

1 ROB BONTA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
Deputy Attorney General
4 State Bar No. 235850
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-0294
Facsimile: (510) 622-2270
7 E-mail: Tim.McDonough@doj.ca.gov
Attorneys for Complainant
8

9
10 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
11 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. 79/24-7061

14 **BAUER SMOG CHECK STATION,**
15 **RODERICK LUGTU VIZCO**
16 **20531 Mission Blvd. Bay B**
Hayward, CA 94541

ACCUSATION

17 **Automotive Repair Dealer Registration No.**
ARD 296697
18 **Smog Check Test and Repair Station**
License No. RC 296697
19 **Vehicle Safety Station License No. VS**
296697
20

21 **RODERICK LUGTU VIZCO**

22 **20531 Mission Boulevard Bay B**
Hayward, CA 94541

23 **Smog Check Repair Technician License No.**
24 **EI 637208,**

25 **Smog Check Inspector License No. EO**
26 **637208**

27 Respondents.
28

PARTIES

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

Bauer Smog Check Station

2. On or about February 19, 2020, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration No. ARD 296697 to Bauer Smog Check Station, Roderick Lugtu Vizco (Respondent Bauer Smog). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on February 28, 2025, unless renewed.

3. On or about December 1, 2020, the Bureau of Automotive Repair issued Smog Check, Test-and Repair, Station License No. RC 296697 to Bauer Smog Check Station, Roderick Lugtu Vizco (Respondent Bauer Smog). The Smog Check, Test-and Repair, Station License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on February 28, 2025, unless renewed.

4. On or about September 3, 2024, the Bureau of Automotive Repair issued Vehicle Safety Station License No. 296697 to Bauer Smog Check Station, Roderick Lugtu Vizco (Respondent Bauer Smog). The Vehicle Safety Station License will expire on February 28, 2025, unless renewed.

Roderick Lugtu Vizco

5. On or about December 26, 2014, the Bureau of Automotive Repair issued Smog Check Inspector License No. EO 637208 to Roderick Lugtu Vizco (Respondent Vizco). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on May 31, 2025, unless renewed.

6. On or about December 15, 2014, the Bureau of Automotive Repair issued Smog Check Repair Technician License No. EI 637208 to Roderick Lugtu Vizco (Respondent Vizco). The Smog Check Repair Technician License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on May 31, 2025, unless renewed.

7. On or about November 13, 2014, the Bureau of Automotive Repair issued Brake Adjuster License No. BA 637208 to Roderick Lugtu Vizco (Respondent Vizco). The license expired on May 31, 2023, and was cancelled on July 1, 2023.

8. On or about August 13, 2014, the Bureau of Automotive Repair issued Lamp Adjuster License No. LA 637208 to Roderick Lugtu Vizco (Respondent Vizco). The License expired on May 31, 2018, and was cancelled on June 1, 2018.

JURISDICTION

9. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau of Automotive Repair (Bureau), under the authority of the following laws.

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

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

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

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

14. Health & Safe. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

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

STATUTORY PROVISIONS

16. Bus. & Prof. Code section 9884.7 states, in relevant part:

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

(1) 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.

• • • •

(4) Any other conduct that constitutes fraud.

• • • •

(c) Notwithstanding subdivision (b), the director may suspend, revoke or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

17. Section 9889.22 of the Code states:

"The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code."

18. Section 44012 of the Health and Safety Code states, in relevant part:

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

1 ...

2 "(f) A visual or functional check is made of emission control devices specified by the
3 department, including the catalytic converter in those instances in which the department
4 determines it to be necessary to meet the findings of Section 44001. The visual or functional
5 check shall be performed in accordance with procedures prescribed by the department."

6 19. Section 44015 of the Health and Safety Code states, in relevant part:

7 "(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
8 issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

9 20. Section 44032 of the Health and Safety Code states:

10 No person shall perform, for compensation, tests or repairs of emission control
11 devices or systems of motor vehicles required by this chapter unless the person
12 performing the test or repair is a qualified smog check technician and the test or
13 repair is performed at a licensed smog check station. Qualified technicians shall
14 perform tests of emission control devices and systems in accordance with Section
15 44012.

16 21. Section 44059 of the Health and Safety Code states:

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

22 22. Health & Saf. Code section 44072.2 states, in relevant part:

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

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

....

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

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

23. Health & Saf. Code section 44072.10 states, in relevant part:

....

