

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

In the Matter of the Accusation Against:

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

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

FRANCISCO JAVIER LIZARDO
15018 Valley Blvd
La Puente, CA 91746

Advanced Emission Specialist Technician
License No. EA 154982

and

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

Advanced Emission Specialist Technician
License No EA 150603

Case No. 79/13-3

OAH No. 2012090703

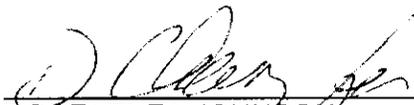
Respondents.

DECISION

The attached Stipulated Revocation of License and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Eric Rene Moran, Advanced Emission Specialist Technician License No. EA 150603.

This Decision shall become effective 1/15/13.

DATED: December 18, 2012



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 79/13-3

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

OAH No. 2012090703

**STIPULATED REVOCATION OF
LICENSE AND ORDER**

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

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

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

21 **and**

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

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

25 Respondents.
26

27 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
28 proceeding that the following matters are true:

1 **PARTIES**

2 1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He
3 brought this action solely in his official capacity and is represented in this matter by Kamala D.
4 Harris, Attorney General of the State of California, by William D. Gardner, Deputy Attorney
5 General.

6 2. Eric Rene Moran (Respondent) is represented in this proceeding by attorney Michael
7 B. Levin, whose address is: The Law Offices of Michael B. Levin, 3727 Camino del Rio South,
8 #200, San Diego, CA 92108.

9 3. On or about January 1, 2005, the Bureau of Automotive Repair issued Advanced
10 Emission Specialist Technician License No. EA 150603 to Eric Rene Moran (Respondent). The
11 Advanced Emission Specialist Technician License was in full force and effect at all times
12 relevant to the charges brought in Accusation No. 79/13-3 and will expire on August 31, 2013,
13 unless renewed.

14 **JURISDICTION**

15 4. Accusation No. 79/13-3 was filed before the Director of Consumer Affairs (Director),
16 for the Bureau of Automotive Repair (Bureau), and is currently pending against Respondent. The
17 Accusation and all other statutorily required documents were properly served on Respondent on
18 August 28, 2012. Respondent timely filed his Notice of Defense contesting the Accusation. A
19 copy of Accusation No. 79/13-3 is attached as Exhibit A and incorporated by reference.

20 **ADVISEMENT AND WAIVERS**

21 5. Respondent has carefully read, fully discussed with counsel, and understands the
22 charges and allegations in Accusation No. 79/13-3. Respondent also has carefully read, fully
23 discussed with counsel, and understands the effects of this Stipulated Revocation of License and
24 Order.

25 6. Respondent is fully aware of his legal rights in this matter, including the right to a
26 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
27 his own expense; the right to confront and cross-examine the witnesses against him; the right to
28 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel

1 the attendance of witnesses and the production of documents; the right to reconsideration and
2 court review of an adverse decision; and all other rights accorded by the California
3 Administrative Procedure Act and other applicable laws.

4 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
5 every right set forth above.

6 **CULPABILITY**

7 8. Respondent admits the truth of each and every charge and allegation in Accusation
8 No. 79/13-3, agrees that cause exists for discipline and hereby agrees to the voluntary revocation
9 of his Advanced Emission Specialist Technician License No. EA 150603 for the Bureau's formal
10 acceptance.

11 9. Respondent understands that by signing this stipulation he enables the Director to
12 issue his order accepting the voluntary revocation of his Advanced Emission Specialist
13 Technician License without further process.

14 **RESERVATION**

15 10. The admissions made by Respondent herein are only for the purposes of this
16 proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of
17 Automotive Repair or other professional licensing agency is involved, and shall not be admissible
18 in any other criminal or civil proceeding.

19 **CONTINGENCY**

20 11. This stipulation shall be subject to approval by the Director of Consumer Affairs or
21 his designee. Respondent understands and agrees that counsel for Complainant and the staff of
22 the Bureau of Automotive Repair may communicate directly with the Director and staff of the
23 Department of Consumer Affairs regarding this stipulation and revocation, without notice to or
24 participation by Respondent or his counsel. By signing the stipulation, Respondent understands
25 and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the
26 time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the
27 Decision and Order, the Stipulated Revocation and Disciplinary Order shall be of no force or

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1 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
2 and the Director shall not be disqualified from further action by having considered this matter.

