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8
9 **BEFORE THE**
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. 79/17-316

13 **SHEREEF BISHAY and JOLANA HERTZ,**
14 **MEMBERS, BISHAY SMOG TWO, LLC.**
15 **DBA ABE'S TEST ONLY SMOG**
STATION
16 **997 23rd Street**
Richmond, CA 94804
17 **Automotive Repair Dealer Registration No.**
ARD 264695
Smog Check Station License No. TC 264695,

A C C U S A T I O N

18 **and**

19 **MIKEY QUANG TRAN**
20 **997 23rd Street**
Richmond, CA 94804
21 **Smog Check Inspector License No. EO**
632091 (Formerly EA 632091)

22 **and**

23 **FATAFEHI ATALUA MESUI**
24 **997 23rd Street**
Richmond, CA 94804
25 **Smog Check Inspector License No. EO**
632412
26 **Smog Check Repair Technician License No.**
EI 632412 (Formerly EA 632412)

27 Respondents.
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1 Complainant alleges:

2 PARTIES

3 1. Patrick Dorais (“Complainant”) brings this Accusation solely in his official capacity
4 as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

5 2. On or about April 20, 2011, the Bureau of Automotive Repair (“Bureau”) issued
6 Automotive Repair Dealer Registration Number ARD 264695 (“ARD License”) to Respondent
7 Shereef Bishay and Jolana Hertz, members, Bishay Smog Two, LLC., doing business as Abe’s
8 Test Only Smog Station (“Respondent Abe’s Test Only Smog”). The ARD License was in full
9 force and effect at all times relevant to the charges brought in this Accusation and will expire on
10 April 30, 2018, unless renewed.

11 3. On or about August 4, 2011, the Bureau issued Smog Check Station License number
12 TC 264695 (“Station License”) to Respondent Abe’s Test Only Smog. The Station License was
13 in full force and effect at all times relevant to the charges brought in this Accusation, and will
14 expire on April 30, 2018, unless renewed.

15 4. On or about May 19, 2010, the Bureau issued Advanced Emissions Specialist
16 Technician License Number EA 632091 to Mikey Quang Tran (“Respondent Tran”). The
17 Advanced Emissions Specialist Technician License expired on October 31, 2012, and was
18 cancelled on January 8, 2013. Pursuant to California Code of Regulations, Title 16, section
19 3340.28, subdivision (e), the Advanced Emissions Specialist Technician License was renewed at
20 Respondent’s election as Smog Check Inspector License Number EO 632091, effective January
21 8, 2013. The Inspector License was in full force and effect at all times relevant to the charges
22 brought in this Accusation and will expire on October 31, 2018, unless renewed.

23 5. On or about August 23, 2010, the Bureau issued Advanced Emissions Specialist
24 Technician License Number EA 632412 to Fatafehi Atalua Mesui (“Respondent Mesui”). The
25 Advanced Emissions Specialist Technician License expired on August 31, 2012, and was
26 cancelled on September 10, 2012. Pursuant to California Code of Regulations, Title 16, section
27 3340.28, subdivision (e), the Advanced Emissions Specialist Technician License was renewed at
28 Respondent’s election as Smog Check Inspector License Number EO 632412, and Smog Check

1 Repair Technician License Number EI 632412, effective September 10, 2012. The Repair
2 Technician License expired on August 31, 2014, and has not been renewed. The Inspector
3 License will expire on August 31, 2018, unless renewed.

4 JURISDICTION

5 6. This Accusation is brought before the Director of the Department of Consumer
6 Affairs (“Director”) for the Bureau, under the authority of the following laws.

7 7. Business and Professions Code (“Code”) section 118, subdivision (b), provides that
8 the suspension/expiration/surrender/cancellation of a license shall not deprive the
9 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
10 within which the license may be renewed, restored, reissued or reinstated.

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

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

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

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

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1 STATUTORY AND REGULATORY PROVISIONS

2 12. Section 9884.7 of the Code states:

3 “(a) The director, where the automotive repair dealer cannot show there was a bona fide
4 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
5 dealer for any of the following acts or omissions related to the conduct of the business of the
6 automotive repair dealer, which are done by the automotive repair dealer or any automotive
7 technician, employee, partner, officer, or member of the automotive repair dealer.