1 (c) The department shall revoke the license of any smog check technician or
2 station licensee who fraudulently certifies vehicles or participates in the fraudulent
3 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
4 the following:

5

6 (4) Intentional or willful violation of this chapter or any regulation, standard, or
7 procedure of the department implementing this chapter . . .

8 **REGULATORY PROVISIONS**

9 24. California Code of Regulations, title 16, section 3373, states:

10 "No automotive repair dealer or individual in charge shall, in filling out an estimate,
11 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
12 withhold therefrom or insert therein any statement or information which will cause any such
13 document to be false or misleading, or where the tendency or effect thereby would be to mislead
14 or deceive customers, prospective customers, or the public."

15 25. Title 16, California Code of Regulations, section 3340.17 states, in relevant part:

16

17 (c) Vehicle data and test results from the OBD Inspection System (OIS) shall be
18 transmitted to the bureau's centralized database . . .

19 26. California Code of Regulations, title 16, section 3340.30, states, in relevant part:

20 "A licensed smog check inspector and/or repair technician shall comply with the following
21 requirements at all times while licensed:

22 "(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
23 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
24 article."

25 27. California Code of Regulations, title 16, section 3340.35, states, in relevant part:

26 "(c) A licensed station shall issue a certificate of compliance or noncompliance to the
27 owner or operator of any vehicle that has been inspected in accordance with the procedures
28 specified in section 3340.42 of this article and has all the required emission control equipment
and devices installed and functioning correctly. The following conditions shall apply:

"(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

"(2) Sales tax shall not be assessed on the price of certificates."

28. California Code of Regulations, title 16, section 3340.41, states, in relevant part:

"(c) No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested."

29. California Code of Regulations, title 16, section 3340.42, states, in relevant part:

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

...

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

• • •

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

30. California Code of Regulations, title 16, section 3340.45, states, in relevant part:

“All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the Smog Check Manual, dated January 2021, which is hereby incorporated by reference.”

COST RECOVERY

31. Section 125.3 of the Code provides, in relevant part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **SMOG CHECK PROGRAM**

4 32. California's Smog Check Program requires the owners of most motor vehicles in
5 California to take and pass a Smog Check inspection and receive a Certificate of Compliance
6 every two years when renewing their registration and when the vehicle's title is transferred. These
7 inspections are performed by Smog Check Inspectors at Smog Check Stations, both of which are
8 licensed by the Bureau of Automotive Repair (BAR). Smog inspection can only take place in
9 Bureau approved work areas of Smog Stations.

10 33. The Smog Check inspection in certain enhanced areas of the State is an Acceleration
11 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
12 as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons, Carbon
13 Monoxide, Oxides of Nitrogen, Carbon Dioxide, and Oxygen. The inspection involves a test of
14 the vehicle's tailpipe emissions on a dynamometer. In Basic areas of the State, or depending on a
15 vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed
16 Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a
17 dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute
18 (RPM).

19 34. The inspector also performs visual and functional tests on the vehicle as outlined in
20 the Smog Check Manual. The visual inspection of the emission control components verifies the
21 required emission control devices are present and properly connected. Functional tests are also
22 performed which, depending on the vehicle, may include checking the ignition timing,
23 malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low pressure test
24 of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas
25 cap.

26 35. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
27 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission
28 Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and

1 1998 and newer diesel vehicles. Most older vehicles require the ASM or TSI test on the EIS.
2 Gas powered vehicles with a gross vehicle weight rating over 14,000 pounds require an
3 inspection on the EIS.

4 36. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a
5 computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a
6 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
7 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
8 vehicle. The bar code scanner is used to input technician information, the vehicle identification
9 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
10 Reports.

11 37. Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN,
12 which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module
13 (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the
14 PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the
15 number of specific data values each PCM uses related to emissions controls.

16 38. As part of the BAR-OIS smog inspections, the technician also performs a visual and
17 functional test on the vehicle being inspected. The visual inspection of the emission control
18 components verifies the required emission control devices are present and properly connected and
19 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
20 makes the determination whether or not the vehicle passes the inspection based on the results of
21 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
22 compliance is issued. The information from the smog inspection is then transmitted to the
23 Vehicle Information Data (VID).

24 39. The Bureau can access the VID to view test data on smog check inspections
25 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
26 particular vehicle which has been tested.

