

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
4 State Bar No. 244817
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2114
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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

10
11 In the Matter of the Accusation Against:

Case No. 79/13-03

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

OAH No. 2012070664

A C C U S A T I O N

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

17 **FRANCISCO JAVIER LIZARDO**
18 **302 Faxina Avenue**
La Puente, CA 91744

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

21 **and**

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

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

25 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about July 30, 2009, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 258921 to Atochas Test Only; Francisco Javier Lizardo.
7 The Automotive Repair Dealer Registration will expire on June 30, 2013, unless renewed.

8 3. On or about July 31, 2009, the Bureau of Automotive Repair issued Smog Check,
9 Test Only, Station License Number TC 258921 to Atochas Test Only; Francisco Javier Lizardo.
10 The Smog Check, Test Only, Station License will expire on June 30, 2013, unless renewed.

11 4. In 2008, the Bureau of Automotive Repair issued Advanced Emission Specialist
12 Technician License Number EA 154982 to Francisco Javier Lizardo. The Advanced Emission
13 Specialist Technician License expired on January 31, 2012, and has not been renewed.

14 5. In 2005, the Bureau of Automotive Repair issued Advanced Emission Specialist
15 Technician License Number EA 150603 to Eric Rene Moran. The Advanced Emission Specialist
16 Technician License was in full force and effect at all times relevant to the charges brought herein
17 and will expire on August 31, 2013, unless renewed.

18 **STATUTORY PROVISIONS**

19 6. Section 9884.13 of the Business and Professions Code (“BPC”) provides, in pertinent
20 part, that “[t]he expiration of a valid registration shall not deprive the director or chief of
21 jurisdiction to proceed with . . . [a] disciplinary proceeding against an automotive repair dealer or
22 to render a decision invalidating a registration temporarily or permanently.”

23 7. Section 9884.7 of the BPC states, in pertinent part:
24 “(a) The director, where the automotive repair dealer cannot show there was a bona fide
25 error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an
26 automotive repair dealer for any of the following acts or omissions related to the conduct of the

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1 business of the automotive repair dealer, which are done by the automotive repair dealer or any
2 automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

6 (4) Any other conduct which constitutes fraud.”

7

8 (6) Failure in any material respect to comply with the provisions of this chapter or
9 regulations adopted pursuant to it.

10 8. Section 44002 of the Health and Safety Code (“HSC”) provides, in pertinent part, that
11 the Director has all the powers and authority granted under the Automotive Repair Act for
12 enforcing the Motor Vehicle Inspection Program.

13 9. Section 44012 of the HSC provides, in pertinent part, that tests at smog check stations
14 shall be performed in accordance with procedures prescribed by the department.

15 10. Section 44014, subdivision (a), of the HSC provides that the testing and repair portion
16 of the smog check program shall be conducted only by licensed smog check technicians.

17 11. Section 44015, subdivision (b), of the HSC provides that a certificate of compliance
18 shall be issued if a vehicle meets the requirements of HSC section 40012.

19 12. Section 44032 of the HSC provides, in pertinent part, that “[q]ualified technicians
20 shall perform tests of emission control devices and systems in accordance with Section 44012.”

21 13. Section 44059 of the HSC provides:

22 “The willful making of any false statement or entry with regard to a material matter in any
23 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
24 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
25 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

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1 14. Section 44072.2 of the HSC states, in pertinent part:

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

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

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

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

11 15. Section 44072.8 of the HSC states:

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

15 **REGULATORY PROVISIONS**

16 16. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),
17 states:

18 “The bureau may suspend or revoke the license of or pursue other legal action against a
19 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
20 certificate of noncompliance.”

21 17. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
22 shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section
23 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
24 3340.42 of this article.”

25 18. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
26 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any
27 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of

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1 this article and has all the required emission control equipment and devices installed and
2 functioning correctly.”

3 19. CCR, title 16, section 3340.41, subdivision (c), provides: “No person shall enter into
4 the emissions inspection system any vehicle identification information or emission control system
5 identification data for any vehicle other than the one being tested. Nor shall any person
6 knowingly enter into the emissions inspection system any false information about the vehicle
7 being tested.”

8 20. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
9 procedures which apply to all vehicles inspected in the State of California.

