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7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 79/09-15

11 **BISHEH, INC., dba**
AIRPORT SMOG
12 1225 S. Oxnard Boulevard
Oxnard, California 93030
13 **POUYA MOALEJ, PRESIDENT**

ACCUSATION
[SMOG CHECK]

14 Automotive Repair Dealer Registration
No. AD 221086
15 Smog Check, Test Only Station License
No. TD 221086,

16 and

17 **CHARLES WILLIAM PROCTOR**
18 1400 California Street
Oxnard, California 93033
19 Advanced Emission Specialist Technician
20 No. EA 041149,

21 and

22 **MOHAMMAD MOALEJ**
15651 Crown Ridge Place
23 Sherman Oaks, California 91403
24 Advanced Emission Specialist Technician
License No. EA 045409

25 Respondents.
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28 Sherry Mehl ("Complainant") alleges:

1 PARTIES

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

4 **Automotive Repair Dealer Registration**

5 2. On a date uncertain in 2002, the Bureau issued Automotive Repair Dealer
6 Registration Number AD 221086 ("registration") to Bisheh, Inc. ("Respondent Airport Smog"),
7 doing business as Airport Smog, with Pouya Moalej as President. The registration will expire on
8 April 30, 2009, unless renewed.

9 **Smog Check, Test Only Station License**

10 3. On or about May 16, 2002, the Bureau issued Smog Check, Test Only
11 Station License Number TD 221086 ("station license") to Respondent Airport Smog. The station
12 license will expire on April 30, 2009, unless renewed.

13 **Advanced Emission Specialist Technician License**

14 4. On a date uncertain in 1996, the Bureau issued Advanced Emission
15 Specialist Technician Number EA 041149 ("technician license") to Charles William Proctor
16 ("Respondent Proctor"). The technician license will expire on November 30, 2008, unless
17 renewed.

18 **Advanced Emission Specialist Technician License**

19 5. On a date uncertain in 1997, the Bureau Advanced Emission Specialist
20 Technician License Number EA 045309 ("technician license") to Mohammad Moalej
21 ("Respondent Moalej"). The technician license will expire on February 28, 2009.

22 STATUTORY PROVISIONS

23 6. Section 9884.7 of the Business and Professions Code ("Code") states, in
24 pertinent part:

25 (a) The director, where the automotive repair dealer cannot show there was
26 a bona fide error, may refuse to validate, or may invalidate temporarily or
27 permanently, the registration of an automotive repair dealer for any of the
28 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.

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

5 (4) Any other conduct which constitutes fraud.

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

13 (c) Notwithstanding subdivision (b), the director may invalidate
14 temporarily or permanently, the registration for all places of business operated in
15 this state by an automotive repair dealer upon a finding that the automotive repair
16 dealer has, or is, engaged in a course of repeated and willful violations of this
17 chapter, or regulations adopted pursuant to it.

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

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

26 9. Section 44002 of the Health and Safety Code provides, in pertinent part,
27 that the Director has all the powers and authority granted under the Automotive Repair Act for
28 enforcing the Motor Vehicle Inspection Program.

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

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

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

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

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

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

9 12. Section 44072.8 of the Health and Safety Code states:

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

13 COST RECOVERY

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

18 SURVEILLANCE OPERATION - AUGUST 1, 2007

19 14. On or about August 1, 2007, the Bureau performed a videotaped
20 surveillance at Respondent Airport Smog's facility. The surveillance operation and information
21 obtained from the Bureau's Vehicle Information Database ("VID") revealed that from
22 approximately 1721 hours to 1726 hours, Respondent Proctor performed a smog inspection that
23 resulted in the issuance of electronic Certificate of Compliance No. MU016599C, certifying that
24 he had tested and inspected a 1983 LAZYD motor home, California License Plate No. 5GSB765,
25 and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent
26 Proctor performed the smog inspection using the clean-piping¹ method by using the tail pipe

27 1. "Clean-piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
28 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
compliance or are not present in the smog check area during the time of the certification.

