

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

In the Matter of the Accusation Against:

SMOG EXPERTS TEST ONLY;

BRIAN PAK, Owner
16618 Union Street #B
Victorville, CA 92392

16515 S. Hampshire Avenue #4
Gardena, CA 90247

Automotive Repair Dealer Registration
No. ARD 238956
Smog Check Station License
No. TC 238956

SMOG EXPERTS TEST ONLY

BRIAN PAK, Owner
9472 C Avenue
Hesperia, CA 92345

Automotive Repair Dealer Registration
No. ARD 238829
Smog Check Test Only Station License
No. TC 238829

Respondent.

Case No. 79/09-65

OAH No. L-2009061419

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.

This Decision shall become effective 10/13/09.

DATED: AUG 31 2009

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

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
SUPERVISING Deputy Attorney General
3 THOMAS L. RINALDI
Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:
12 **SMOG EXPERTS TEST ONLY; BRIAN**
13 **PAK, OWNER**

13 16618 Union Street #B
Victorville, CA 92392

14 16515 S. Hampshire Avenue #4
15 Gardena, CA 90247
16 Automotive Repair Dealer Registration No.
ARD238956
17 Smog Check Test Only Station License No.
TC238956

18 **SMOG EXPERTS TEST ONLY; BRIAN**
19 **PAK, OWNER**

20 9472 C Avenue
Hesperia, CA 92345
21 Automotive Repair Dealer Registration No.
ARD238829
22 Smog Check Test Only Station License No.
TC238829

23 Respondent.
24

Case No. 79/09-65

OAH No. L-2009061419

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

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1 PARTIES

2 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She
3 brought this action solely in her official capacity and is represented in this matter by Edmund G.
4 Brown Jr., Attorney General of the State of California, by Thomas L. Rinaldi, Deputy Attorney
5 General.

6 2. Smog Experts Test Only; Brian Pak, Owner (Respondent) is representing himself in
7 this proceeding and has chosen not to exercise his right to be represented by counsel.

8 3. On or about May 27, 2005, the Bureau of Automotive Repair issued Automotive
9 Repair Dealer Registration No. ARD238956 to Respondent. The Automotive Repair Dealer
10 Registration was in full force and effect at all times relevant to the charges brought in Accusation
11 No. 79/09-65 and will expire on April 30, 2010, unless renewed.

12 4. On or about June 1, 2005, the Bureau of Automotive Repair issued Smog Check Test
13 Only Station License No. TC238956 to Respondent. The Smog Check Test Only Station
14 License was in full force and effect at all times relevant to the charges brought in Accusation No.
15 79/09-65 and will expire on April 30, 2010, unless renewed.

16 5. On or about January 1, 2005, the Bureau of Automotive Repair issued Automotive
17 Repair Dealer Registration No. ARD238829 to Respondent. The Automotive Repair Dealer
18 Registration was in full force and effect at all times relevant to the charges brought in Accusation
19 No. 79/09-65 and will expire on April 30, 2010, unless renewed.

20 6. On or about May 25, 2005, the Bureau of Automotive Repair issued Smog Check
21 Test Only Station License No. TC238829 to Respondent. The Smog Check Test Only Station
22 License was in full force and effect at all times relevant to the charges brought in Accusation No.
23 79/09-65 and will expire on April 30, 2010, unless renewed.

24 JURISDICTION

25 7. Accusation No. 79/09-65 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 March 2, 2009. Respondent timely filed his Notice of Defense contesting the

1 Accusation. A copy of Accusation No. 79/09-65 is attached as exhibit A and incorporated herein
2 by reference.

3 ADVISEMENT AND WAIVERS

4 8. Respondent has carefully read, and understands the charges and allegations in
5 Accusation No. 79/09-65. Respondent has also carefully read, and understands the effects of this
6 Stipulated Settlement and Disciplinary Order.

7 9. Respondent is fully aware of his 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 his own expense; the right to confront and cross-examine the witnesses against him; the right to
10 present evidence and to testify on his 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 10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
15 every right set forth above.

16 CULPABILITY

17 11. Respondent admits the truth of each and every charge and allegation in Accusation
18 No. 79/09-65.

19 12. Respondent further agrees that as the owner of Smog Expert Test Only (ARD
20 License No. ARD238829 and Smog Check Test Only Station License No. TC238829) his
21 licenses corresponding to that shop are subject to discipline pursuant to Business and Professions
22 Code section 9884.7, subdivision (c) and Health and Safety Code section 44072.8, in that
23 Respondent has engaged in a course of repeated and willful violations of the Automotive Repair
24 Act.

