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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. 79/09-65

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

A C C U S A T I O N

[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
automotive repair dealer, which are done by the automotive repair dealer or any
automotive technician, 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
18 which 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 [the Automotive Repair Act (Bus. & Prof. Code, 9880, et seq.)] 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
24 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
25 business.

26 (c) Notwithstanding subdivision (b), the director may invalidate
27 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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THIRD CAUSE FOR DISCIPLINE

(Failure to Provide the Operator With a Written Estimate)

16. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about April 16, 2008, Respondent failed to comply with section 9884.9, subdivision (a), of that Code, failing to provide the operator with a written estimated price for a specific job regarding the smog inspection.

FOURTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

17. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about April 16, 2008, regarding the 1993 Mercury Villager, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of Compliance No. VP478344C for that vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Code section 44012.

d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of Compliance No. VP478344C for that vehicle, certifying that the vehicle had been inspected as required when, in fact, it had not.

FIFTH CAUSE FOR DISCIPLINE

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

18. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about April 16, 2008, regarding the 1993 Mercury Villager, he violated sections of the California Code of Regulations, title 16, as follows:

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.

1 OTHER MATTERS

2 21. Under Code section 9884.7, subdivision (c), the director may invalidate
3 temporarily or permanently or refuse to validate, the registrations for all places of business
4 operated in this state by Brian Pak doing business as Smog Experts Test Only, upon a finding
5 that he has, or is, engaged in a course of repeated and willful violations of the laws and
6 regulations pertaining to an automotive repair dealer.

7 22. Under Health & Safety Code section 44072.8, if Smog Check Test Only
8 Station License Number TC 238956, issued to Brian Pak doing business as Smog Experts Test
9 Only, is revoked or suspended, any additional license issued under this chapter in the name of
10 said licensee may be likewise revoked or suspended by the director.

11 PRAYER

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

14 1. Temporarily or permanently invalidating Automotive Repair Dealer
15 Registration Number ARD 238956, issued to Brian Pak doing business as Smog Experts Test
16 Only;

17 2. Temporarily or permanently invalidating any other automotive repair
18 dealer registration issued to Brian Pak doing business as Smog Experts Test Only;

19 3. Revoking or suspending Smog Check Test Only Station License Number
20 TC 238956, issued to Brian Pak doing business as Smog Experts Test Only;

21 4. Revoking or suspending any additional license issued under Chapter 5 of
22 the Health & Safety Code in the name of Brian Pak doing business as Smog Experts Test Only;

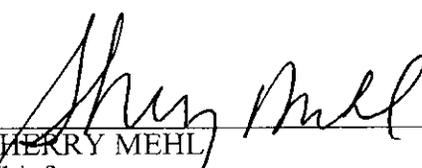
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5. Ordering Brian Pak to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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