1 emissions of a vehicle other than the vehicle being certified in order to issue the certificate of
2 compliance. The vehicle certified was not in the test bay at the time of the smog inspection.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Misleading Statements)**

5 15. Respondent Airport Smog has subjected its registration to discipline under
6 Code section 9884.7, subdivision (a)(1), in that on or about August 1, 2007, it made statements
7 which it knew or which by exercise of reasonable care it should have known were untrue or
8 misleading when it issued electronic Certificate of Compliance No. MU016599C for the 1983
9 LAZYD motor home, certifying that the vehicle was in compliance with applicable laws and
10 regulations when, in fact, the vehicle had been clean-piped.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 16. Respondent Airport Smog has subjected its registration to discipline under
14 Code section 9884.7, subdivision (a)(4), in that on or about August 1, 2007, it committed acts
15 which constitute fraud by issuing electronic Certificate of Compliance No. MU016599C for the
16 1983 LAZYD motor home without performing a bona fide inspection of the emission control
17 devices and systems on that vehicle, thereby depriving the People of the State of California of the
18 protection afforded by the Motor Vehicle Inspection Program.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Violation of the Motor Vehicle Inspection Program)**

21 17. Respondent Airport Smog has subjected its station license to discipline
22 under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 1,
23 2007, regarding the 1983 LAZYD motor home, it violated sections of that Code, as follows:

24 a. **Section 44012, subdivision (f):** Respondent Airport Smog failed to
25 perform emission control tests on the vehicle in accordance with procedures prescribed by the
26 department.

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1 for the vehicle when, in fact, the vehicle had not been properly tested and inspected, thereby
2 depriving the People of the State of California of the protection afforded by the Motor Vehicle
3 Inspection Program.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 **(Violations of the Motor Vehicle Inspection Program)**

6 20. Respondent Proctor has subjected his technician license to discipline under
7 Health and Safety Code section 44072.2, subdivision (a), in that on or about August 1, 2007,
8 regarding the 1983 LAZYD motor home, he violated sections of that Code, as follows:

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

12 b. **Section 44032:** Respondent Proctor failed to perform tests of the
13 emission control devices and systems on that vehicle in accordance with section 44012 of that
14 Code, in that the vehicle had been clean-piped.

15 c. **Section 44059:** Respondent made false entries for electronic Certificate
16 of Compliance No. MU016599C by certifying that the vehicle had been inspected as required
17 when, in fact, it had not.

18 **SEVENTH CAUSE FOR DISCIPLINE**

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

20 21. Respondent Proctor has subjected his technician license to discipline under
21 Health and Safety Code section 44072.2, subdivision (c), in that on or about August 1, 2007,
22 regarding the 1983 LAZYD motor home, he violated sections of the California Code of
23 Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent Proctor falsely or
25 fraudulently issued electronic Certificate of Compliance No. MU016599C for that vehicle
26 without performing a bona fide inspection of the emission control devices and systems on the
27 vehicle as required by Health and Safety Code section 44012.

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Table 1

Date and Test Times	Vehicle Certified	Certificate No.	Details
8/2/2007 1049 hours to 1053 hours	1999 Chevrolet Lic. No. 6B39225	MU016600C	No functional fuel cap test performed.
8/2/2007 1136 hours to 1141 hours	1990 Ford Lic. No. 4D26599	MU133503C	No functional fuel cap test performed.
8/2/2007 1624 hours to 1629 hours	2001 Ford Lic. No. 4TYX619	No Certificate Issued	No functional fuel cap test performed.
8/2/2007 1653 hours to 1659 hours	1999 Honda Lic. No. 4HBR533	MU133506C	No functional fuel cap test performed.

NINTH CAUSE FOR DISCIPLINE

(Misleading Statements)

24. Respondent Airport Smog has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about August 2, 2007, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading by issuing the electronic certificates of compliance for the vehicles, set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, Respondent's technician, Respondent Proctor, failed to properly inspect the vehicles by failing to perform a functional fuel cap test on those vehicles.

TENTH CAUSE FOR DISCIPLINE

(Fraud)

25. Respondent Airport Smog has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about August 2, 2007, it committed acts which constitute fraud by issuing the electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices

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1 and systems on those vehicles, thereby depriving the People of the State of California of the
2 protection afforded by the Motor Vehicle Inspection Program.