10 **COST RECOVERY**

11 21. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board
12 “may request the administrative law judge to direct a licentiate found to have committed a
13 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
14 investigation and enforcement of the case.”

15 **CLEAN PLUGGING: SURVEILLANCE OPERATION**

16 22. On or about February 2, 2012, between the hours of approximately 1018 and 1335,
17 Bureau program representatives Freeman Baldwin and Allen Steele conducted video-taped
18 surveillance of the Atochas Test Only smog check station, located at 15018 Valley Blvd., La
19 Puente, CA. Bureau program representative Baldwin observed respondent Eric Rene Moran at
20 the Atochas Test Only smog check station during the surveillance period. During the surveillance
21 period, Baldwin observed four (4) smog inspections that required the performance of OBDII
22 functional tests wherein the technician must connect a test cable from the BAR-97 analyzer to the
23 Diagnostic Link Connector (DLC) located in the vehicle’s passenger compartment. Bureau
24 program representative Baldwin further observed that in two (2) of the four (4) inspections in
25 which OBDII functional tests were required to be performed, respondent Moran engaged in
26 fraudulent conduct known as “clean plugging”.¹ Specifically, Respondent failed to connect the

27 ¹ Clean plugging is the use of the OBD II readiness monitor status and stored fault code
28 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
(continued...)

1 OBDII functional test cable to two (2) of the vehicles that were issued Certificates of Compliance
2 from respondent Atochas Test Only; Francisco Javier Lizardo. Instead, in both instances,
3 respondent Moran fraudulently connected the test cable to a second vehicle instead of the vehicle
4 supposedly being tested.

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

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

21 25. The specific details of Respondent Lizardo and Respondent Moran's
22 (collectively, "Respondents") clean plugging activities on February 2, 2012, and February 3,
23 2012, as observed by Bureau program representatives Baldwin and Steele, are as follows:

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,

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27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
28 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

1 respondent Moran's smog technician license (EA 150603) and access code were used to perform
2 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
3 XD442387C for a 1996 Nissan 240 SX, certifying that Moran had tested and inspected that
4 vehicle and that the vehicle was in compliance with applicable laws and regulations. However,
5 during the inspection of this vehicle, Bureau program representative Baldwin observed
6 respondent Moran and two unidentified individuals engage in clean plugging by using a another
7 vehicle -- a 1996 Chevrolet Lumina, California license 5GNB699 -- to perform the OBDII
8 functional test. The clean plugging observed by Bureau program representative Baldwin was
9 further corroborated by his review of the BAR 97 test detail for this inspection, which indicated
10 that that a fault code P1864 was identified during the OBDII functional test. This fault code is
11 not supported by the 1996 Nissan; however, it is supported by the 1996 Chevrolet Lumina.

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

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

1 XD504756C for a 2000 Ford Expedition, certifying that Moran had tested and inspected that
2 vehicle and that the vehicle was in compliance with applicable laws and regulations. However,
3 during the inspection of this vehicle, Bureau program representative Baldwin observed
4 respondent Moran and an unidentified individual engage in clean plugging by using a another
5 vehicle -- a 1996 Chevrolet Lumina, California license 5GNB699 – to perform the OBDII
6 functional test. The clean plugging observed by Bureau program representative Baldwin was
7 further corroborated by his review of the BAR 97 test detail for this inspection, which indicated
8 that that a fault code P1864 was identified during the OBDII functional test. This fault code is
9 not supported by the 2000 Ford Expedition; however, it is supported by the 1996 Chevrolet
10 Lumina.

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 e. The Bureau's surveillance operation and BAR 97 test detail data obtained from the
26 Bureau's VID revealed that between approximately 1421 and 1427 hours on February 3, 2012,
27 respondent Moran's smog technician license (EA 150603) and access code were used to perform
28 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.

1 XD504760C for a 2000 Chevrolet Suburban, certifying that Moran had tested and inspected that
 2 vehicle and that the vehicle was in compliance with applicable laws and regulations. However,
 3 during the inspection of this vehicle, Bureau program representative Baldwin observed
 4 respondent Moran and an unidentified individual engage in clean plugging by using a another
 5 vehicle -- a 1996 Chevrolet Lumina, California license 5GNB699 – to perform the OBDII
 6 functional test. The clean plugging observed by Bureau program representative Baldwin was
 7 further corroborated by his review of the BAR 97 test detail for this inspection, which indicated
 8 that that a fault code P1864 was identified during the OBDII functional test. This fault code is
 9 not supported by the 2000 Chevrolet Suburban; however, it is supported by the 1996 Chevrolet
 10 Lumina.