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

11 . . .

12 “(4) Any other conduct which constitutes fraud.

13 “(6) Failure in any material respect to comply with the provisions of this chapter or
14 regulations adopted pursuant to it.”

15 13. Health and Safety Code, section 44072.2, states, in pertinent part:

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

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

22 . . .

23 “(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.”

24 14. Health and Safety Code section 44032 states:

25 “No person shall perform, for compensation, tests or repairs of emission control devices or
26 systems of motor vehicles required by this chapter unless the person performing the test or repair
27 is a qualified smog check technician and the test or repair is performed at a licensed smog check
28

1 station. Qualified technicians shall perform tests of emission control devices and systems in
2 accordance with Section 44012.”

3 15. Health and Safety Code section 44012 states:

4 “The test at the smog check stations shall be performed in accordance with procedures
5 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
6 mode dynamometer testing in enhanced areas, and two speed testing in all other program areas,
7 and shall ensure all of the following:

8 . . .

9 “(f) A visual or functional check is made of emission control devices specified by the
10 department, including the catalytic converter in those instances in which the department
11 determines it to be necessary to meet the findings of Section 44001. The visual or functional
12 check shall be performed in accordance with procedures prescribed by the department.”

13 16. California Code of Regulations, title 16, section 3340.42, states:

14 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
15 section 3340.45.

16 “(a) All vehicles subject to a smog check inspection, shall receive one of the following test
17 methods:

18 . . .

19 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
20 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
21 The OBD test failure criteria are specified in section 3340.42.

22 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
23 receive the following:

24 “(1) A visual inspection of emission control components and systems to verify the vehicle's
25 emission control systems are properly installed.

26 “(2) A functional inspection of emission control systems as specified in the Smog Check
27 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
28 operation.”

1 17. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:
2 “(c) The bureau may suspend or revoke the license of or pursue other legal action against a
3 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
4 certificate of noncompliance.”

5 18. California Code of Regulations, title 16, section 3340.35, subdivision (c), states:
6 “(c) A licensed station shall issue a certificate of compliance or noncompliance to the
7 owner or operator of any vehicle that has been inspected in accordance with the procedures
8 specified in section 3340.42 of this article and has all the required emission control equipment
9 and devices installed and functioning correctly.”

10 19. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:
11 “(c) No person shall enter into the emissions inspection system any vehicle identification
12 information or emission control system identification data for any vehicle other than the one
13 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
14 information about the vehicle being tested.”

15 20. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:
16 “A smog check technician shall comply with the following requirements at all times while
17 licensed.

18 “(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
19 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
20 3340.42 of this article.”

21 COST RECOVERY

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

26 FACTUAL ALLEGATIONS

27 22. On or about January 9, 2017, Bureau representative Gregory Bernes reviewed the OIS
28 Data for vehicles inspected by Respondents Tran and Mesui with the BAR-OIS at Respondent

1 Abe's Test Only Smog Star between May 12, 2016, and January 4, 2017. The details regarding
2 Mr. Bernes's investigation are summarized as follows: Mr. Bernes accessed the Vehicle
3 Information Database ("VID"), and performed a focused review of BAR-OIS test data for
4 Respondents. BAR-OIS test data is the OBD information transmitted during a smog inspection
5 from the computer of the vehicle being inspected to the BAR-OIS. The information is organized
6 in a detailed inspection report for each vehicle inspected and is known as a BAR-OIS Test Detail.
7 The BAR-OIS Test Detail contains information segregated into eight different blocks titled as
8 follows: Station, Vehicle, Test Status, Visual Details, Functional Details, OBDII Details, OBDII
9 Readiness Monitor Details, and OBDII DTC Details. Mr. Bernes focused on information in the
10 "Vehicle" and "OBDII Details" blocks because they contain a unique combination of information
11 about the vehicle being inspected and "like vehicles" inspected. Like vehicles are vehicles of the
12 same manufacture, model, and model year that were inspected on the BAR-OIS. The unique
13 combination of information analyzed by Gregory Bernes includes the eVIN, PID count, and
14 protocol. Mr. Bernes compared the eVIN, communication protocol, and PID count for a vehicle
15 that has been certified to like vehicles.