3 **ELEVENTH CAUSE FOR DISCIPLINE**

4 **(Violation of the Motor Vehicle Inspection Program)**

5 26. Respondent Airport Smog has subjected its station license to discipline
6 under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 2,
7 2007, regarding the vehicles set forth in Table 1, above, it violated sections of that Code, as
8 follows:

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

12 b. **Section 44015, subdivision (b):** Respondent Airport Smog issued the
13 electronic certificates of compliance for those vehicles without properly testing and inspecting
14 them to determine if they were in compliance with section 44012 of that Code.

15 c. **Section 44059:** Respondent Airport willfully made false entries for the
16 electronic certificates of compliance by certifying that those vehicles had been inspected as
17 required when, in fact, they had not.

18 **TWELFTH CAUSE FOR DISCIPLINE**

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

20 27. Respondent Airport Smog has subjected its station license to discipline
21 under Health and Safety Code section 44072.2, subdivision (c), in that on or about August 2,
22 2007, regarding the vehicles set forth in Table 1, above, it violated sections of the California
23 Code of Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent Airport Smog falsely or
25 fraudulently issued the electronic certificates of compliance for those vehicles without
26 performing bona fide inspections of the emission control devices and systems on the vehicles as
27 required by Health and Safety Code section 44012.

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1 b. Section 3340.35, subdivision (c): Respondent Airport Smog issued the
2 electronic certificates of compliance for those vehicles even though the vehicles had not been
3 inspected in accordance with section 3340.42 of that Code.

4 c. Section 3340.42: Respondent Airport Smog failed to conduct the
5 required smog tests and inspections on those vehicles in accordance with the Bureau's
6 specifications.

7 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

9 28. Respondent Airport Smog has subjected its station license to discipline
10 under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 2,
11 2007, regarding the vehicles set forth in Table 1, above, it committed acts involving dishonesty,
12 fraud or deceit whereby another was injured by issuing the electronic certificates of compliance
13 for those vehicles when, in fact, the vehicles had not been properly tested and inspected, thereby
14 depriving the People of the State of California of the protection afforded by the Motor Vehicle
15 Inspection Program.

16 **FOURTEENTH CAUSE FOR DISCIPLINE**

17 **(Violations of the Motor Vehicle Inspection Program)**

18 29. Respondent Proctor has subjected his technician license to discipline under
19 Health and Safety Code section 44072.2, subdivision (a), in that on or about August 2, 2007,
20 regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

21 a. Section 44012, subdivision (f): Respondent Proctor failed to determine
22 that all emission control devices and systems required by law were installed and functioning
23 correctly on those vehicles in accordance with test procedures.

24 b. Section 44032: Respondent Proctor failed to perform tests of the
25 emission control devices and systems on those vehicles in accordance with section 44012 of that
26 Code.

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1 c. Section 44059: Respondent Proctor entered false information for the
2 electronic certificates of compliance by certifying that those vehicles had been inspected as
3 required when, in fact, they had not.

4 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

6 30. Respondent Proctor has subjected his technician license to discipline under
7 Health and Safety Code section 44072.2, subdivision (c), in that on or about August 2, 2007,
8 regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of
9 Regulations, title 16, as follows:

10 a. Section 3340.24, subdivision (c): Respondent Proctor falsely or
11 fraudulently issued the electronic certificates of compliance for those vehicles without
12 performing bona fide inspections of the emission control devices and systems on the vehicles as
13 required by Health and Safety Code section 44012.

14 b. Section 3340.30, subdivision (a): Respondent Proctor failed to inspect
15 and test those vehicles in accordance with Health and Safety Code section 44012.

16 c. Section 3340.41, subdivision (c): Respondent Proctor entered false
17 information into the EIS for those vehicles by entering "Pass" for the functional fuel cap test
18 when, in fact, he failed to perform that test on those vehicles.

19 d. Section 3340.42: Respondent Proctor failed to conduct the required
20 smog tests and inspections of those vehicles in accordance with the Bureau's specifications.

21 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

23 31. Respondent Proctor has subjected his technician license to discipline under
24 Health and Safety Code section 44072.2, subdivision (d), in that on or about August 2, 2007, he
25 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the
26 electronic certificates of compliance for the vehicles set forth in Table 1, above, without
27 performing bona fide inspections of the emission control devices and systems on those vehicles,

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1 thereby depriving the People of the State of California of the protection afforded by the Motor
2 Vehicle Inspection Program.