3 12. The parties understand and agree that facsimile copies of this Stipulated Revocation
4 of License and Order, including facsimile signatures thereto, shall have the same force and effect
5 as the originals.

6 13. This Stipulated Revocation of License and Order is intended by the parties to be an
7 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
8 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
9 negotiations, and commitments (written or oral). This Stipulated Revocation of License and
10 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
11 writing executed by an authorized representative of each of the parties.

12 14. In consideration of the foregoing admissions and stipulations, the parties agree that
13 the Director may, without further notice or formal proceeding, issue and enter the following
14 Order:

15 **ORDER**

16 IT IS HEREBY ORDERED that Advanced Emission Specialist Technician License No. EA
17 150603, issued to Respondent Eric Rene Moran, is voluntarily revoked and accepted by the
18 Director of Consumer Affairs.

19 1. The voluntary revocation of Respondent's Advanced Emission Specialist Technician
20 License and the acceptance of the revoked license by the Bureau shall constitute the imposition of
21 discipline against Respondent. This stipulation constitutes a record of the discipline and shall
22 become a part of Respondent's license history with the Bureau of Automotive Repair.

23 2. Respondent shall lose all rights and privileges as an advanced emission specialist
24 technician in California as of the effective date of the Director's Decision and Order.

25 3. Respondent shall cause to be delivered to the Bureau his pocket license and, if one
26 was issued, his wall certificate on or before the effective date of the Decision and Order.

27 4. If Respondent ever files an application for licensure or a petition for reinstatement in
28 the State of California, the Bureau shall treat it as a petition for reinstatement. Respondent must

1 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
2 effect at the time the petition is filed, and all of the charges and allegations contained in
3 Accusation No. 79/13-3 shall be deemed to be true, correct and admitted by Respondent when the
4 Director determines whether to grant or deny the petition.

5 5. Respondent shall pay the agency its costs of investigation and enforcement in the
6 amount of \$12,614.00 prior to issuance of a new or reinstated license.

7 **ACCEPTANCE**

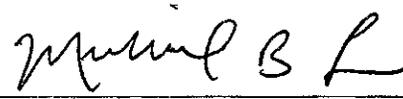
8 I have carefully read the above Stipulated Revocation of License and Order and have fully
9 discussed it with my attorney, Michael B. Levin. I understand the stipulation and the effect it will
10 have on my Advanced Emission Specialist Technician License. I enter into this Stipulated
11 Revocation of License and Order voluntarily, knowingly, and intelligently, and agree to be bound
12 by the Decision and Order of the Director of Consumer Affairs.

13
14 DATED: Oct 30 2012


ERIC RENE MORAN
Respondent

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16
17 I have read and fully discussed with Respondent Eric Rene Moran the terms and conditions
18 and other matters contained in this Stipulated Revocation of License and Order. I approve its
19 form and content.

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21 DATED: 10/30/12


MICHAEL B. LEVIN
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 10/31/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General



WILLIAM D. GARDNER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/13-3

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
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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
14

OAH No. 2012070664

A C C U S A T I O N

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

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

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

21 **and**

22 **ERIC RENE MORAN**
939 Le Borgne Avenue
23 **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 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 (e), 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,

26
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
18 02/02/2012 19 1302- 1310 20 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
21 02/03/2012 22 1213-1220 23 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
7				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
28

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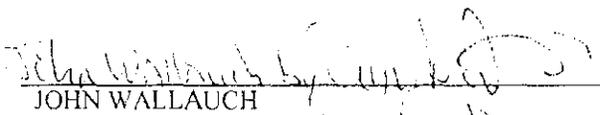
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5. Ordering Francisco Javier Lizardo and Eric Rene Moran to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: August 21, 2018



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

LEIC. BALAN

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