16 23. When comparing like vehicle data, there are occasions when there is a discrepancy in
17 the data transmitted. Discrepancies can occur because some of the like vehicles were fraudulently
18 certified, or because a faulty computer was replaced with a remanufactured unit that transmits the
19 eVIN from its original vehicle. In these cases, the protocol and PID count are still at expected
20 values. Other discrepancies in like vehicle data tend to occur only in the protocol or PID count
21 and they represent a rare anomaly. All of the vehicles identified by Mr. Bernes failed to transmit
22 the expected eVIN, protocol, and PID count.

23 24. The data transmitted during Respondents Tran and Mesui's inspections either differed
24 from the OIS data the vehicles transmitted during failed or abandoned inspections, or the data was
25 inconsistent with the OIS data transmitted by "like vehicles" inspected, or both.

26 25. The OIS Data transmitted by the vehicles during the failed or abandoned inspections
27 was consistent with the OIS Data transmitted by like vehicles inspected. The OIS Data
28

1 transmitted by the ten vehicles identified by Gregory Bernes was not consistent with OIS Data for
2 like vehicles inspected.

3 26. Mr. Bernes's review of the BAR-OIS data for the vehicles certified by Respondents
4 during the above time period revealed a pattern of fraudulent smog inspections that resulted in the
5 issuance of fraudulent certificates of compliance. Mr. Bernes determined ten instances in which
6 Respondents Tran and Mesui certified vehicles that were not connected to the DAD during the
7 smog inspection. Respondents Tran and Mesui therefore clean plugged ten vehicles, resulting in
8 Respondent Abe's Test Only Smog's issuing ten fraudulent certificates of compliance between
9 May 12, 2016, and January 4, 2017. The details of each instance of clean plugging is set forth in
10 detail below:

11 **Clean Plug Number 1:**

12 27. Mr. Bernes's review of the OIS Test OBD Inspection List for Respondent Abe's Test
13 Only Smog indicated that on May 12, 2016, Respondent Tran inspected a 2012 Nissan Altima
14 2.5/2.5S, VIN 1N4AL2AP8CN492986, and Respondent Abe's Test Only Smog issued smog
15 certificate of compliance ZD649562C. The OIS Test Data shows that during Respondent Tran's
16 inspection, an incorrect eVIN was transmitted, the communication protocol is listed as I914080,
17 and the PID count was 19. Comparative OIS Test Data for like 2012 Nissan Altima 2.5/2.5S
18 vehicles shows they transmit their correct eVIN, they transmit a communication protocol of
19 ICAN11bt500, and they transmit a PID count of 39 or 40.

20 28. Furthermore, the OIS Test Data shows that a 2007 Nissan Altima 2.5/2.5S, VIN
21 1N4AL21E97C182572 was the vehicle used to generate the fraudulent Smog Certificate for the
22 2012 Nissan Altima 2.5/2.5S. During a May 5, 2016, inspection of the 2007 Nissan Altima
23 2.5/2.5S, the correct eVIN was transmitted, the communication was through the expected
24 protocol of I914080, and the PID count was the expected number of 19.

25 **Clean Plug Number 2:**

26 29. Mr. Bernes's review of the OIS Test OBD Inspection List for Respondent Abe's Test
27 Only Smog indicated that on July 12, 2016, Respondent Mesui inspected a 2006 Lincoln
28 Navigator, VIN 5LMFU27556LJ12689, and Respondent Abe's Test Only Smog issued smog

1 certificate of compliance ZF743038C. The OIS Test Data shows that during Respondent Mesui's
2 inspection, an incorrect eVIN was transmitted, the communication protocol is listed as
3 JPWM1850, and the PID count was 22. Comparative OIS Test Data for like 2006 Lincoln
4 Navigator vehicles shows they transmit their correct eVIN, they transmit a communication
5 protocol of ICAN11bt5, and they transmit a PID count of 44 or 44/16.