3 SURVEILLANCE OPERATION - AUGUST 13, 2007

4 32. On or about August 13, 2007, the Bureau performed a videotaped
5 surveillance at Respondent Airport Smog's facility. The surveillance operation and information
6 obtained from the Bureau's VID revealed that from approximately 1053 hours and 1658 hours,
7 Respondent Proctor performed seven (7) smog inspections that resulted in the issuance of
8 electronic certificates of compliance, certifying that he had tested and inspected the vehicles set
9 forth in Table 2, below, and that those vehicles were in compliance with applicable laws and
10 regulations. In fact, Respondent Proctor failed to perform a functional fuel cap test on those
11 vehicles.

12 Table 2

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Date and Test Times	Vehicle Certified	Certificate No.	Details
8/13/2007 1053 hours to 1058 hours	1990 Chevrolet Lic. No. 6T12995	MU253616C	No functional fuel cap test performed.
8/13/2007 1311 hours to 1317 hours	1996 Toyota Lic. No. 5K53945	MU253618C	No functional fuel cap test performed.
8/13/2007 1439 hours to 1449 hours	1997 Chevrolet Lic. No. 4HIL341	MU253620C	No functional fuel cap test performed.
8/13/2007 1528 hours to 1538 hours	1996 GMC Lic. No. 5HYN541	MU253622C	No functional fuel cap test performed.
8/13/2007 1556 hours to 1604 hours	1998 Ford Lic. No. 4CUW453	MU253624C	No functional fuel cap test performed.
8/13/2007 1647 hours to 1652	1994 Plymouth Lic. No. 3JYF127	MU253625C	No functional fuel cap test performed.

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1 2 3	8/13/2007 1658 hours to 1703 hours	1996 Honda Lic. No. 4CNJ486	MU253626C	No functional fuel cap test performed.
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4 **SEVENTEENTH CAUSE FOR DISCIPLINE**

5 **(Misleading Statements)**

6 33. Respondent Airport Smog has subjected its registration to
7 discipline under Code section 9884.7, subdivision (a)(1), in that on or about August 13, 2007, it
8 made statements which it knew or which by exercise of reasonable care it should have known
9 were untrue or misleading by issuing the electronic certificates of compliance for the vehicles, set
10 forth in Table 2, above, certifying that those vehicles were in compliance with applicable laws
11 and regulations when, in fact, Respondent's technician, Respondent Proctor failed to properly
12 inspect the vehicles by failing to perform a functional fuel cap test on those vehicles.

13 **EIGHTEENTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 34. Respondent Airport Smog has subjected its registration to discipline under
16 Code section 9884.7, subdivision (a)(4), in that on or about August 13, 2007, it committed acts
17 which constitute fraud by issuing the electronic certificates of compliance for the vehicles set
18 forth in Table 2, above, without performing bona fide inspections of the emission control devices
19 and systems on those vehicles, thereby depriving the People of the State of California of the
20 protection afforded by the Motor Vehicle Inspection Program.

21 **NINETEENTH CAUSE FOR DISCIPLINE**

22 **(Violation of the Motor Vehicle Inspection Program)**

23 35. Respondent Airport Smog has subjected its station license to discipline
24 under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 13,
25 2007, regarding the vehicles set forth in Table 2, above, it violated sections of that Code, as
26 follows:

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1 a. Section 44012, subdivision (f): Respondent Airport Smog failed to
2 perform emission control tests on those vehicles in accordance with procedures prescribed by the
3 department.

4 b. Section 44015, subdivision (b): Respondent Airport Smog issued the
5 electronic certificates of compliance for those vehicles without properly testing and inspecting
6 them to determine if they were in compliance with section 44012 of that Code.

7 c. Section 44059: Respondent Airport willfully made false entries for the
8 electronic certificates of compliance by certifying that those vehicles had been inspected as
9 required when, in fact, they had not.

10 **TWENTIETH CAUSE FOR DISCIPLINE**

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

12 36. Respondent Airport Smog has subjected its station license to discipline
13 under Health and Safety Code section 44072.2, subdivision (c), in that on or about August 13,
14 2007, regarding the vehicles set forth in Table 2, above, it violated sections of the California
15 Code of Regulations, title 16, as follows:

16 a. Section 3340.24, subdivision (c): Respondent Airport Smog falsely or
17 fraudulently issued the electronic certificates of compliance for those vehicles without
18 performing bona fide inspections of the emission control devices and systems on the vehicles as
19 required by Health and Safety Code section 44012.