11 The following chart (“Table 1”) illustrates the illegal smog tests performed at Atochas Test
 12 Only on February 2, 2012 and February 3, 2012:

13 **Table 1**

14 Test Date and Time	Vehicle Certified & License No.	Vehicle Actually Tested & License No.	Certificate Issued	Details
15 02/02/2012 16 1053-1102 17 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
19 02/02/2012 20 1302- 1310 21 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
22 02/03/2012 23 1213-1220 24 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

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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 **Clean Plugging: Analysis of January 2012 VID Data**

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

18 27. The details of the clean plugging activities discovered by Bureau representative
19 Baldwin's analysis of Atochas Test Only's January 2012 VID data are as follows:

20 a. BAR 97 test detail data shows that between 1129 and 1136 hours on January 3,
21 2012, respondent Moran's smog technician license (EA 150603) and access code were used to
22 perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance
23 No. XB929664C for a 1997 Ford F150, certifying that Moran had tested and inspected that
24 vehicle and that the vehicle was in compliance with applicable laws and regulations. The BAR
25 97 test detail indicates that fault code P1864 was detected during the OBDII functional test of the
26 1997 Ford F150. This fault code is not supported by the 1997 Ford F150; however it is supported
27 by the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's February
28 2012 surveillance operation.

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

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

19 d. BAR 97 test detail data shows that between 1448 and 1455 hours on January 7, 2012,
20 respondent Moran's smog technician license (EA 150603) and access code were used to perform
21 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
22 XD011927C for a 1998 Ford Mustang, certifying that Moran had tested and inspected that vehicle
23 and that the vehicle was in compliance with applicable laws and regulations. The BAR 97 test
24 detail indicates that fault code P1864 was detected during the OBDII functional test of the 1998
25 Ford Mustang. This fault code is not supported by the 1998 Ford Mustang; however it is
26 supported by the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's
27 February 2012 surveillance operation.

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1 e. BAR 97 test detail data shows that between 1440 and 1448 hours on January 9, 2012,
2 respondent Moran's smog technician license (EA 150603) and access code were used to perform
3 a smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
4 XD011940C for a 1999 Ford Windstar, certifying that Moran had tested and inspected that
5 vehicle and that the vehicle was in compliance with applicable laws and regulations. The BAR
6 97 test detail indicates that fault code P1864 was detected during the OBDII functional test of the
7 1999 Ford Windstar. This fault code is not supported by the 1999 Ford Windstar; however it is
8 supported by the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's
9 February 2012 surveillance operation.

10 f. BAR 97 test detail data shows that between 1217 and 1226 hours on January 12,
11 2012, respondent Moran's smog technician license (EA 150603) and access code were used to
12 perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance
13 No. XD096416C for a 1997 Ford F150, certifying that Moran had tested and inspected that
14 vehicle and that the vehicle was in compliance with applicable laws and regulations. The BAR
15 97 test detail indicates that fault code P1864 was detected during the OBDII functional test of the
16 1997 Ford F150. This fault code is not supported by the 1997 Ford F150; however it is supported
17 by the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's February
18 2012 surveillance operation.

19 g. BAR 97 test detail data shows that between 1451 and 1509 hours on January 13,
20 2012, respondent Moran's smog technician license (EA 150603) and access code were used to
21 perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance
22 No. XD096427C for a 1997 Ford F250, certifying that Moran had tested and inspected that
23 vehicle and that the vehicle was in compliance with applicable laws and regulations. The BAR
24 97 test detail indicates that fault code P1864 was detected during the OBDII functional test of the
25 1997 Ford F250. This fault code is not supported by the 1997 Ford F250; however it is supported
26 by the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's February
27 2012 surveillance operation.