6 30. Furthermore, on June 11, 2016, the same 2006 Lincoln Navigator was inspected using
7 the BAR-OIS. During that inspection, the correct eVIN was transmitted, the communication was
8 through the expected protocol of ICAN11bt5, and the PID count was the expected number of
9 44/16.

10 31. Furthermore, the OIS Test Data shows that a 2003 Lincoln Navigator, VIN
11 5LMFU28R73LJ38305 was the vehicle used to generate the fraudulent Smog Certificate for the
12 2006 Lincoln Navigator. During a June 27, 2016, inspection of the 2003 Lincoln Navigator, the
13 correct eVIN was transmitted, the communication was through the expected protocol of
14 JPWM1850, and the PID count was the expected number of 22.

15 **Clean Plug Number 3:**

16 32. Mr. Bernes's review of the OIS Test OBD Inspection List for Respondent Abe's Test
17 Only Smog indicated that on July 27, 2016, Respondent Mesui inspected a 2001 Volkswagen
18 Passat GLX 4Motion, VIN WVWTH63B41E159744, and Respondent Abe's Test Only Smog
19 issued smog certificate of compliance ZH366472C. The OIS Test Data shows that during
20 Respondent Mesui's inspection, an incorrect eVIN was transmitted, the communication protocol
21 is listed as KWPS8FE9, and the PID count was 18/5. Comparative OIS Test Data for like 2001
22 Volkswagen Passat GLX 4Motion vehicles shows they do not transmit any eVIN, they transmit a
23 communication protocol of I914, and they transmit a PID count of 20, 21 or 21/5.

24 33. Furthermore, the OIS Test Data shows that a 2003 Volkswagen Passat GLS, VIN
25 WVWPD36B73P456298 was the vehicle used to generate the fraudulent Smog Certificate for the
26 2001 Volkswagen Passat GLX 4Motion. During a July 23, 2016, inspection of the 2003
27 Volkswagen Passat GLS, the correct eVIN was transmitted, the communication was through the
28 expected protocol of KWPS8FE9, and the PID count was the expected number of 18/5.

1 **Clean Plug Number 4:**

2 34. Mr. Bernes's review of the OIS Test OBD Inspection List for Respondent Abe's Test
3 Only Smog indicated that on August 17, 2016, Respondent Tran inspected a 2002 Toyota RAV4,
4 VIN JTEGH20V220071830, and Respondent Abe's Test Only Smog issued smog certificate of
5 compliance ZH962390C. The OIS Test Data shows that during Respondent Tran's inspection, an
6 incorrect eVIN was transmitted, the communication protocol is listed as ICAN11bt500, and the
7 PID count was 39. Comparative OIS Test Data for like 2002 Toyota RAV4 vehicles shows they
8 do not transmit any eVIN, they transmit a communication protocol of I914, and they transmit a
9 PID count of 21.

10 35. Furthermore, the OIS Test Data shows that a 2006 Toyota RAV4, VIN
11 JTMZD31V665008428 was the vehicle used to generate the fraudulent Smog Certificate for the
12 2002 Toyota RAV4. During a June 11, 2015, inspection of the 2006 Toyota RAV4, the correct
13 eVIN was transmitted, the communication was through the expected protocol of ICAN11bt500,
14 and the PID count was the expected number of 39.

15 **Clean Plug Number 5:**

16 36. Mr. Bernes's review of the OIS Test OBD Inspection List for Respondent Abe's Test
17 Only Smog indicated that on August 19, 2016, Respondent Tran inspected a 2006 Hyundai
18 Tiburon GT/SE/GT LTD, VIN KMHHN65F86U230080, and Respondent Abe's Test Only Smog
19 issued smog certificate of compliance ZJ251054C. The OIS Test Data shows that during
20 Respondent Tran's inspection, an incorrect eVIN was transmitted, the communication protocol is
21 listed as ICAN11bt500, and the PID count was 42/4. Comparative OIS Test Data for like 2006
22 Hyundai Tiburon GT/SE/GT LTD vehicles shows they transmit their correct eVIN, they transmit
23 a communication protocol of KWPF, and they transmit a PID count of 21, 21/1 or 22.