20 b. Section 3340.35, subdivision (c): Respondent Airport Smog issued the
21 electronic certificates of compliance for those vehicles even though the vehicles had not been
22 inspected in accordance with section 3340.42 of that Code.

23 c. Section 3340.42: Respondent Airport Smog failed to conduct the
24 required smog tests and inspections on those vehicles in accordance with the Bureau's
25 specifications.

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1 TWENTY-FIRST CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 37. Respondent Airport Smog has subjected its station license to discipline
4 under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 13,
5 2007, regarding the vehicles set forth in Table 2, above, it committed acts involving dishonesty,
6 fraud or deceit whereby another was injured by issuing the electronic certificates of compliance
7 for those vehicles when, in fact, the vehicles had not been properly tested and inspected, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 TWENTY-SECOND CAUSE FOR DISCIPLINE

11 (Violations of the Motor Vehicle Inspection Program)

12 38. Respondent Proctor has subjected his technician license to discipline under
13 Health and Safety Code section 44072.2, subdivision (a), in that on or about August 13, 2007,
14 regarding the vehicles set forth in Table 2, above, he violated sections of that Code, as follows:

15 a. Section 44012, subdivision (f): Respondent Proctor failed to determine
16 that all emission control devices and systems required by law were installed and functioning
17 correctly on those vehicles in accordance with test procedures.

18 b. Section 44032: Respondent Proctor failed to perform tests of the
19 emission control devices and systems on those vehicles in accordance with section 44012 of that
20 Code.

21 c. Section 44059: Respondent Proctor entered false information for the
22 electronic certificates of compliance, by certifying that those vehicles had been inspected as
23 required when, in fact, they had not.

24 TWENTY-THIRD CAUSE FOR DISCIPLINE

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

26 39. Respondent Proctor has subjected his technician license to discipline under
27 Health and Safety Code section 44072.2, subdivision (c), in that on or about August 13, 2007,

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1 regarding the vehicles set forth in Table 2, above, he violated sections of the California Code of
2 Regulations, title 16, as follows:

3 a. Section 3340.24, subdivision (c): Respondent Proctor falsely or
4 fraudulently issued the electronic certificates of compliance for the vehicles set forth in Table 2,
5 above, without performing bona fide inspections of the emission control devices and systems on
6 those vehicles as required by Health and Safety Code section 44012.

7 b. Section 3340.30, subdivision (a): Respondent Proctor failed to inspect
8 and test those vehicles in accordance with Health and Safety Code section 44012.

9 c. Section 3340.41, subdivision (c): Respondent Proctor entered false
10 information into the EIS for those vehicles by entering "Pass" for the functional fuel cap test
11 when, in fact, he failed to perform that test on those vehicles.

12 d. Section 3340.42: Respondent Proctor failed to conduct the required
13 smog tests and inspections of those vehicles in accordance with the Bureau's specifications.

14 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

16 40. Respondent Proctor has subjected his technician license to discipline under
17 Health and Safety Code section 44072.2, subdivision (d), in that on or about August 13, 2007, he
18 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the
19 electronic certificates of compliance for the vehicles set forth in Table 2, above, without
20 performing bona fide inspections of the emission control devices and systems on those vehicles,
21 thereby depriving the People of the State of California of the protection afforded by the Motor
22 Vehicle Inspection Program.

23 **SURVEILLANCE OPERATION - AUGUST 14, 2007**

24 41. On or about August 14, 2007, the Bureau performed a videotaped
25 surveillance at Respondent Airport Smog's facility. The surveillance operation and information
26 obtained from the Bureau's VID revealed that from approximately 0823 hours and 1710 hours,
27 Respondent Proctor performed five (5) smog inspections that resulted in the issuance of
28 electronic certificates of compliance, certifying that he had tested and inspected the vehicles set

1 forth in Table 3, below, and that those vehicles were in compliance with applicable laws and
2 regulations. In fact, Respondent Proctor failed to perform a functional fuel cap test on those
3 vehicles.