40. The Bureau has become aware of methods some Smog Check stations and Smog Check inspectors use to issue smog certificates to vehicles that will not pass a Smog Check test on their own, or in some instances, are not even present during the time the test is performed.

41. One method is known as "clean plugging." "Clean plugging" is the act of using one vehicle's properly functioning OBDII system, or another source, to generate passing data readings or diagnostic information for the purpose of issuing a smog certificate of compliance to a vehicle that is not in smog compliance and/or not being tested. The vehicle being certified is not the one being tested.

FACTUAL ALLEGATIONS

42. BAR Representative MW (Representative MW) conducted a detailed review of the VID data for Smog Check Inspections performed at Respondent Bauer Smog from March 1, 2024, through April 22, 2024. The review of the VID data showed seven vehicles were fraudulently certified. The OIS test data for the seven vehicles were performed at the Respondent Bauer Smog by Respondent Vizco. Respondent Vizco used the Clean Plugging method to fraudulently issue Smog Check Certificates of Compliance to these seven vehicles. Two different surrogate vehicles were used repeatedly to certify the seven vehicles. One of those vehicles belongs to Respondent Vizco and was used to fraudulently certify two of the seven vehicles. The details related to the seven vehicles is explained below.

Clean Plug # 1, March 30, 2024

43. Representative MW's review of OIS test data for Respondent Bauer Smog indicates that on March 30, 2024, a 2001 Toyota Rav4 with VIN JTEGH20V210021377 and CA License 4RQK800 was tested by Respondent Vizco¹ at Respondent Bauer Smog and Smog Check Certificate of Compliance #TU672698C was issued to the vehicle. The OIS Inspection Test data for the 2001 Toyota Rav4 shows the eVIN was transmitted as 5FNRL38728B016442, the

¹ All seven of the vehicles that were fraudulently certified using the Clean Plugging Method were certified under Smog Check Inspector License No. 637208, issued to Respondent Vizco.

1 communication protocol was transmitted as ICAN29bt5 and the PID count was 44|19. However, the
2 eVIN transmitted does not match the VIN of the vehicle issued a certificate of compliance.

3 44. The eVIN of 5FNRL38728B016442 that was transmitted during the March 30, 2024
4 test of the 2001 Toyota Rav4 is the correct eVIN for a 2008 Honda Odyssey. The 2008 Honda
5 Odyssey was tested and certified at Respondent Bauer Smog on May 10, 2023. The OIS test data
6 transmitted shows the eVIN as 5FNRL38728B016442, the communication protocol ICAN29bt5 and
7 a PID count of 44/19.

8 45. The OIS test data transmitted for the 2008 Honda Odyssey matches the OIS test data
9 for the March 30, 2024 inspection of the 2001 Toyota Rav4. The 2008 Honda Odyssey's OBDII
10 system was used to generate a fraudulent Smog Certificate of Compliance for the 2001 Toyota Rav4.

11 **Clean Plug # 2, April 6, 2024**
12

13 46. Representative MW's review of OIS test data for Respondent Bauer Smog indicates
14 that on April 6, 2024, at 1:25 PM, a 2005 Chevrolet Trailblazer LS with VIN 1GNDS13S452328815
15 and CA License 5NDK329 was tested by Respondent Vizco at Respondent Bauer Smog and did not
16 pass inspection due to monitors not ready. The OIS test data for that inspection show that the eVIN
17 was transmitted as 1GNDS13S452328815, the communication protocol was transmitted as
18 JVPW1850 and the PID count was 19.

19 47. Subsequently, on April 6, 2024, at 4:36 PM, the same 2005 Chevrolet Trailblazer LS
20 with VIN 1GNDS13S452328815 and CA License 5NDK329 was tested by Respondent Vizco at
21 Respondent Bauer Smog and Smog Check Certificate of Compliance #TU923790C was issued to
22 the vehicle. However, the OIS test data show that the eVIN was transmitted as
23 5FNRL38728B016442, the communication protocol was transmitted as ICAN29bt5 and the PID
24 count was 44/19.

25 48. The eVIN 5FNRL38728B016442 that was transmitted during the April 6, 2024 (at
26 4:36 p.m.) test of the 2005 Chevrolet Trailblazer LS is the correct eVIN for a 2008 Honda Odyssey.
27 The 2008 Honda Odyssey was tested and certified at Bauer licensed Smog Check facility on May
28 10, 2023. The OIS test data transmitted shows the eVIN as 5FNRL38728B016442, the

1 communication protocol ICAN11bt5 and a PID count of 44/19.

