

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

In the Matter of the Petition for Interim Suspension Order
Against:

Case No. 79/13-03

ATOCHAS TEST ONLY;
FRANCISCO JAVIER LIZARDO

OAH No. 2012070664

Automotive Repair Dealer Registration No. ARD 258921
Smog Check Test Only Station License No. TC 258921

FRANCISCO JAVIER LIZARDO
Advanced Emission Specialist Technician License No.
EA 154982

and

ERIC RENE MORAN

Advanced Emission Specialist Technician License No.
EA 150603

Respondents.

DECISION ON PETITION FOR INTERIM SUSPENSION ORDER

The petition for interim suspension order (ISO) was heard before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 10, 2012, in Los Angeles, California.

William D. Gardner, Deputy Attorney General, represented John Wallaugh (petitioner), Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs. Respondent Atochas Test Only, respondent Francisco Javier LizarDO and respondent Eric Rene Moran were represented by Michael B. Levin, Attorney at Law. They did not appear at the hearing.

Pursuant to Business and Professions Code section 494, subdivision (d), affidavits and other documentary evidence were received, oral and written arguments were presented, the record was closed, and the matter was submitted for decision on August 10, 2012.

SUMMARY OF DECISION

Petitioner seeks an ISO under Business and Professions Code section 494 against respondents based upon their use of "clean plugging" to certify that vehicles, which were not properly tested, had passed smog inspections. As set forth below, petitioner established that permitting respondents to continue to engage in the licensed activity until an accusation can be served and a decision rendered thereon would endanger the public health, safety, and welfare. Petitioner therefore demonstrated that an ISO should be issued against respondents under Business and Professions Code section 494.

FACTUAL FINDINGS

Procedural History

1. On July 23, 2012, petitioner served the petition for an ISO on respondents at their addresses of record with the Bureau. Also on July 23, 2012, petitioner served on respondents a Notice of Hearing.

Respondents' Licenses

2. On July 30, 2009, the Bureau issued Automotive Repair Dealer Registration Number ARD 258921 (registration) to respondent Atochas Test Only, with respondent Francisco Javier Lizardo as owner. The registration was in full force and effect at all times relevant to the charges brought in this proceeding and expired on June 30, 2012.

3. On July 31, 2009, the Bureau issued Smog Check Only Station License Number TC 258921 (station license) to respondent Atochas. The station license was in full force and effect at all times relevant to the charges brought in this proceeding and expired on June 30, 2012.

4. On January 1, 2008, the Bureau issued Advanced Emission Specialist Technician License Number EA 154982 (technician license) to respondent Lizardo. The technician license was in full force and effect at all times relevant to the charges brought in this proceeding and expired on January 31, 2012.

5. In 2005, the Bureau issued Advanced Emission Specialist Technician License Number EA 150603 (technician license) to respondent Eric Rene Moran. The technician license was in full force and effect at all times relevant to the charges brought in this proceeding and will expire on August 31, 2013, unless renewed.

Clean Plugging

6. A regular smog test of a vehicle requires a licensed technician to perform a visual inspection of the vehicle to verify that the components of the vehicle's smog control system are present, connected and within technical specifications. Two of the other tests include use of a probe in the vehicle's exhaust pipe to test emissions, and plugging a computer cable into the vehicle's computer control system to gather information about the vehicle's operation. The probe and computer cable are connected to a computer terminal that is connected by modem to the Bureau. The technician enters information on the computer terminal to identify the vehicle and, if these inspections and tests are all passed, a Certificate of Compliance is issued which can be used to register the vehicle with the Department of Motor Vehicles. In the fraudulent process known as clean plugging, the technician enters information identifying the vehicle to be tested, vehicle #1, on the computer terminal. However, because the technician suspects that vehicle #1 might not pass the test, he plugs the computer cable into vehicle #2. Although a Certificate of Compliance is issued, vehicle #1 has not had a proper test of its computer control system.

7. On February 2, 2012, the Bureau conducted a video surveillance operation of smog inspections performed at respondent Atochas's facility. During the surveillance period, the Bureau representative had a clear view of the facility and observed respondent Moran engage in two instances of clean plugging. In both instances the computer cable was connected to a 1996 Chevrolet Lumina, California license 5GNB699. By checking the Bureau's computer system, the representative learned that Certificates of Compliance had been issued for the two cars, a 1996 Nissan 240 SX and a 1997 Honda Accord.

8. On February 3, 2012, the Bureau conducted a video surveillance operation of smog inspections performed at respondent Atochas's facility. During the surveillance period, the Bureau representative had a clear view of the facility and observed respondent Moran engage in three instances of clean plugging. In the three instances the computer cable was connected to a 1996 Chevrolet Lumina, California license 5GNB699. By checking the Bureau's computer system, the representative learned that Certificates of Compliance had been issued for the three cars, a 2000 Ford Expedition, a 1997 Honda Prelude and a 2000 Chevrolet Suburban.

9. After connection of the computer cable, a vehicle's computer control system will often report a fault code indicating that some aspect of the vehicle should be checked or is not operating correctly. Many fault codes are specific to a particular make or model of vehicle. Not all fault codes result in a failure of the vehicle to pass this part of a smog test.

10. A Bureau representative reviewed the computer data collected from smog tests at respondent Atochas's facility during the surveillance on February 2 and 3, 2012. For each of the five smog tests referenced in Factual Findings 7 and 8, the fault code P1864 was recorded. The fault code did not result in failure of the tests. Fault code P1864 is not specific to the five cars being tested, but would be supported by a 1996 Chevrolet Lumina.

11. A Bureau representative reviewed the computer data collected from smog tests at respondent Atochas's facility during the month of January 2012. He discovered eight instances in which the data revealed that respondent Moran's technician license number and computer access code were used to issue fraudulent Certificates of Compliance, most likely by use of clean plugging. In each instance set forth in more detail below, the fault code P1864 was noted and did not match the make or model of the car for which a Certificate of Compliance was issued, but would be supported by a 1996 Chevrolet Lumina: (1) January 3, 1997 Ford 150; (2) January 4, 1996 Ford 150; (3) January 5, 2001 Ford 150; (4) January 7, 1998 Ford Mustang; (5) January 9, 1999 Ford Windstar; (6) January 12, 1997 Ford 150; (7) January 13, 1997 Ford 250; and (8) January 31, 1999 Ford 150.

12. Respondent Lizardo submitted a declaration dated August 3, 2012 (Exhibit A) summarized as follows: Moran runs the shop; Lizardo has a full time job at Alamo Express Lube where he works Tuesday-Sunday, 8 a.m. to 6 p.m.; he would typically go to Atochas on some Mondays, for about 30 minutes; he would "track" the business with information from Moran on the number of smog tests, information from the computer on certificate numbers, and by checking the money paid in; of the various dates in the Petition, only one was a Monday, and he does not recall if he was at Atochas that day; he didn't know anything about clean plugging until July 23, 2012, when Moran got the papers from the Bureau and brought them to Lizardo; Moran apologized and was crying; and Lizardo does not believe that continued operation of Atochas would be a threat to the public health, safety and welfare.

13. Respondent Moran submitted a declaration dated August 3, 2012 (Exhibit B) summarized as follows: he has worked at Atochas for approximately two and one-half years; Lizardo was seldom at the shop and "had no idea what was going on"; people Moran knew would come to the shop and ask if he could help them, and: "I tried to help out people in doing what I did. I regret what happened." He still works at Atochas. He is married, his wife is pregnant and he works the job to support his family. Respondent Moran writes that he has "learned my lesson" and does not believe that continued employment would be a threat to the public health, safety and welfare.

14. Through the use of clean plugging, respondents issued 13 fraudulent certificates of compliance to vehicles that had not been properly inspected. Given respondents' fraudulent conduct, it would endanger the public health, safety and welfare of to allow respondents to continue to operate. To protect the public health, safety and welfare, respondent Atochas's registration and station license, and the technician licenses of respondent Lizardo and respondent Moran must be suspended until an accusation is filed and a decision is rendered thereon pursuant to Business and Professions Code section 494, subdivision (f).

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LEGAL CONCLUSIONS AND DISCUSSION

1. Business and Professions Code section 494, subdivision (a), in relevant part, provides that an ISO may be issued when it is established that: "The licentiate has engaged in acts or omissions constituting a violation of this code"; and "Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare."
2. Under Business and Professions Code section 118, the Bureau has jurisdiction to suspend or revoke an expired license or registration.
3. Under Business and Professions Code section 9884.7, subdivisions (a)(1) and (4), the director of the Bureau may revoke the registration of an automotive repair dealer for the following acts, "where the automotive repair dealer cannot show there was a bona fide error": "(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading"; and "(4) Any other conduct that constitutes fraud."
4. The director of the Bureau may revoke or take other disciplinary action against a license under Health and Safety Code section 44072.2, subdivisions (a), (c) and (d), if the licensee: "(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities"; "(c) Violates any of the regulations adopted by the director pursuant to this chapter"; or "(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured."
5. By virtue of its license and registration, respondents Lizardo and Atochas are responsible for any acts of respondent Moran while he was employed at Atochas.
6. Respondents' fraudulent use of clean plugging to issue Certificates of Compliance to 13 vehicles that were not properly inspected in accordance with the laws and regulations governing smog inspections demonstrates that respondents have engaged in acts and omissions constituting violations of the Business and Professions Code. These violations subject them to discipline pursuant to Business and Professions Code section 9884.7, subdivisions (a)(1) and (4), and Health and Safety Code section 44072.2, subdivisions (a), (c) and (d).
7. Permitting respondents to continue to engage in licensed activity would endanger the public health, safety, and welfare. To protect the public health, safety and welfare, respondent Atochas's registration and station license, and the technician licenses of respondent Lizardo and respondent Moran must be suspended until an accusation is filed and a decision is rendered thereon pursuant to Business and Professions Code section 494, subdivision (f).

8. Noticeably lacking in the respondents' declarations are any changes in procedures or supervision to prevent the recurrence of clean plugging. Respondent Lizardo is usually not there. He does not propose to be there more often. His oversight of the business was so lax as to allow these violations to occur. He does not propose any new procedures to provide more supervision or discover if there are improper vehicle smog tests. After learning of the violations, he still employs the primary wrongdoer and does not state that there is anything new he will do to assure that vehicle smog tests will be performed correctly. Nor does respondent Moran, the person who actually performed the improper smog tests, even say that he will not do it again. Under these circumstances it is necessary to suspend the licenses and registration of respondents Atochas, Lizardo and Moran.

ORDER

1. Petitioner's petition for an interim suspension order is granted.
2. Automotive Repair Dealer Registration No. ARD 258921 issued to respondent Atochas Test Only is hereby suspended.
3. Smog Test Only Station License No. TC 258921 issued to respondent Atochas Test Only is hereby suspended.
4. Advance Emission Specialist Technician License No. EA 154982 issued to respondent Francisco Javier Lizardo is hereby suspended.
5. Advance Emission Specialist Technician License EA 150603 issued to respondent Eric Rene Moran is hereby suspended.
6. The suspensions are effective immediately and remain in effect until an accusation is issued and a decision is rendered thereon in accordance with Business and Professions Code section 494, subdivision (f). Failure to comply with any of the requirements of Business and Professions Code section 494, subdivision (f), shall dissolve this Interim Suspension Order by operation of law.

DATED: August 10, 2012



DAVID B. ROSENMAN
Administrative Law Judge

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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 Interim Suspension Order
Against:

13 **ATOCHAS TEST ONLY; FRANCISCO**
14 **JAVIER LIZARDO**
15018 Valley Blvd
16 La Puente, CA 91746

17 **Automotive Repair Dealer Registration No.**
ARD 258921
Smog Check, Test Only, Station License No.
TC 258921,

18 **FRANCISCO JAVIER LIZARDO**
15018 Valley Blvd
19 La Puente, CA 91746

20 **Advanced Emission Specialist Technician**
License No. EA 154982,

21 and

22 **ERIC RENE MORAN**
939 Le Borgne Avenue
23 La Puente, CA 91746

24 **Advanced Emission Specialist Technician**
25 License No. EA 150603

26 Respondents.

Case No. 79/13-03

OAH No.

**PETITION FOR INTERIM
SUSPENSION ORDER**

[Business and Professions Code section 494]

(Filed concurrently with Memorandum of
Points and Authorities in Support of Interim
Suspension Order)

DATE: August 10, 2012

TIME: 1:30 p.m.

PLACE: Office of Administrative
Hearings, 320 West Fourth
Street, Suite 630
Los Angeles, CA 90013

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

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

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

6 **VIOLATIONS OF THE AUTOMOTIVE REPAIR ACT AND MOTOR**
7 **VEHICLE INSPECTION PROGRAM**

8 Respondents Atochas Test Only; Francisco Javier Lizardo, owner, Francisco Javier
9 Lizardo and Eric Rene Moran (collectively, "Respondents") have engaged in acts or omissions
10 constituting violations of the Motor Vehicle Inspection Program (Health and Safety Code section
11 44000 et. seq.) in the following respects:

12 **Clean Plugging: Surveillance Operation**

13 8. On or about February 2, 2012, between the hours of approximately 1018 and 1335,
14 Bureau program representatives Freeman Baldwin and Allen Steele conducted video-taped
15 surveillance of the Atochas Test Only smog check station, located at 15018 Valley Blvd., La
16 Puente, CA. Bureau program representative Baldwin observed respondent Eric Rene Moran at
17 the Atochas Test Only smog check station during the surveillance period. During the surveillance
18 period, Baldwin observed four (4) smog inspections that required the performance of OBDII
19 functional tests wherein the technician must connect a test cable from the Bar-97 analyzer to the
20 Diagnostic Link Connector (DLC) located in the vehicle's passenger compartment. Bureau
21 program representative Baldwin further observed that in two (2) of the four (4) inspections in
22 which OBDII functional tests were required to be performed, respondent Moran engaged in
23 fraudulent conduct known as "clean plugging".² Specifically, Respondent failed to connect the
24 OBDII functional test cable to two (2) of the vehicles that were issued Certificates of Compliance

25
26 ² Clean plugging is the use of the OBD II readiness monitor status and stored fault code
27 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
28 another vehicle that is not in compliance due to a failure to complete the minimum number of self
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

1 from respondent Atochas Test Only; Francisco Javier Lizardo. Instead, in both instances,
2 respondent Moran fraudulently connected the test cable to a second vehicle instead of the vehicle
3 supposedly being tested.

4 9. Bureau program representatives Baldwin and Steele performed a second video
5 surveillance the Atochas Test Only smog check station on February 3, 2012, between the hours of
6 approximately 0739 and 1643. During the surveillance period, Bureau program representative
7 Baldwin observed respondent Moran perform eight (8) smog inspections that required the
8 performance of OBDII functional tests wherein the technician must connect a test cable from the
9 Bar-97 analyzer to the DLC located in the vehicle's passenger compartment. Bureau program
10 representative Baldwin further observed that in three (3) of the eight (8) inspections in which
11 OBDII functional tests were required to be performed, respondent Moran again engaged in clean
12 plugging.

13 10. The clean plugging activities observed by Bureau representative Baldwin at
14 Atochas Test Only on February 2, 2012 and February 3, 2012, were further corroborated by his
15 review of the Test Summary Reports for the clean piped vehicles, which indicated that a fault
16 code P1864 was present in each inspection. Baldwin then consulted the original equipment
17 manufacturer ("OEM") service information for these vehicles and/or the industry standard
18 references Mitchell On-Demand and Alldata Information Systems and confirmed that none of the
19 clean piped vehicles supported fault code P1864.

20 11. The specific details of Respondents' clean plugging activities on February 2,
21 2012, and February 3, 2012, as observed by Bureau program representatives Baldwin and Steele,
22 are set forth below.

23 *Fraudulent Inspection No. 1*

24 a. The Bureau's surveillance operation and BAR 97 test detail data obtained from the
25 Bureau's VID revealed that between approximately 1053 and 1102 hours on February 2, 2012,
26 respondent Moran's smog technician license (EA 150603) and access code were used to perform
27 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
28 XD442387C for a 1996 Nissan 240 SX, certifying that Moran had tested and inspected that

1 vehicle and that the vehicle was in compliance with applicable laws and regulations. However,
2 during the inspection of this vehicle, Bureau program representative Baldwin observed
3 respondent Moran and two unidentified individuals engage in clean plugging by using a another
4 vehicle -- a 1996 Chevrolet Lumina, California license 5GNB699 -- to perform the OBDII
5 functional test. The clean plugging observed by Bureau program representative Baldwin was
6 further corroborated by his review of the BAR 97 test detail for this inspection, which indicated
7 that that a fault code P1864 was identified during the OBDII functional test. This fault code is
8 not supported by the 1996 Nissan; however, it is supported by the 1996 Chevrolet Lumina.

9 Fraudulent Inspection No. 2

10 b. The Bureau's surveillance operation and BAR 97 test detail data obtained from the
11 Bureau's VID revealed that between approximately 1302 and 1310 hours on February 2, 2012,
12 respondent Moran's smog technician license (EA 150603) and access code were used to perform
13 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
14 XD442390C for a 1997 Honda Accord, certifying that Moran had tested and inspected that
15 vehicle and that the vehicle was in compliance with applicable laws and regulations. However,
16 during the inspection of this vehicle, Bureau program representative Baldwin observed
17 respondent Moran and two unidentified individuals engage in clean plugging by using a another
18 vehicle -- a 1996 Chevrolet Lumina, California license 5GNB699 -- to perform the OBDII
19 functional test. The clean plugging observed by Bureau program representative Baldwin was
20 further corroborated by his review of the BAR 97 test detail for this inspection, which indicated
21 that that a fault code P1864 was identified during the OBDII functional test. This fault code is
22 not supported by the 1997 Honda; however, it is supported by the 1996 Chevrolet Lumina.

23 Fraudulent Inspection No. 3

24 c. The Bureau's surveillance operation and BAR 97 test detail data obtained from the
25 Bureau's VID revealed that between approximately 1213 and 1220 hours on February 3, 2012,
26 respondent Moran's smog technician license (EA 150603) and access code were used to perform
27 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
28 XD504756C for a 2000 Ford Expedition, certifying that Moran had tested and inspected that

1 vehicle and that the vehicle was in compliance with applicable laws and regulations. However,
2 during the inspection of this vehicle, Bureau program representative Baldwin observed
3 respondent Moran and an unidentified individual engage in clean plugging by using a another
4 vehicle -- a 1996 Chevrolet Lumina, California license 5GNB699 -- to perform the OBDII
5 functional test. The clean plugging observed by Bureau program representative Baldwin was
6 further corroborated by his review of the BAR 97 test detail for this inspection, which indicated
7 that that a fault code P1864 was identified during the OBDII functional test. This fault code is
8 not supported by the 2000 Ford Expedition; however, it is supported by the 1996 Chevrolet
9 Lumina.

10 Fraudulent Inspection No. 4

11 d. The Bureau's surveillance operation and BAR 97 test detail data obtained from the
12 Bureau's VID revealed that between approximately 1350 and 1359 hours on February 3, 2012,
13 respondent Moran's smog technician license (EA 150603) and access code were used to perform
14 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
15 XD504758C for a 1997 Honda Prelude, certifying that Moran had tested and inspected that
16 vehicle and that the vehicle was in compliance with applicable laws and regulations. However,
17 during the inspection of this vehicle, Bureau program representative Baldwin observed
18 respondent Moran and an unidentified individual engage in clean plugging by using a another
19 vehicle -- a 1996 Chevrolet Lumina, California license 5GNB699 -- to perform the OBDII
20 functional test. The clean plugging observed by Bureau program representative Baldwin was
21 further corroborated by his review of the BAR 97 test detail for this inspection, which indicated
22 that that a fault code P1864 was identified during the OBDII functional test. This fault code is
23 not supported by the 1997 Honda Prelude; however, it is supported by the 1996 Chevrolet
24 Lumina.

25 Fraudulent Inspection No. 5

26 e. The Bureau's surveillance operation and BAR 97 test detail data obtained from the
27 Bureau's VID revealed that between approximately 1421 and 1427 hours on February 3, 2012,
28 respondent Moran's smog technician license (EA 150603) and access code were used to perform

1 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
 2 XD504760C for a 2000 Chevrolet Suburban, certifying that Moran had tested and inspected that
 3 vehicle and that the vehicle was in compliance with applicable laws and regulations. However,
 4 during the inspection of this vehicle, Bureau program representative Baldwin observed
 5 respondent Moran and an unidentified individual engage in clean plugging by using a another
 6 vehicle -- a 1996 Chevrolet Lumina, California license 5GNB699 -- to perform the OBDII
 7 functional test. The clean plugging observed by Bureau program representative Baldwin was
 8 further corroborated by his review of the BAR 97 test detail for this inspection, which indicated
 9 that that a fault code P1864 was identified during the OBDII functional test. This fault code is
 10 not supported by the 2000 Chevrolet Suburban; however, it is supported by the 1996 Chevrolet
 11 Lumina.

12 The following chart ("Table 1") illustrates the illegal smog tests performed at Atochas Test
 13 Only on February 2, 2012 and February 3, 2012.

14 **Table 1**

| 15 Test Date and Time | Vehicle Certified & License No. | Vehicle Actually Tested & License No. | Certificate Issued | Details |
|--|--|--|---|--|
| 16 02/02/2012 17 1053-1102 18 hours | 1996 Nissan 240 SX 4RCR868 | XD442387C | Inapplicable trouble code P1864 detected; vehicle certified by respondent Moran. | 1996 Chevrolet Lumina, license 5GNB699, used to clean plug vehicle |
| 20 02/02/2012 21 1302- 1310 22 hours | 1997 Honda Accord 5LMX598 | XD442390C | Inapplicable trouble code P1864 detected; vehicle certified by respondent Moran. | 1996 Chevrolet Lumina, license 5GNB699, used to clean plug vehicle |
| 23 02/03/2012 24 1213-1220 25 hours | 2000 Ford Expedition WECUCO | XD504756C | Inapplicable trouble code P1864 detected; vehicle certified by respondent Moran. | 1996 Chevrolet Lumina, license 5GNB699, used to clean plug vehicle |

| | | | | | |
|---|--------------------|---------------------------------------|-----------|---|--|
| 1 | 02/03/2012 | 1997 Honda Prelude 3WUA718 | XD504758C | Inapplicable trouble code P1864 detected; vehicle certified by respondent Moran. | 1996 Chevrolet Lumina, license 5GNB699, used to clean plug vehicle |
| 2 | 1350-1359 hours | | | | |
| 3 | | | | | |
| 4 | 02/03/2012 | 2000 Chevrolet Suburban 5BDC541 | XD504760C | Inapplicable trouble code P1864 detected; vehicle certified by respondent Moran. | 1996 Chevrolet Lumina, license 5GNB699, used to clean plug vehicle |
| 5 | 1421-1427 hours | | | | |
| 6 | | | | | |
| 7 | | | | | |

8
9
Clean Plugging: Analysis of January 2012 VID Data

10 12. Bureau program representative Freeman Baldwin examined test information
11 from the VID for all smog inspections performed by Atochas Test Only during the month of
12 January 2012. Among the vehicles that required OBDII functional tests during the month of
13 January 2012, Baldwin discovered a high occurrence of the fault code P1864. Specifically, fault
14 code P1864 was present in fifty-four (54) of vehicles tested that month. Baldwin then analyzed
15 the technical service data for seven (7) of those vehicles and, after consulting the original
16 equipment manufacturer ("OEM") service information for these vehicles and/or the industry
17 standard references Mitchell On-Demand and Alldata Information Systems, discovered that none
18 of these seven (7) vehicles supported fault code P1864, meaning that they had been clean
19 plugged.

20 13. The details of the clean plugging activities discovered by Bureau representative
21 Baldwin's analysis of Atochas Test Only's January 2012 VID data are set forth below.

22 **Fraudulent Inspection No. 6**

23 a. BAR 97 test detail data shows that between 1129 and 1136 hours on January 3,
24 2012, respondent Moran's smog technician license (EA 150603) and access code were used to
25 perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance
26 No. XB929664C for a 1997 Ford F150, certifying that Moran had tested and inspected that
27 vehicle and that the vehicle was in compliance with applicable laws and regulations. The BAR
28 97 test detail indicates that fault code P1864 was detected during the OBDII functional test of the

1 1997 Ford 150. This fault code is not supported by the 1997 Ford 150; however it is supported by
2 the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's February
3 2012 surveillance operation.

4 Fraudulent Inspection No. 7

5 b. BAR 97 test detail data shows that between 1755 and 1806 hours on January 4, 2012,
6 respondent Moran's smog technician license (EA 150603) and access code were used to perform
7 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
8 XB929688C for a 1996 Ford F150, certifying that Moran had tested and inspected that vehicle
9 and that the vehicle was in compliance with applicable laws and regulations. The BAR 97 test
10 detail indicates that fault code P1864 was detected during the OBDII functional test of the 1996
11 Ford 150. This fault code is not supported by the 1996 Ford 150; however it is supported by the
12 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's February 2012
13 surveillance operation.

14 Fraudulent Inspection No. 8

15 c. BAR 97 test detail data shows that between 1139 and 1156 hours on January 7, 2012,
16 respondent Moran's smog technician license (EA 150603) and access code were used to perform
17 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
18 XD011919C for a 2001 Ford F150, certifying that Moran had tested and inspected that vehicle
19 and that the vehicle was in compliance with applicable laws and regulations. The BAR 97 test
20 detail indicates that fault code P1864 was detected during the OBDII functional test of the 2001
21 Ford 150. This fault code is not supported by the 2001 Ford 150; however it is supported by the
22 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's February 2012
23 surveillance operation.

24 Fraudulent Inspection No. 9

25 d. BAR 97 test detail data shows that between 1448 and 1455 hours on January 7, 2012,
26 respondent Moran's smog technician license (EA 150603) and access code were used to perform
27 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
28 XD011927C for a 1998 Ford Mustang, certifying that Moran had tested and inspected that vehicle

1 and that the vehicle was in compliance with applicable laws and regulations. The BAR 97 test
2 detail indicates that fault code P1864 was detected during the OBDII functional test of the 1998
3 Ford Mustang. This fault code is not supported by the 1998 Ford Mustang; however it is
4 supported by the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's
5 February 2012 surveillance operation.

6 Fraudulent Inspection No. 10

7 e. BAR 97 test detail data shows that between 1440 and 1448 hours on January 9, 2012,
8 respondent Moran's smog technician license (EA 150603) and access code were used to perform
9 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
10 XD011940C for a 1999 Ford Windstar, certifying that Moran had tested and inspected that
11 vehicle and that the vehicle was in compliance with applicable laws and regulations. The BAR
12 97 test detail indicates that fault code P1864 was detected during the OBDII functional test of the
13 1999 Ford Windstar. This fault code is not supported by the 1999 Ford Windstar; however it is
14 supported by the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's
15 February 2012 surveillance operation.

16 Fraudulent Inspection No. 11

17 f. BAR 97 test detail data shows that between 1217 and 1226 hours on January 12,
18 2012, respondent Moran's smog technician license (EA 150603) and access code were used to
19 perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance
20 No. XD096416C for a 1997 Ford F150, certifying that Moran had tested and inspected that
21 vehicle and that the vehicle was in compliance with applicable laws and regulations. The BAR
22 97 test detail indicates that fault code P1864 was detected during the OBDII functional test of the
23 1997 Ford F150. This fault code is not supported by the 1997 Ford F150; however it is supported
24 by the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's February
25 2012 surveillance operation.

26 Fraudulent Inspection No. 12

27 g. BAR 97 test detail data shows that between 1451 and 1509 hours on January 13,
28 2012, respondent Moran's smog technician license (EA 150603) and access code were used to

1 perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance
 2 No. XD096427C for a 1997 Ford F250, certifying that Moran had tested and inspected that
 3 vehicle and that the vehicle was in compliance with applicable laws and regulations. The BAR
 4 97 test detail indicates that fault code P1864 was detected during the OBDII functional test of the
 5 1997 Ford F250. This fault code is not supported by the 1997 Ford F250; however it is supported
 6 by the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's February
 7 2012 surveillance operation.

8 Fraudulent Inspection No. 13

9 h. BAR 97 test detail data shows that between 1557 and 1607 hours on January 31,
 10 2012, respondent Moran's smog technician license (EA 150603) and access code were used to
 11 perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance
 12 No. XD442367C for a 1999 Ford F150, certifying that Moran had tested and inspected that
 13 vehicle and that the vehicle was in compliance with applicable laws and regulations. The BAR
 14 97 test detail indicates that fault code P1864 was detected during the OBDII functional test of the
 15 1999 Ford F150. This fault code is not supported by the 1999 Ford F150; however it is supported
 16 by the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's February
 17 2012 surveillance operation.

18 The following chart ("Table 2") illustrates the clean plugging activities at respondent
 19 Atochas Test Only on that the dates at issue, as established by the Declaration of Freeman
 20 Baldwin attached hereto as Exhibit 5.

21 **Table 2**

| 22 Test Date and Time | Vehicle Certified & License No. | Certificate No. | Details |
|-------------------------------------|---------------------------------|-----------------|--|
| 23 01/03/2012 24 1129-1136 hours | 1997 Ford 150 5K57596 | XB929664C | Inapplicable trouble code P1860 detected; vehicle certified by respondent Moran. |
| 25 01/04/2012 26 1755-1806 hours | 1996 Ford 150 7M54201 | XB929688C | Inapplicable trouble code P1860 detected; vehicle certified by respondent Moran. |

| | | | | |
|----|-----------------|------------------------------|-----------|---|
| 1 | 01/07/2012 | 2001 Ford 150 6T39360 | XD011919C | Inapplicable trouble code P1860 detected; vehicle certified by respondent Moran. |
| 2 | 1139-1156 hours | | | |
| 3 | 01/07/2012 | 1998 Ford Mustang 4JCZ397 | XD011927C | Inapplicable trouble code P1860 detected; vehicle certified by respondent Moran. |
| 4 | 1448-1455 hours | | | |
| 5 | | | | |
| 6 | 01/09/2012 | 1999 Ford Windsar 4UTZ814 | XD011940C | Inapplicable trouble code P1860 detected; vehicle certified by respondent Moran. |
| 7 | 1440-1448 hours | | | |
| 8 | | | | |
| 9 | 01/12/2012 | 1997 Ford 150 8R20198 | XD096416C | Inapplicable trouble code P1860 detected; vehicle certified by respondent Moran. |
| 10 | 1217-1226 hours | | | |
| 11 | 01/13/2012 | 1997 Ford 250 7H06689 | XD096427C | Inapplicable trouble code P1860 detected; vehicle certified by respondent Moran. |
| 12 | 1451-1509 hours | | | |
| 13 | | | | |
| 14 | 01/31/2012 | 1999 Ford 150 49047C1 | XD442367C | Inapplicable trouble code P1860 detected; vehicle certified by respondent Moran. |
| 15 | 1557-1607 hours | | | |

16
17 The illegal smog inspections set forth above subject Respondents to discipline pursuant to
18 Health and Safety Code section 44072.2, subdivisions (a), (c), and (d) and Business and
19 Professions Code section 9889.3, subdivisions (a), (c), and (d).

20 8. The illegal smog inspections set forth in paragraphs 12-14, above, subject
21 Respondents to discipline pursuant to Health and Safety Code section 44072.2, subdivisions (a),
22 (c), and (d) and Business and Professions Code section 9889.3, subdivisions (a), (c), and (d).

23 **CONTINUED PRACTICE BY RESPONDENT WILL ENDANGER THE PUBLIC**
24 **HEALTH, SAFETY AND WELFARE**

25 9. Respondents are participating in a scheme at multiple smog check locations to
26 fraudulently certify vehicles that have not undergone the necessary testing to ensure that they
27 have met California's strenuous emissions standards.
28