24 37. Furthermore, on June 8, 2016, the same 2006 Hyundai Tiburon GT/SE/GT LTD was
25 inspected using the BAR-OIS. During that inspection, the correct eVIN was transmitted, the
26 communication was through the expected protocol of KWPF, and the PID count was the expected
27 number of 21.

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1 38. Furthermore, the OIS Test Data shows that a 2010 Hyundai Santa Fe GLS, VIN
2 5NMSG3AB0AH396390, was the vehicle used to generate the fraudulent Smog Certificate for
3 the 2006 Hyundai Tiburon GT/SE/GT LTD. During a June 6, 2016, inspection of the 2010
4 Hyundai Santa Fe GLS, the correct eVIN was transmitted, the communication was through the
5 expected protocol of ICAN11bt500, and the PID count was the expected number of 42/4.

6 **Clean Plug Number 6**

7 39. Mr. Bernes's review of the OIS Test OBD Inspection List for Respondent Abe's Test
8 Only Smog indicated that on September 24, 2016, Respondent Tran inspected a 2006 Toyota
9 Scion XB, VIN JTLKT324664031843, and Respondent Abe's Test Only Smog issued smog
10 certificate of compliance QE370726C. The OIS Test Data shows that during Respondent Tran's
11 inspection, an incorrect eVIN was transmitted, the communication protocol is listed as I9140808,
12 and the PID count was 17. Comparative OIS Test Data for like 2006 Toyota Scion XB vehicles
13 shows they transmit their correct eVIN, they transmit a communication protocol of ICAN11bt5,
14 and they transmit a PID count of 34.

15 40. Furthermore, on July 11, 2016, the same 2006 Toyota Scion XB was inspected using
16 the BAR-OIS. During that inspection, the correct eVIN was transmitted, the communication was
17 through the expected protocol of ICAN11bt5, and the PID count was the expected number of 34.

18 41. Furthermore, the OIS Test Data shows that a 2006 Toyota Scion XC, VIN
19 JTKDE177860120237, was the vehicle used to generate the fraudulent Smog Certificate for the
20 2006 Toyota Scion XB. During a March 14, 2016, inspection of the 2006 Toyota Scion XC, the
21 correct eVIN was transmitted, the communication was through the expected protocol of
22 I9140808, and the PID count was the expected number of 17.

23 **Clean Plug Number 7**

24 42. Mr. Bernes's review of the OIS Test OBD Inspection List for Respondent Abe's Test
25 Only Smog indicated that on October 1, 2016, Respondent Tran inspected a 2005 Toyota Prius,
26 VIN JTDKB20U353051094, and Respondent Abe's Test Only Smog issued smog certificate of
27 compliance QE671008C. The OIS Test Data shows that during Respondent Tran's inspection, an
28 eVIN was not transmitted, the communication protocol is listed as I9140808, and the PID count

1 was 16. Comparative OIS Test Data for like 2005 Toyota Prius vehicles shows they transmit
2 their correct eVIN, they transmit a communication protocol of ICAN11bt5, and they transmit a
3 PID count of 37/21, 37/21/17 or 37/21/5.

4 **Clean Plug Number 8**

5 43. Mr. Bernes's review of the OIS Test OBD Inspection List for Respondent Abe's Test
6 Only Smog indicated that on October 7, 2016, Respondent Tran inspected a 2003 Nissan
7 Altima/S/SL, VIN 1N4AL11D33C271856, and Respondent Abe's Test Only Smog issued smog
8 certificate of compliance QE979102C. The OIS Test Data shows that during Respondent Tran's
9 inspection, an incorrect eVIN was transmitted, the communication protocol is listed as
10 ICAN11bt500, and the PID count was 39. Comparative OIS Test Data for like 2003 Nissan
11 Altima/S/SL vehicles shows they do not transmit their eVIN, they transmit a communication
12 protocol of I914, and they transmit a PID count of 18.

13 44. Furthermore, on November 27, 2016, the same 2003 Nissan Altima/S/SL was
14 inspected using the BAR-OIS. During that inspection, the eVIN was not transmitted, the
15 communication was through the expected protocol of I914, and the PID count was the expected
16 number of 18.

17 45. Furthermore, the OIS Test Data shows that a 2008 Nissan Rogue S/SL, VIN
18 JN8AS58V98W111283, was the vehicle used to generate the fraudulent Smog Certificate for the
19 2003 Nissan Altima/S/SL. During a September 9, 2016, inspection of the 2008 Nissan Rogue
20 S/SL, the correct eVIN was transmitted, the communication was through the expected protocol of
21 ICAN11bt500, and the PID count was the expected number of 39.

22 **Clean Plug Number 9**

23 46. Mr. Bernes's review of the OIS Test OBD Inspection List for Respondent Abe's Test
24 Only Smog indicated that on October 13, 2016, Respondent Tran inspected a 2007 Ford Mustang,
25 VIN 1ZVFT80N975270804, and Respondent Abe's Test Only Smog issued smog certificate of
26 compliance QE979129C. The OIS Test Data shows that during Respondent Tran's inspection, an
27 incorrect eVIN was transmitted, the communication protocol is listed as JPWM1850, and the PID
28 count was 20. Comparative OIS Test Data for like 2007 Ford Mustang vehicles shows they

1 transmit the correct eVIN, they transmit a communication protocol of ICAN11bt5, and they
2 transmit a PID count of 45 or 47.

3 47. Furthermore, the OIS Test Data shows that a 2001 Ford Escape XLT, VIN
4 1FMCU03101KB12255 was the vehicle used to generate the fraudulent Smog Certificate for the
5 2007 Ford Mustang. During a October 13, 2016, inspection of the 2001 Ford Escape XLT, the
6 correct eVIN was transmitted, the communication was through the expected protocol of
7 JPWM1850, and the PID count was the expected number of 20.

8 **Clean Plug Number 10**

9 48. Mr. Bernes's review of the OIS Test OBD Inspection List for Respondent Abe's Test
10 Only Smog indicated that on January 4, 2017, Respondent Tran inspected a 2003 Nissan Altima
11 Base, VIN 1N4AL11D53C120212, and Respondent Abe's Test Only Smog issued smog
12 certificate of compliance ZN094472C. The OIS Test Data shows that during Respondent Tran's
13 inspection, an incorrect eVIN was transmitted, the communication protocol is listed as
14 ICAN11bt500, and the PID count was 38. Comparative OIS Test Data for like 2003 Nissan
15 Altima Base vehicles shows they do not transmit their eVIN, they transmit a communication
16 protocol of I914, and they transmit a PID count of 18.

17 49. Furthermore, on November 26, 2016, the same 2003 Nissan Altima Base was
18 inspected using the BAR-OIS. During that inspection, the eVIN was not transmitted, the
19 communication was through the expected protocol of I914, and the PID count was the expected
20 number of 18.

21 50. Furthermore, the OIS Test Data shows that a 2008 Nissan Altima 2.5, VIN
22 1N4AL21E48N465130, was the vehicle used to generate the fraudulent Smog Certificate for the
23 2003 Nissan Altima Base. During a December 22, 2016, inspection of the 2008 Nissan Altima
24 2.5, the correct eVIN was transmitted, the communication was through the expected protocol of
25 ICAN11bt500, and the PID count was the expected number of 38.

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51. The relevant OIS Test Data analyzed by Mr. Bernes is summarized in Table I below:

TABLE 1

Clean Plug	Cert. #	eVIN	Protocol	PID Count
1	#ZD649562C			
	Fraudulent Inspection 5/12/16	1N4AL21E97C182572	I9140808	19
	Expected Value	1N4AL2AP8CN492986	ICAN11bt5	39 or 40
2	#ZF743038C			
	Fraudulent Inspection 7/12/16	5LMFU28R73LJ38305	JPWM1850	22
	Expected Value	5LMFU27556LJ12689	ICAN11bt500	44 or 44/16
3	#ZH366472C			
	Fraudulent Inspection 7/27/16	WVWPD63B73P456298	KWPS8FE9	18/5
	Expected Value	Not Expected	I914	20, 21, or 21/5
4	#ZH962390C			
	Fraudulent Inspection 8/17/16	JTMZD31V665008428	ICAN11bt500	39
	Expected Value	Not Expected	I914	21
5	#ZJ251054C			
	Fraudulent Inspection 8/19/16	5NMSG3AB0AH396390	ICAN11bt500	42/4
	Expected Value	KMHHN65F86U230080	KWPF	21, 21/1, or 22
6	#QE370726C			
	Fraudulent Inspection 9/24/16	JTKDE177860120237	I9140808	17
	Expected Value	JTLKT324664031843	ICAN11bt5	34
7	#QE671008C			
	Fraudulent Inspection 10/1/16	Not Present	I9140808	16
	Expected Value	JTDKB20U353051094	ICAN11bt5	37/21, 37/21/17, or 37/21/5
8	#QE979102C			
	Fraudulent Inspection 10/7/16	JN8AS58V98W111283	ICAN11bt5	39
	Expected Value	Not Expected	I914	18

Clean Plug 9	Cert. #QE979129C	eVIN	Protocol	PID Count
	Fraudulent Inspection 10/13/16	1FMCU03101KB12255	JPWM1850	20
	Expected Value	1ZVFT80N975270804	ICAN11bt5	45 or 47
Clean Plug 10	Cert. #ZN094472C	eVIN	Protocol	PID Count
	Fraudulent Inspection 1/4/17	1N4AL21E48N465130	ICAN11bt500	38
	Expected Value	Not Expected	I914	18

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

52. Respondent Abe's Test Only Smog has subjected its ARD License to disciplinary action in that Respondent Abe's Test Only Smog made untrue statements when it issued ten fraudulent certificates of compliance and failed to comply with the Automotive Repair Act as set forth in paragraphs 22 through 50, above. (Bus. & Prof Code, section 9884.7, subd. (a)(1))

SECOND CAUSE FOR DISCIPLINE

(Fraud)

53. Respondent Abe's Test Only Smog has subjected its ARD License to discipline in that Respondent Abe's Test Only Smog engaged in fraud when it issued ten fraudulent certificates of compliance as set forth in paragraphs 22 through 50, above. (Bus. & Prof. Code, section 9884.7, subd. (a)(4).)

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Automotive Repair Act)

54. Respondent Abe's Test Only Smog has subjected its ARD License and its Station License to discipline in that it failed to comply with the Automotive Repair Act and sections of the Code and applicable regulations as set forth in paragraphs 22 through 50, above. (Bus. & Prof Code, section 9884.7, subd. (a)(6); Health & Saf. Code, section 44072.2.) The violations are as follows:

a. **Health & Safety Code, § 44012, subd. (f):** Respondent Abe's Test Only Smog failed to follow test procedures in accordance with the Onboard Inspection System ("OIS")

1 SEVENTH CAUSE FOR DISCIPLINE

2 (Violations of Motor Vehicle Inspection Program)

3 58. Respondent Mesui has subjected his Inspector License to discipline in that he violated
4 sections of the Code and applicable regulations when he failed to connect two vehicles to the
5 BAR-OIS when they were being certified, as set forth in paragraphs 29 through 33, above.
6 (Health & Safe Code, § 44072.2, subds. (a), (c).) The circumstances are as follows:

7 a. **Health & Saf. Code, § 44012, subd. (f):** Respondent Mesui failed to follow test
8 procedures in accordance with the OIS specifications and failed to perform a functional
9 inspection of required equipment.

10 b. **Health & Saf. Code, § 44032:** Respondent Mesui failed to ensure that the emission
11 control tests were performed in accordance with the procedures prescribed by the department.

12 c. **Cal. Code Regs., tit. 16, § 3340.24, subd. (c):** Respondent Mesui falsely or
13 fraudulently caused certificates of compliance to be issued to vehicles without performing bona
14 fide inspections of the emission control devices and systems on the vehicles as required by Health
15 and Safety Code section 44012.

16 d. **Cal. Code Regs., tit. 16, § 3340.30, subd. (a):** Respondent Mesui failed to inspect
17 and test two vehicles in accordance with Health & Safety Code sections 44012 and 44035, and
18 California Code of Regulations, title 16, section 3340.42.

19 e. **Cal. Code Regs., tit. 16, § 3340.35, subd. (c):** Respondent Mesui caused certificates
20 of compliance to be issued to vehicles that were not properly inspected in accordance with
21 California Code of Regulations, title 16, section 3340.42.

22 f. **Cal. Code Regs., tit. 16, § 3340.41, subd. (c):** Respondent Mesui entered into the
23 BAR-OIS vehicle identification information or emission inspection information for a vehicle
24 other than the vehicle being inspected, and also entered false information for the vehicle being
25 inspected.

26 g. **Cal. Code Regs., tit. 16, § 3340.42, subd. (b)(2):** Respondent Mesui failed to
27 conduct the functional inspection in accordance with the smog check manual referenced in
28 California Code of Regulations, title 16, section 3340.45.

1 EIGHTH CAUSE FOR DISCIPLINE

2 (Dishonesty)

3 59. Respondent Mesui has subjected his Inspector License to discipline in that he
4 committed acts involving dishonesty, fraud, or deceit, whereby another was injured, when he
5 caused two fraudulent certificates of compliance to be issued as set forth in paragraphs 29 through
6 33, above. (Health & Saf. Code, § 44072.2, subd. (d).)

7 OTHER MATTERS

8 60. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
9 or place on probation the registration for all places of business operated in this state by
10 Respondent Abe's Test Only Smog, upon a finding that Respondent Abe's Test Only Smog has,
11 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining
12 to an automotive repair dealer.

13 61. Pursuant to Health & Safety Code section 44072.8, if Respondent Abe's Test Only
14 Smog's Station License is revoked or suspended, any additional license issued under Chapter 5 of
15 Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise
16 revoked or suspended by the director.

17 62. Pursuant to Health & Safety Code section 44072.8, if Respondent Tran's Inspector
18 License is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of
19 Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked
20 or suspended by the director.

21 63. Pursuant to Health & Safety Code section 44072.8, if Respondent Mesui's Inspector
22 License is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of
23 Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked
24 or suspended by the director.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
3 Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

4 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
5 264695, issued to Shereef Bishay and Jolana Hertz, members, Bishay Smog Two, LLC., doing
6 business as Abe's Test Only Smog Station;

7 2. Revoking or suspending Smog Check Station License Number TC 264695, issued to
8 Shereef Bishay and Jolana Hertz, members, Bishay Smog Two, LLC., doing business as Abe's
9 Test Only Smog Station;

10 3. Revoking or suspending Smog Check Inspector License Number EO 632091, issued
11 to Mikey Quang Tran;

12 4. Revoking or suspending Smog Check Inspector License Number EO 632412, issued
13 to Fatafehi Atalua Mesui;

14 5. Revoking or suspending any other automotive repair dealer registration issued to
15 Shereef Bishay and Jolana Hertz, members, Bishay Smog Two, LLC.;

16 6. Revoking or suspending any other smog check station license issued to Shereef
17 Bishay and Jolana Hertz, members, Bishay Smog Two, LLC.;

18 7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
19 Division 26 of the Health and Safety Code in the name of Mikey Quang Tran;

20 8. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
21 Division 26 of the Health and Safety Code in the name of Fatafehi Atalua Mesui;

22 9. Ordering Shereef Bishay and Jolana Hertz, members, Bishay Smog Two, LLC,
23 Mikey Quang Tran, and Fatafehi Atalua Mesui to pay the Bureau of Automotive Repair the
24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
25 Professions Code section 125.3;

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

DATED: November 30 2017 Patrick Dorais

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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