2 49. The OIS test data transmitted for the 2008 Honda Odyssey matches the OIS test data
3 for the April 6, 2024 (at 4:36 p.m.) test of the 2005 Chevrolet Trailblazer LS inspection. The 2008
4 Honda Odyssey's OBDII system was used to generate a fraudulent Smog Certificate of Compliance
5 for the 2005 Chevrolet Trailblazer LS.

6
7 **Clean Plug # 3, April 19, 2024**

8 50. On February 27, 2024, a 2015 Ford Fusion SE with VIN 3FA6P0HDXFR196394
9 and CA License 9FTN360 was tested and did not pass at Official Smog Check Test Only by Smog
10 Inspector ES.² The OIS test data for the 2015 Ford Fusion SE shows the eVIN was transmitted as
11 3FA6P0HDXFR196394, the communication protocol was transmitted as ICAN11bt500 and the PID
12 count was 41. Additionally, the MIL was commanded on, and Smog Inspector ES noted that the
13 MIL does not work.

14 51. On April 19, 2024, the same 2015 Ford Fusion SE with VIN 3FA6P0HDXFR196394
15 with CA License 9FTN360 was tested by Respondent Vizco at Respondent Bauer Smog and
16 Certificate of Compliance #TW344917C was issued to the vehicle. The OIS Inspection Test data for
17 the 2015 Ford Fusion SE shows the eVIN was transmitted as JTHBL46F685053673, the
18 communication protocol was transmitted as ICAN11bt500 and the PID count was 47/17.

19 52. The eVIN JTHBL46F685053673 that was transmitted during the April 19, 2024 test
20 of the 2015 Ford Fusion SE is the correct eVIN for a 2008 Lexus LS 460. The 2008 Lexus LS 460
21 was also tested and certified at another licensed Smog Check facility on March 14, 2024. The OIS
22 test data transmitted shows the eVIN as JTHBL46F685053673 the communication protocol
23 ICAN11bt500 and a PID count of 47/17. The OIS test data transmitted for the 2008 Lexus LS 460
24 matches the OIS test data for the inspection of the 2015 Ford Fusion SE. The 2008 Lexus LS 460's
25 OBDII system was used to generate a fraudulent Smog Certificate of Compliance for the 2015 Ford
26 Fusion SE.

27
28 ² Initials are used to identify the Smog Check Inspectors at other stations that are not
Respondent in this Accusation.

Clean Plug # 4, April 20, 2024

53. On March 27, 2024, a 2014 Ford Mustang with VIN 1ZVBP8AM5E5288948 and CA License 9HUD307 was tested and did not pass at K West Auto Care by Smog Inspector JZ. The OIS test data for the 2014 Ford Mustang shows the eVIN was transmitted as 1ZVBP8AM5E5288948, the communication protocol was transmitted as ICAN11bt5 and the PID count was 42. Additionally, a permanent code P0456 was stored in the vehicle's computer and the OBDII readiness monitors had not run to completion.

54. On April 20, 2024, the same 2014 Ford Mustang with VIN 1ZVBP8AM5E5288948 and CA License 9HUD307 was tested by Respondent Vizco at Respondent Bauer Smog and Smog Check Certificate of Compliance #TW344930C was issued to the vehicle. The OIS Inspection Test data for the 2014 Ford Mustang shows the eVIN was transmitted as JTHBL46F685053673, the communication protocol was transmitted as ICAN11bt500 and the PID count was 47/17.

55. The eVIN JTHBL46F685053673 that was transmitted during the April 20, 2024 test was of the 2014 Ford Mustang is the correct eVIN for a 2008 Lexus LS 460. The 2008 Lexus LS 460 was tested and certified at another licensed Smog Check facility on March 14, 2024. The OIS test data transmitted shows the eVIN as JTHBL46F685053673 the communication protocol ICAN11bt500 and a PID count of 47/17. The OIS test data transmitted for the 2008 Lexus LS 460 matches the OIS test data for the inspection of the 2014 Ford Mustang. The 2008 Lexus LS 460's OBDII system was used to generate a fraudulent Smog Certificate of Compliance for the 2014 Ford Mustang.