25 13. Respondent agrees that his Automotive Repair Dealer registrations and Smog Check
26 Test Only Station licenses are subject to discipline and he agrees to be bound by the Director's
27 imposition of discipline as set forth in the Disciplinary Order below.

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1 by the Bureau, but no more frequently than each quarter, on the methods used and success
2 achieved in maintaining compliance with the terms and conditions of probation.

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

7 4. **Random Inspections.** Provide Bureau representatives unrestricted access
8 to inspect all vehicles (including parts) undergoing repairs, up to and including the point of
9 completion.

10 5. **Jurisdiction.** If an accusation is filed against Respondent during the term
11 of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
12 until the final decision on the accusation, and the period of probation shall be extended until such
13 decision

14 6. **Violation of Probation.** Should the Director of Consumer Affairs
15 determine that Respondent has failed to comply with the terms and conditions of probation, the
16 Department may, after giving notice and opportunity to be heard temporarily or permanently
17 invalidate Respondent's Automotive Repair Dealer Registration (ARD238829) and suspend or
18 revoke Respondent's Smog Check Test Only Station License (TC238829.)

19 7. **Cost Recovery.** Payment to the Bureau of cost recovery in the amount of
20 \$3,000.00 shall be received no later than 6 months before probation terminates. Respondent may
21 pay costs in equal monthly installments of \$100.00 beginning on the first day of each month
22 following the effective date of the Director's decision and order. Failure to complete payment of
23 cost recovery within this time frame shall constitute a violation of probation which may subject
24 Respondent's Automotive Repair Dealer Registration (ARD238829) and Smog Check Test Only
25 Station License (TC238829) to outright revocation; however, the Director or the Director's
26 Bureau of Automotive Repair designee may elect to continue probation until such time as
27 reimbursement of the entire cost recovery amount has been made to the Bureau.
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ACCEPTANCE

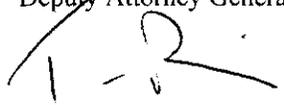
I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registrations and Smog Check Test Only Station Licenses. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 8/11/2009 
SMOG EXPERTS TEST ONLY; BRIAN PAK,
OWNER
Respondent

ENDORSEMENT

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

Dated: 8/19/09

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
THOMAS L. RINALDI
Deputy Attorney General

THOMAS L. RINALDI
Deputy Attorney General
Attorneys for Complainant

LA2008900399
Stipulation.rtf

Exhibit A

Accusation No. 79/09-65

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 GREGORY J. SALUTE, State Bar No. 164015
Supervising Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2520
Facsimile: (213) 897-2804
6 Attorneys for Complainant

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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
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12 In the Matter of the Accusation Against:

Case No. 79/09-65

13 **SMOG EXPERTS TEST ONLY**
16618 Union Street, Suite B
14 Victorville, California 92392

ACCUSATION

[SMOG CHECK]

15 and/or

16 16515 S. New Hampshire Avenue, No. 4
Gardena, California 90247

BRIAN PAK, OWNER

17 Automotive Repair Dealer Registration
No. ARD 238956
18 Smog Check Test Only Station License
No. TC 238956,
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20 Respondent.

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22 Sherry Mehl ("Complainant") alleges:

23 **PARTIES**

24 1. Complainant brings this Accusation solely in her official capacity as the
25 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 27, 2005, the Bureau issued Automotive Repair Dealer
3 Registration Number ARD 238956 ("registration") to Brian Pak doing business as Smog Experts
4 Test Only ("Respondent"). The registration will expire on April 30, 2009, unless renewed.

5 **Smog Check Test Only Station License**

6 3. On or about June 1, 2005, the Bureau issued Smog Check Test Only
7 Station License Number TC 238956 ("station license") to Respondent. The station license will
8 expire on April 30, 2009, unless renewed.

9 **STATUTORY PROVISIONS**

10 4. Section 9884.7 of the Business and Professions Code ("Code") states, in
11 pertinent part:

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

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

23 (4) Any other conduct which constitutes fraud.

24 (6) Failure in any material respect to comply with the provisions of this
25 chapter [the Automotive Repair Act (Bus. & Prof. Code, 9880, et seq.)] or
26 regulations adopted pursuant to it.

27 (b) Except as provided for in subdivision (c), if an automotive repair
28 dealer operates more than one place of business in this state, the director pursuant
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.

 (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.

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5. Code section 9884.9, subdivision (a), states:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

(signature or initials)"

Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

6. 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.