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1 h. BAR 97 test detail data shows that between 1557 and 1607 hours on January 31,
 2 2012, respondent Moran's smog technician license (EA 150603) and access code were used to
 3 perform a smog inspection that resulted in the issuance of electronic Certificate of Compliance
 4 No. XD442367C for a 1999 Ford F150, certifying that Moran had tested and inspected that
 5 vehicle and that the vehicle was in compliance with applicable laws and regulations. The BAR
 6 97 test detail indicates that fault code P1864 was detected during the OBDII functional test of the
 7 1999 Ford F150. This fault code is not supported by the 1999 Ford F150; however it is supported
 8 by the 1996 Chevrolet Lumina that was used to clean plug vehicles during the Bureau's February
 9 2012 surveillance operation.

10 The following chart ("Table 2") illustrates the clean plugging activities discovered by
 11 Bureau Representative Baldwin analysis of the Atochas Test Only VID data for January 2012:

12 **Table 2**

13 Test Date and Time	Vehicle Certified & License No.	Certificate No.	Details
14 01/03/2012 15 1129-1136 hours	1997 Ford F150 5K57596	XB929664C	Inapplicable trouble code P1864 detected; vehicle certified by respondent Moran.
16 01/04/2012 17 1755-1806 hours	1996 Ford F150 7M54201	XB929688C	Inapplicable trouble code P1864 detected; vehicle certified by respondent Moran.
18 01/07/2012 19 1139-1156 hours	2001 Ford F150 6T39360	XD011919C	Inapplicable trouble code P1864 detected; vehicle certified by respondent Moran.
20 01/07/2012 21 1448-1455 hours	1998 Ford Mustang 4JCZ397	XD011927C	Inapplicable trouble code P1864 detected; vehicle certified by respondent Moran.
22 01/09/2012 23 1440-1448 hours	1999 Ford Windsar 4UTZ814	XD011940C	Inapplicable trouble code P1864 detected; vehicle certified by respondent Moran.
24 01/12/2012 25 1217-1226 hours	1997 Ford F150 8R20198	XD096416C	Inapplicable trouble code P1864 detected; vehicle certified by respondent Moran.

1	01/13/2012	1997 Ford F250	XD096427C	Inapplicable trouble
2	1451-1509 hours	7H06689		code P1864 detected;
3				vehicle certified by
4	01/31/2012	1999 Ford F150	XD442367C	Inapplicable trouble
5	1557-1607 hours	49047C1		code P1864 detected;
6				vehicle certified by
6				respondent Moran.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Misleading Statements)**

9 28. Respondent Atochas Test Only, Francisco Lizardo, owner, has subjected his
10 registration to discipline under BPC section 9884.7, subdivision (a)(1), in that in January 2012
11 and on or about February 2, 2012 and February 3, 2012, he made statements which he knew or
12 which by exercise of reasonable care should have known were untrue or misleading when he
13 issued electronic certificates of compliance for the vehicles set forth in Tables 1 and 2 above,
14 certifying that those vehicles were in compliance with applicable laws and regulations when, in
15 fact, those vehicles had not been so inspected.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 29. Respondent Atochas Test Only, Francisco Lizardo, owner, has subjected his
19 registration to discipline under BPC section 9884.7, subdivision (a)(4), in that in January 2012
20 and on or about February 2, 2012 and February 3, 2012, he committed acts which constitute fraud
21 by issuing electronic certificates of compliance for the vehicles set forth in Tables 1 and 2 above,
22 without performing bona fide inspections of the emission control devices and systems on those
23 vehicles, thereby depriving the People of the State of California of the protection afforded by the
24 Motor Vehicle Inspection Program.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Material Violation of Automotive Repair Act)**

27 30. Respondent Atochas Test Only, Francisco Lizardo, owner, has subjected his
28 registration to discipline under BPC section 9884.7, subdivision (a)(6), in that in January 2012

1 and on or about February 2, 2012 and February 3, 2012, he failed in a “material respect to comply
2 with the provisions of this chapter or regulations adopted pursuant to it” when he issued
3 electronic certificates of compliance for the vehicles set forth in Tables 1 and 2 above, without
4 performing bona fide inspections of the emission control devices and systems on those vehicles,
5 thereby depriving the People of the State of California of the protection afforded by the Motor
6 Vehicle Inspection Program.

