 Complainant alleges:

22 **PARTIES**

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

25 **Automotive Repair Dealer Registration**

26 2. On or about February 24, 2003, the Bureau issued Automotive Repair Dealer  
27 Registration Number ARD 225965 ("registration") to XSrnog, Inc.; Tai Tan Ho, President

28

1 ("Respondent"). The registration was in full force and effect at all times relevant to the charges  
2 brought herein and will expire on January 31, 2011, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about March 20, 2003, the Bureau issued Smog Check Test Only Station  
5 License Number TC 225965 ("station license") Respondent. The station license was in full force  
6 and effect at all times relevant to the charges brought herein and will expire on January 31, 2011,  
7 unless renewed.

8 **STATUTORY PROVISIONS**

9 4. Section 9884.7 of the Code states, in pertinent part:

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

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

19 (4) Any other conduct which constitutes fraud.

20 (6) Failure in any material respect to comply with the provisions of this  
21 chapter or regulations adopted pursuant to it.

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

28 (c) Notwithstanding subdivision (b), the director may invalidate  
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."

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









1 **PRIOR CITATIONS**

2 20. To determine the degree of penalty, if any, to be imposed upon Respondent,  
3 Complainant alleges as follows:

4 a. On April 18, 2007, the Bureau issued Citation No. C07-0747 to Respondent against  
5 its registration and station licenses for violations of Health and Safety Code section 44012,  
6 subdivision (f) (failure to perform a visual/functional check of emission control devices) and  
7 California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing  
8 a certificate of compliance to a vehicle improperly tested). Respondent issued a certificate of  
9 compliance to a Bureau vehicle with a missing EGR system. The Bureau assessed a civil penalty  
10 of \$500. Respondent complied with this citation on May 25, 2007.

11 b. On November 30, 2007, the Bureau issued Citation No. C08-0526 to Respondent  
12 against its registration and station licenses for violations of Health and Safety Code section  
13 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
14 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
15 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the  
16 ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil  
17 penalty of \$1,000. Respondent complied with this citation on February 6, 2008.

18 c. On August 12, 2008, the Bureau issued Citation No. C09-0151 to Respondent against  
19 its registration and station licenses for violations of Health and Safety Code section 44012,  
20 subdivision (f) (failure to perform a visual/functional check of emission control devices) and  
21 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
22 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a  
23 missing PCV system. The Bureau assessed a civil penalty of \$2,000. Respondent appealed this  
24 citation on September 15, 2008. The appeal was withdrawn on January 30, 2009, and Respondent  
25 complied with this citation on March 13, 2009.

26 **OTHER MATTERS**

27 21. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
28 or permanently or refuse to validate, the registrations for all places of business operated in this

1 state by to XSmog, Inc., upon a finding that it has, or is, engaged in a course of repeated and  
2 willful violations of the laws and regulations pertaining to an automotive repair dealer.

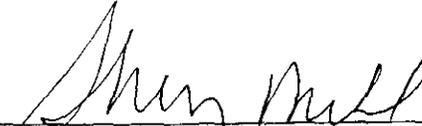
3 22. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station  
4 License Number TC 225965, issued to XSmog, Inc., is revoked or suspended, any additional  
5 license issued under this chapter in the name of said licensee may be likewise revoked or  
6 suspended by the director.

7 **PRAYER**

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

- 10 1. Temporarily or permanently invalidating Automobile Repair Dealer Registration  
11 Number ARD 225965, issued to XSmog, Inc.;
- 12 2. Temporarily or permanently invalidating any other automotive repair dealer  
13 registration issued to XSmog, Inc.;
- 14 3. Revoking or suspending Smog Check Test Only Station License Number TC 225965,  
15 issued to XSmog, Inc.;
- 16 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
17 and Safety Code in the name of XSmog, Inc.;
- 18 5. Ordering XSmog, Inc., to pay the Bureau of Automotive Repair the reasonable costs  
19 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
20 section 125.3; and,
- 21 6. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: 4/21/10

24   
25 (SHERRY MEHL)  
26 Chief  
27 Bureau of Automotive Repair  
28 Department of Consumer Affairs  
State of California  
Complainant

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