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

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1 the vehicle's ignition timing was adjusted beyond the manufacturer's specifications. The
2 operator did not sign or receive a written estimate prior to the smog inspection. Carlos Eduardo
3 Gonzalez, a licensed technician, performed the smog inspection and issued electronic Certificate
4 of Compliance No. VP478344C, certifying that the vehicle was in compliance with applicable
5 with all laws and regulations when, in fact, the vehicle could not have passed the smog
6 inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's
7 specifications. Following the inspection, the operator paid Respondent \$69.75 and was provided
8 with Invoice No. 8764 and a Vehicle Information Report.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 14. Respondent has subjected his registration to discipline under Code section
12 9884.7, subdivision (a)(1), in that on or about April 16, 2008, he made statements which he knew
13 or which by exercise of reasonable care he should have known were untrue or misleading by
14 issuing electronic Certificate of Compliance No. VP478344C for the 1993 Mercury Villager,
15 certifying that the vehicle was in compliance with applicable laws and regulations. In fact, the
16 vehicle could not have passed the functional portion of the smog inspection because the vehicle's
17 ignition timing was adjusted beyond the manufacturer's specifications.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 15. Respondent has subjected his registration to discipline under Code section
21 9884.7, subdivision (a)(4), in that on or about April 16, 2008, he committed acts which constitute
22 fraud by issuing electronic Certificate of Compliance No. VP478344C for the 1993 Mercury
23 Villager without performing a bona fide inspection of the emission control devices and systems
24 on the vehicle, thereby depriving the People of the State of California of the protection afforded
25 by the Motor Vehicle Inspection Program.

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1 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
2 issued electronic Certificate of Compliance No. VP478344C for that vehicle without performing
3 a bona fide inspection of the emission control devices and systems on the vehicle as required by
4 Health and Safety Code section 44012.

5 b. **Section 3340.35, subdivision (c):** Respondent issued electronic
6 Certificate of Compliance No. VP478344C for that vehicle even though the vehicle had not been
7 inspected in accordance with section 3340.42 of that Code.

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

10 **SIXTH CAUSE FOR DISCIPLINE**

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

12 19. Respondent has subjected his station license to discipline under Health and
13 Safety Code section 44072.2, subdivision (d), in that on or about April 16, 2008, he committed
14 acts involving dishonesty, fraud or deceit whereby another was injured by issuing Certificate of
15 Compliance No. VP478344C without performing a bona fide inspection of the emission control
16 devices and systems on that vehicle, thereby depriving the People of the State of California of the
17 protection afforded by the Motor Vehicle Inspection Program.

18 **PRIOR CITATIONS**

19 20. To determine the degree of discipline, if any, to be imposed on
20 Respondent, Complainant alleges as follows:

21 a. On or about January 19, 2006, the Bureau issued Citation No. C06-0422
22 against Respondent's registration and station licenses for violations of Health & Safety Code
23 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
24 devices according to procedures prescribed by the department), and California Code of
25 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
26 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
27 Bureau undercover vehicle with the ignition timing adjusted beyond the manufacturer's

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1 specifications. The Bureau assessed civil penalties totaling \$500 against Respondent for the
2 violations.

3 b. On or about June 8, 2006, the Bureau issued Citation No. C06-0785
4 against Respondent's registration and station licenses for violations of Health & Safety Code
5 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
6 devices according to procedures prescribed by the department), and California Code of
7 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
8 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
9 Bureau undercover vehicle with the ignition timing adjusted beyond the manufacturer's
10 specifications. The Bureau assessed civil penalties totaling \$500 against Respondent for the
11 violations.

12 c. On or about January 29, 2007, the Bureau issued Citation No. C07-0488
13 against Respondent's registration and station licenses for violations of Health & Safety Code
14 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
15 devices according to procedures prescribed by the department), and California Code of
16 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
17 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
18 Bureau undercover vehicle with the ignition timing adjusted beyond the manufacturer's
19 specifications. The Bureau assessed civil penalties totaling \$1,000 against Respondent for the
20 violations.

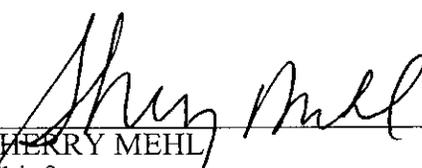
21 d. On or about September 7, 2007, the Bureau issued Citation No. C08-0209
22 against Respondent's registration and station licenses for violations of Health & Safety Code
23 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
24 devices according to procedures prescribed by the department), and California Code of
25 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
26 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
27 Bureau undercover vehicle with a missing evaporative cannister. The Bureau assessed civil
28 penalties totaling \$2,000 against Respondent for the violations.

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5. Ordering Brian Pak 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,

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

DATED: 1/26/09



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