4 Table 3

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Date and Test Times	Vehicle Certified	Certificate No.	Details
8/14/2007 0823 hours to 0828 hours	1990 Toyota Lic. No. 3Y95158	MU253627C	No functional fuel cap test performed.
8/14/2007 0910 hours to 0914 hours	1990 Toyota Lic. No. 2NUU462	MU253628C	No functional fuel cap test performed.
8/14/2007 1111 hours to 1117 hours	2001 Chevrolet Lic. No. 4UBX446	MU253630C	No functional fuel cap test performed.
8/14/2007 1548 hours to 1552 hours	1998 Dodge Lic. No. 5W57282	MU253633C	No functional fuel cap test performed.
8/14/2007 1710 hours to 1714 hours	1998 Ford Lic. No. 4XVV483	MU253636C	No functional fuel cap test performed.

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19 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

20 **(Misleading Statements)**

21 42. Respondent Airport Smog has subjected its registration to discipline under
22 Code section 9884.7, subdivision (a)(1), in that on or about August 14, 2007, it made statements
23 which it knew or which by exercise of reasonable care it should have known were untrue or
24 misleading by issuing the electronic certificates of compliance for the vehicles, set forth in Table
25 3, above, certifying that those vehicles were in compliance with applicable laws and regulations
26 when, in fact, Respondent's technician, Respondent Proctor, failed to properly inspect the
27 vehicles by failing to perform a functional fuel cap test on those vehicles.

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1 TWENTY-SIXTH CAUSE FOR DISCIPLINE

2 (Fraud)

3 43. Respondent Airport Smog has subjected its registration to discipline under
4 Code section 9884.7, subdivision (a)(4), in that on or about August 14, 2007, it committed acts
5 which constitute fraud by issuing the electronic certificates of compliance for the vehicles set
6 forth in Table 3, above, without performing bona fide inspections of the emission control devices
7 and systems on those vehicles, thereby depriving the People of the State of California of the
8 protection afforded by the Motor Vehicle Inspection Program.

9 TWENTY-SEVENTH CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 44. Respondent Airport Smog has subjected its station license to discipline
12 under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 14,
13 2007, regarding the vehicles set forth in Table 3, above, it violated sections of that Code, as
14 follows:

15 a. Section 44012, subdivision (f): Respondent Airport Smog failed to
16 perform emission control tests on those vehicles in accordance with procedures prescribed by the
17 department.

18 b. Section 44015, subdivision (b): Respondent Airport Smog issued the
19 electronic certificates of compliance for those vehicles without properly testing and inspecting
20 them to determine if they were in compliance with section 44012 of that Code.

21 c. Section 44059: Respondent Airport willfully made false entries for the
22 electronic certificates of compliance by certifying that those vehicles had been inspected as
23 required when, in fact, they had not.

24 TWENTY-EIGHTH CAUSE FOR DISCIPLINE

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

26 45. Respondent Airport Smog has subjected its station license to discipline
27 under Health and Safety Code section 44072.2, subdivision (c), in that on or about August 14,

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1 2007, regarding the vehicles set forth in Table 3, above, it violated sections of the California
2 Code of Regulations, title 16, as follows:

3 a. Section 3340.24, subdivision (c): Respondent Airport Smog falsely or
4 fraudulently issued the electronic certificates of compliance for those vehicles without
5 performing bona fide inspections of the emission control devices and systems on the vehicles as
6 required by Health and Safety Code section 44012.

7 b. Section 3340.35, subdivision (c): Respondent Airport Smog issued the
8 electronic certificates of compliance for those vehicles even though the vehicles had not been
9 inspected in accordance with section 3340.42 of that Code.

10 c. Section 3340.42: Respondent Airport Smog failed to conduct the
11 required smog tests and inspections on those vehicles in accordance with the Bureau's
12 specifications.

13 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

15 46. Respondent Airport Smog has subjected its station license to discipline
16 under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 14,
17 2007, regarding the vehicles set forth in Table 3, above, it committed acts involving dishonesty,
18 fraud or deceit whereby another was injured by issuing the electronic certificates of compliance
19 for those vehicles when, in fact, the vehicles had not been properly tested and inspected, thereby
20 depriving the People of the State of California of the protection afforded by the Motor Vehicle
21 Inspection Program.