Clean Plug # 5, April 20, 2024

56. On April 16, 2024, a 2013 Ford F250 Super Duty with VIN 1FT7W2B60DEA28027 and CA License 11161Y2 was tested and did not pass at Santa Teresa Chevron by Smog Inspector SS. The OIS test data for the 2013 Ford Super Duty shows the eVIN was transmitted as 1FT7W2B60DEA28027, the communication protocol was transmitted as ICAN11bt5 and the PID count was 44. Additionally, a permanent code P0446 was stored in the vehicle's computer and the OBDII readiness monitors had not run to completion. The vehicle's OBD bulb check also failed.

1 57. On April 20, 2024, the same 2013 Ford F250 Super Duty with VIN
2 1FT7W2B60DEA28027 and CA License 11161Y2 was tested by Respondent Vizco at Respondent
3 Bauer Smog and Smog Check Certificate of Compliance #TW344931C was issued to the vehicle.
4 However, the OIS Inspection Test data for the 2013 Ford F250 Super Duty shows the eVIN was
5 transmitted as JTHBL46F685053673, the communication protocol was transmitted as ICAN11bt500
6 and the PID count was 47|17.

7 58. The eVIN JTHBL46F685053673 that was transmitted during the April 20, 2024 test
8 of the 2013 Ford F250 Super Duty is the correct eVIN for a 2008 Lexus LS 460. The 2008 Lexus
9 LS 460 was tested and certified at another licensed Smog Check facility on March 14, 2024. The
10 OIS test data transmitted shows the eVIN as JTHBL46F685053673 the communication protocol
11 ICAN11bt500 and a PID count of 47/17. The OIS test data transmitted for the 2008 Lexus LS 460
12 matches the OIS test data for the inspection of the 2013 Ford F250 Super Duty. The 2008 Lexus LS
13 460's OBDII system was used to generate a fraudulent Smog Certificate of Compliance for the 2013
14 Ford F250 Super Duty.

15 **Clean Plug # 6, April 20, 2024**
16

17 59. Representative MW's review of OIS test data for Respondent Bauer Smog indicates
18 that on April 20, 2024, a 2009 Ford Econoline E250 Van with VIN 1FTNE24L59DA78478 was
19 tested by Respondent Vizco at Respondent Bauer Smog and Smog Check Certificate of Compliance
20 #TW344941C was issued to the vehicle. However, the OIS Inspection Test data for the 2009 Ford
21 Econoline E250 shows the eVIN was transmitted as JTHBL46F685053673, the communication
22 protocol was transmitted as ICAN11bt500 and the PID count was 47|17.

23 60. On December 20, 2022, the same 2009 Ford Econoline E250 Van with VIN
24 1FTNE24L59DA78478 and CA License 96045S1 was tested at TDN Smog Check and Smog Check
25 Certificate of Compliance #TA965974C was issued by Smog Inspector TN. The OIS test data for
26 the 2009 Ford Econoline E250 Van shows the eVIN was transmitted as 1FTNE24L59DA78478, the
27 communication protocol was transmitted as ICAN11bt5 and the PID count was 44.

28 ///

61. The eVIN JTHBL46F685053673 that was transmitted during the April 20, 2024 test of the 2009 Ford Econoline E250 Van is the correct eVIN for a 2008 Lexus LS 460. The 2008 Lexus LS 460 was tested and certified at another licensed Smog Check facility on March 14, 2024. The OIS test data transmitted shows the eVIN as JTHBL46F685053673 the communication protocol ICAN11bt500 and a PID count of 47/17. The OIS test data transmitted for the 2008 Lexus LS 460 matches the OIS test data for the inspection of the 2009 Ford Econoline E250 Van. The 2008 Lexus LS 460's OBDII system was used to generate a fraudulent Smog Certificate of Compliance for the 2009 Ford Econoline E250 Van.

Clean Plug # 7, April 20, 2024

62. On January 17, 2024, a 2015 Toyota Sienna XLE with VIN 5TDYK3DC6FS538260 and CA License 9EEA078 was tested and did not pass at Quick Smog and Repair by Smog Inspector EG. The OIS Inspection Test data for the 2015 Toyota Sienna XLE shows the eVIN was transmitted as 5TDYK3DC6FS538260 the communication protocol was transmitted as ICAN11bt5 and the PID count was 49/20. Additionally, the 2015 Toyota Sienna XLE had the MIL commanded on and the vehicle's computer had Service Fault codes showing a P0430 Catalyst System Efficiency issue and P0713 Transmission Fluid Temperature Sensor Circuit High Input.