7 **FOURTH CAUSE FOR DISCIPLINE**

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

9 31. Respondent Atochas Test Only, Francisco Lizardo, owner, has subjected his station
10 license to discipline under HSC section 44072.2, subdivision (a), in that, with respect to the
11 vehicles set forth in Tables 1 and 2, above, Respondent violated the following sections of the
12 HSC:

13 a. **Section 44012:** Respondent Lizardo failed to ensure that the emission control tests
14 were performed on those vehicles in accordance with procedures prescribed by the department.

15 b. **Section 44014:** Respondent Lizardo allowed an unlicensed person, Raul Padilla, to
16 perform emission control tests on those vehicles in violation of procedures prescribed by the
17 department.

18 c. **Section 44015, subdivision (b):** Respondent Lizardo issued electronic certificates of
19 compliance without properly testing and inspecting the vehicles to determine if they were in
20 compliance with section 44012 of the HSC.

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

24 **FIFTH CAUSE FOR DISCIPLINE**

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

26 32. Respondent Atochas Test Only, Francisco Lizardo, owner, has subjected his station
27 license to discipline under HSC section 44072.2, subdivision (c), in that, with respect to the
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1 vehicles set forth in Tables 1 and 2, above, Respondent violated the following sections of title 16
2 of the CCR:

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

6 c. **Section 3340.35, subdivision (c):** Respondent Lizardo issued electronic certificates
7 of compliance even though those vehicles had not been inspected in accordance with section
8 3340.42 of the HSC.

9 e. **Section 3340.42:** Respondent Lizardo failed to conduct the required smog tests and
10 inspections on those vehicles in accordance with the Bureau's specifications.

11 **SIXTH CAUSE FOR DISCIPLINE**

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

13 33. Respondent Atochas Test Only, Francisco Lizardo, owner, has subjected his station
14 license to discipline under HSC section 44072.2, subdivision (d), in that, with respect to the
15 vehicles set forth in Tables 1 and 2 above, Respondent committed acts involving dishonesty,
16 fraud or deceit whereby another was injured by issuing electronic certificates of compliance for
17 those vehicles without performing bona fide inspections of the emission control devices and
18 systems on those vehicles, thereby depriving the People of the State of California of the
19 protection afforded by the Motor Vehicle Inspection Program.

20 **SEVENTH CAUSE FOR DISCIPLINE**

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

22 34. Respondent Moran has subjected his technician license to discipline under HSC
23 section 44072.2, subdivision (a), in that in January 2012 and on or about February 2, 2012, and
24 February 3, 2012, he violated the following sections of the HSC with respect to the vehicles set
25 forth in Tables 1 and 2 above:

26 a. **Section 44012:** Respondent Moran failed to ensure that the emission control tests
27 were performed on those vehicles in accordance with procedures prescribed by the department.

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1 above, without performing bona fide inspections of the emission control devices and systems on
2 those vehicles, thereby depriving the People of the State of California of the protection afforded
3 by the Motor Vehicle Inspection Program.

4 **TENTH CAUSE FOR DISCIPLINE**

5 **(Revocation of Additional Licenses)**

6 37. Respondent Lizardo has subjected his Emission Specialist Technician License
7 Number EA 154982 to discipline under section 44072.8 of the Health and Safety Code in that
8 Respondent Lizardo has engaged in violations that have subjected other licenses issued by the
9 Bureau to discipline. Complainant refers to, and by this reference incorporates, the allegations set
10 forth above in paragraphs 22 - 33, inclusive, as though set forth fully herein.

11 **PRAYER**

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

- 14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15 258921, issued to Atochas Test Only; Francisco Javier Lizardo;
- 16 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
17 258921, issued to Atochas Test Only; Francisco Javier Lizardo;
- 18 3. Revoking or suspending Advanced Emission Specialist Technician License Number
19 EA 154982, issued to Francisco Javier Lizardo;
- 20 4. Revoking or suspending Advanced Emission Specialist Technician License Number
21 EA 150603, issued to Eric Rene Moran;

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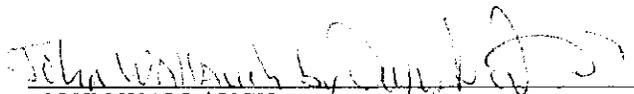
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5. Ordering Francisco Javier Lizardo and Eric Rene Moran to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: August 21, 2012


JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

LA2012507144