22 **THIRTIETH CAUSE FOR DISCIPLINE**

23 **(Violations of the Motor Vehicle Inspection Program)**

24 47. Respondent Proctor has subjected his technician license to discipline under
25 Health and Safety Code section 44072.2, subdivision (a), in that on or about August 14, 2007,
26 regarding the vehicles set forth in Table 3, above, he violated sections of that Code, as follows:

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1 a. Section 44012, subdivision (f): Respondent Proctor failed to determine
2 that all emission control devices and systems required by law were installed and functioning
3 correctly on those vehicles in accordance with test procedures.

4 b. Section 44032: Respondent Proctor failed to perform tests of the
5 emission control devices and systems on those vehicles in accordance with section 44012 of that
6 Code.

7 c. Section 44059: Respondent Proctor entered false information for the
8 electronic certificates of compliance by certifying that those vehicles had been inspected as
9 required when, in fact, they had not.

10 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

12 48. Respondent Proctor has subjected his technician license to discipline under
13 Health and Safety Code section 44072.2, subdivision (c), in that on or about August 14, 2007,
14 regarding the vehicles set forth in Table 3, above, he violated sections of the California Code of
15 Regulations, title 16, as follows:

16 a. Section 3340.24, subdivision (c): Respondent Proctor falsely or
17 fraudulently issued the electronic certificates of compliance for those vehicles without
18 performing bona fide inspections of the emission control devices and systems on those vehicles
19 as required by Health and Safety Code section 44012.

20 b. Section 3340.30, subdivision (a): Respondent Proctor failed to inspect
21 and test those vehicles in accordance with Health and Safety Code section 44012.

22 c. Section 3340.41, subdivision (c): Respondent Proctor entered false
23 information into the EIS for those vehicles by entering "Pass" for the functional fuel cap test
24 when, in fact, he failed to perform that test on those vehicles.

25 d. Section 3340.42: Respondent Proctor failed to conduct the required
26 smog tests and inspections of those vehicles in accordance with the Bureau's specifications.

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1 a. Section 3340.24, subdivision (c): Respondent Airport Smog falsely or
2 fraudulently issued electronic Certificate of Compliance No. MW166607C for that vehicle
3 without performing a bona fide inspection of the emission control devices and systems on that
4 vehicle as required by Health and Safety Code section 44012.

5 b. Section 3340.35, subdivision (c): Respondent Airport Smog issued
6 electronic Certificate of Compliance No. MW166607C for that vehicle even though the vehicle
7 had not been inspected in accordance with section 3340.42 of that Code.

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

11 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

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

13 55. Respondent Airport Smog has subjected its station license to discipline
14 under Health and Safety Code section 44072.2, subdivision (d), in that on or about October 24,
15 2007, regarding the 1995 Toyota Corolla, it committed acts involving dishonesty, fraud or deceit
16 whereby another was injured by issuing electronic Certificate of Compliance No. MW166607C
17 for that vehicle when, in fact, the vehicle had not been properly tested and inspected, thereby
18 depriving the People of the State of California of the protection afforded by the Motor Vehicle
19 Inspection Program.

20 **THIRTY-EIGHTH CAUSE FOR DISCIPLINE**

21 **(Violations of the Motor Vehicle Inspection Program)**

22 56. Respondent Moalej has subjected his technician license to discipline under
23 Health and Safety Code section 44072.2, subdivision (a), in that on or about October 24, 2007,
24 regarding the 1995 Toyota Corolla, he violated sections of that Code, as follows:

25 a. Section 44012, subdivision (f): Respondent Moalej failed to determine
26 that all emission control devices and systems required by law were installed and functioning
27 correctly on the vehicle in accordance with test procedures.

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1 b. Section 44032: Respondent Moalej failed to perform tests of the
2 emission control devices and systems on the vehicle in accordance with section 44012 of that
3 Code.

4 c. Section 44059: Respondent Moalej entered false information for
5 electronic Certificate of Compliance No. MW166607C by certifying that the vehicle had been
6 inspected as required when, in fact, it had not.