63. On April 20, 2024, the same 2015 Toyota Sienna XLE with VIN 5TDYK3DC6FS538260 and CA License 9EEA078 was tested by Respondent Vizco at Respondent Bauer Smog and Smog Check Certificate of Compliance #TW344942C was issued to the vehicle. The OIS Inspection Test data for the 2015 Toyota Sienna XLE shows the eVIN was transmitted as JTHBL46F685053673, the communication protocol was transmitted as ICAN11bt500 and the PID count was 47/17.

64. The eVIN JTHBL46F685053673 that was transmitted during the April 20, 2024 test of the 2015 Toyota Sienna XLE is the correct eVIN for a 2008 Lexus LS 460. The 2008 Lexus LS 460 was tested and certified at another licensed Smog Check facility on March 14, 2024. The OIS test data transmitted shows the eVIN as JTHBL46F685053673 the communication protocol ICAN11bt500 and a PID count of 47/17. The OIS test data transmitted for the 2008 Lexus LS 460

1 matches the OIS test data for the inspection of the 2015 Toyota Sienna XLE. The 2008 Lexus LS
2 460's OBDII system was used to generate a fraudulent Smog Certificate of Compliance for the 2015
3 Toyota Sienna XLE.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 65. Respondent Bauer Smog's Registration is subject to disciplinary action pursuant to
7 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
8 statements which it knew or in the exercise of reasonable care should have known to be untrue or
9 misleading, as follows:

10 a. Respondent Bauer Smog's smog check inspector, Respondent Vizco, certified that
11 Vehicles 1 through 7 identified in paragraphs 43 through 64 above, had passed inspection and
12 were in compliance with applicable laws and regulations. In fact, Respondent Vizco conducted
13 the smog inspections on the vehicles using clean-plugging methods in that he substituted or used
14 a different vehicle or defeat device during the inspections in order to issue smog certificates of
15 compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf.
16 Code section 44012. The circumstances are more fully explained in paragraphs 32 through 64,
17 above.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 66. Respondent Bauer Smog's Registration is subject to disciplinary action pursuant to
21 Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which
22 constitute fraud by issuing electronic smog certificates of compliance for Vehicles 1 through 7,
23 identified in paragraphs 43 through 64 above, without ensuring that bona fide inspections were
24 performed of the emission control devices and systems on the vehicles, thereby depriving the
25 People of the State of California of the protection afforded by the Motor Vehicle Inspection
26 Program. The circumstances are more fully explained in paragraphs 32 through 64, above.

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

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

3 67. Respondent Bauer Smog's Smog Check Test and Repair Station License is subject to
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
5 Respondent failed to comply with the following sections of the Health and Safety Code:

6 a. **Section 44012:** Respondent Vizco failed to ensure that the emission control tests
7 were performed on Vehicles 1 through 7, identified in paragraphs 43 through 64 above, in
8 accordance with procedures prescribed by the department. The circumstances are more fully
9 explained in paragraphs 32 through 64, above.

10 b. **Section 44015:** Respondent Vizco issued electronic smog certificates of compliance
11 for Vehicles 1 through 7, identified in paragraphs 43 through 64 above, without ensuring that the
12 vehicles were properly tested and inspected to determine if they were in compliance with Health
13 & Saf. Code section 44012. The circumstances are more fully explained in paragraphs 32
14 through 64, above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant**
17 **to the Motor Vehicle Inspection Program)**

18 68. Respondent Bauer Smog's Smog Check Test and Repair Station License is subject to
19 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that
20 Respondent failed to comply with provisions of Title 16, California Code of Regulations, as
21 follows:

22 a. **Section 3340.35, subdivision (c):** Respondent Vizco issued electronic smog
23 certificates of compliance for Vehicles 1 through 7, identified in paragraphs 43 through 64 above,
24 even though the vehicles had not been inspected in accordance with section 3340.42. The
25 circumstances are more fully explained in paragraphs 32 through 64, above.

26 b. **Section 3340.42:** Respondent Vizco failed to ensure that the required smog tests
27 were conducted on Vehicles 1 through 7, identified in paragraphs 43 through 64 above, in
28

1 accordance with the Bureau's specifications. The circumstances are more fully explained in
2 paragraphs 32 through 64, above.

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 69. Respondent Bauer Smog's Smog Check Test and Repair Station License is subject to
6 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
7 conjunction with section 44072.10, subdivision (c), in that Respondent committed dishonest,
8 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
9 compliance for Vehicles 1 through 7, identified in paragraphs 43 through 64 above, without
10 ensuring that bona fide inspections were performed of the emission control devices and systems
11 on the vehicles, thereby depriving the People of the State of California of the protection afforded
12 by the Motor Vehicle Inspection Program. The circumstances are more fully explained in
13 paragraphs 32 through 64, above.

14 **SIXTH CAUSE FOR DISCIPLINE**

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

16 70. Respondent Vizco's Smog Check Inspector License and Smog Check Repair
17 Technician License are subject to disciplinary action pursuant to Health & Saf. Code section
18 44072.2, subdivision (a), in that Respondent Vizco failed to comply with section 44012 of that
19 Health and Safety Code in a material respect, as follows: Respondent Vizco failed to perform the
20 emission control tests on Vehicles 1 through 7, identified in paragraphs 43 through 64 above, in
21 accordance with procedures prescribed by the department. The circumstances are more fully
22 explained in paragraphs 32 through 64, above.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with Regulations Pursuant**
25 **to the Motor Vehicle Inspection Program)**

26 71. Respondent Vizco's Smog Check Inspector License and Smog Check Repair
27 Technician License are subject to disciplinary action pursuant to Health & Saf. Code section
28

1 44072.2, subdivision (c), in that Respondent Vizco failed to comply with provisions of Title 16,
2 California Code of Regulations, as follows:

3 a. **Section 3340.30, subdivision (a):** Respondent Vizco failed to inspect and test
4 Vehicles 1 through 7, identified in paragraphs 43 through 64 above, in accordance with Health &
5 Saf. Code sections 44012 and 44035, and Title 16, California Code of Regulations, section
6 3340.42. The circumstances are more fully explained in paragraphs 32 through 64, above.

7 b. **Section 3340.42:** Respondent Vizco failed to conduct the required smog tests on
8 Vehicles 1 through 7, identified in paragraphs 43 through 64 above, in accordance with the
9 Bureau's specifications. The circumstances are more fully explained in paragraphs 32 through
10 64, above.

11 **EIGHTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 72. Respondent Vizco's Smog Check Inspector License and Smog Check Repair
14 Technician License are subject to disciplinary action pursuant to Health and Safety Code section
15 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10,
16 subdivision (c), in that Respondent committed acts which constitute fraud by issuing electronic
17 smog certificates of compliance for Vehicles 1 through 7, identified in paragraphs 43 through 64
18 above, without ensuring that bona fide inspections were performed of the emission control
19 devices and systems on the vehicles, thereby depriving the People of the State of California of the
20 protection afforded by the Motor Vehicle Inspection Program. The circumstances are more fully
21 explained in paragraphs 32 through 64, above.

22 **OTHER MATTERS**

23 73. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
24 or place on probation the registration for all places of business operated in this state by
25 Respondent Bauer Smog upon a finding that Respondent Bauer Smog has, or is, engaged in a
26 course of repeated and willful violations of the laws and regulations pertaining to an automotive
27 repair dealer.
28

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

75. Pursuant to Health & Safety Code section 44072.8, if Respondent Vizco's Smog Check Inspector License and/or Smog Check Repair Technician License is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 296697, issued to Bauer Smog Check Station, Roderick Lugtu Vizco;

2. Revoking or suspending any additional Automotive Repair Dealer Registrations issued to Roderick Lugtu Vizco;

3. Revoking or suspending Smog Check Test and Repair Station License No. RC 296697, issued to Bauer Smog Check Station, Roderick Lugtu Vizco;

4. Revoking or suspending Vehicle Safety Station License No. VS 296697, issued to Bauer Smog Check Station, Roderick Lugtu Vizco;

5. Revoking or suspending Smog Check Inspector License No. EO 637208, issued to Roderick Lugtu Vizco;

6. Revoking or suspending Smog Check Repair Technician License No. EI 637208,
issued to Roderick Lugtu Vizco;

7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Roderick Lugtu Vizco;

///

///

1 8. Ordering Bauer Smog Check Station, Roderick Lugtu Vizco to pay the Bureau of
2 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3; and, if placed on probation, the costs of
4 probation monitoring; and,

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

7
8 DATED: As of Digital Signature Day

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

9
10
11
12
13
14 OK2024900402
15 91886208.docx
16
17
18
19
20
21
22
23
24
25
26
27
28