7 **THIRTY-NINTH CAUSE FOR DISCIPLINE**

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

9 57. Respondent Moalej has subjected his technician license to discipline under
10 Health and Safety Code section 44072.2, subdivision (c), in that on or about October 24, 2007,
11 regarding the 1995 Toyota Corolla, he violated sections of the California Code of Regulations,
12 title 16, as follows:

13 a. Section 3340.24, subdivision (c): Respondent Moalej falsely or
14 fraudulently issued electronic Certificate of Compliance No. MW166607C for that vehicle
15 without performing a bona fide inspection of the emission control devices and systems on that
16 vehicle as required by Health and Safety Code section 44012.

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

19 c. Section 3340.41, subdivision (c): Respondent Moalej entered false
20 information into the EIS for the vehicle by entering "Pass" for the functional fuel cap test when,
21 in fact, he failed to perform that test on that vehicle.

22 d. Section 3340.42: Respondent Moalej failed to conduct the required
23 smog tests and inspections of that vehicle in accordance with the Bureau's specifications.

24 **FORTIETH CAUSE FOR DISCIPLINE**

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

26 58. Respondent Moalej has subjected his technician license to discipline under
27 Health and Safety Code section 44072.2, subdivision (d), in that on or about October 24, 2007,
28 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing

1 electronic Certificate of Compliance No. MW166607C for the 1995 Toyota Corolla without
2 performing a bona fide inspection of the emission control devices and systems on that vehicle,
3 thereby depriving the People of the State of California of the protection afforded by the Motor
4 Vehicle Inspection Program.

5 OTHER MATTERS

6 59. Under Code section 9884.7, subdivision (c), the director may invalidate
7 temporarily or permanently or refuse to validate, the registrations for all places of business
8 operated in this state by Bisheh, Inc., doing business as Airport Smog, upon a finding that it has,
9 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining
10 to an automotive repair dealer.

11 60. Under Health and Safety Code section 44072.8, if Smog Check Test Only
12 Station License Number TD 221086, issued to Bisheh, Inc., doing business as Airport Smog, is
13 revoked or suspended, any additional license issued under this chapter in the name of said
14 licensee may be likewise revoked or suspended by the director.

15 61. Under Health and Safety Code section 44072.8, if Advanced Emission
16 Specialist Technician License Number EA 041149, issued to Charles William Proctor, is revoked
17 or suspended, any additional license issued under this chapter in the name of said licensee may
18 be likewise revoked or suspended by the director.

19 62. Under Health and Safety Code section 44072.8, if Advanced Emission
20 Specialist Technician License Number EA 045409, issued to Mohammad Moalej, is revoked or
21 suspended, any additional license issued under this chapter in the name of said licensee may be
22 likewise revoked or suspended by the director.

23 PRAAYER

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

26 1. Temporarily or permanently invalidating Automotive Repair Dealer
27 Registration Number AD 221086, issued to Bisheh, Inc., doing business as Airport Smog;

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1 2. Temporarily or permanently invalidating any other automotive repair dealer
2 registration issued to Bisheh, Inc., doing business as Airport Smog;

3 3. Revoking or suspending Smog Check, Test Only Station License Number
4 TD 221086, issued to Bisheh, Inc., doing business as Airport Smog;

5 4. Revoking or suspending any additional license issued under this chapter in
6 the name of Bisheh, Inc., doing business as Airport Smog;

7 5. Revoking or suspending Advanced Emission Specialist Technician
8 Number EA 041149, issued to Charles William Proctor;

9 6. Revoking or suspending any additional license issued under this chapter in
10 the name of Charles William Proctor;

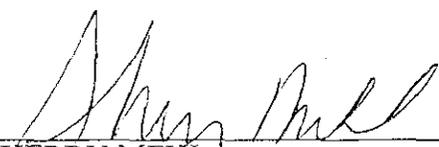
11 7. Revoking or suspending Advanced Emission Specialist Technician
12 License Number EA 04509, issued to Mohammad Moalej;

13 8. Revoking or suspending any additional license issued under this chapter in
14 the name of Mohammad Moalej;

15 9. Ordering Bisheh, Inc., Charles William Proctor and Mohammad Moalej to
16 pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement
17 of this case, pursuant to Code section 125.3; and,

18 10. Taking such other and further action as deemed necessary and proper.

19
20 DATED: 9-3-08

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23 
24 SHERRY MEHL
25 Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant