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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. 79/24-6272

14 **FREDDY DELGADO LUGO DBA**
CULICHI SMOG CHECK
15 **10557 1/2 Magnolia Ave**
Riverside, CA 92505

ACCUSATION

16 **Automotive Repair Dealer License No. ARD**
17 **301974**
Smog Check, Test-Only, Station License No.
18 **TC 301974,**

19 **and**

20 **FREDDY DELGADO-LUGO**
9841 Lombardy Ave
21 **Bloomington, CA 92316**

22 **Smog Check Inspector License No. EO**
23 **643273**

24 Respondents.

25
26 **PARTIES**

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

2. On or about March 14, 2022, the Bureau of Automotive Repair issued Automotive Repair Dealer License Number ARD 301974 to Freddy Delgado Lugo dba Culichi Smog Check (Respondent or Respondent Culichi Smog Check). The Automotive Repair Dealer License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2025, unless renewed.

3. On or about August 8, 2022, the Bureau of Automotive Repair issued Smog Check, Test-Only, Station License Number TC 301974 to Freddy Delgado Lugo dba Culichi Smog Check (Respondent). The Smog Check, Test-Only, Station License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2025, unless renewed.

4. On or about September 10, 2021, the Bureau of Automotive Repair issued Smog Check Inspector License Number EO 643273 to Freddy Delgado-Lugo (Respondent Delgado-Lugo or Respondent). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2025, unless renewed.

JURISDICTION

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

6. Section 9884.7 of the Business and Professions Code¹ provides that the Director may revoke an ARD registration.

7. Section 9884.13 of the Code provides, in pertinent 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.

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

¹ All statutory references herein shall be to the Business and Professions Code unless specifically stated otherwise.

9. Section 44072.6 of the Health and Safety Code provides, in pertinent 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.

STATUTORY PROVISIONS

10. Section 9884.7 of the Code states:

(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 which constitutes fraud.

• • •

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

11. Section 44072.2 of the Health and Safety Code states:

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

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

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

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

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12. Section 44072.10 of the Health and Safety Code states, in pertinent part:

...

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

(1) Clean piping, as defined by the department. . . .

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

REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:

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

14. California Code of Regulations, title 16, section 3340.30, states:

A smog check technician shall comply with the following requirements at all times while licensed.

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

15. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

....

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

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

COST RECOVERY

17. Section 125.3 of the Code provides, in pertinent 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 **VID DATA REVIEW**

4 18. Beginning March 9, 2015, California's Smog Check Program was updated to require
5 the use of an On-Board Diagnostic Inspection System ("OIS"). OIS is the Smog Check
6 equipment required in all areas of the State when inspecting most model-year 2000 and newer
7 gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a
8 certified Data Acquisition Device ("DAD"), computer, bar code scanner, and printer. The DAD
9 is an On Board Diagnostic ("OBD") scan tool that, when requested by the California OIS
10 software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it
11 supports is requested by the California OIS software and will be retrieved. The DAD connects
12 between the OIS computer and the vehicle's DLC. The California OIS software requires a
13 continuous Internet connection when performing a Smog Check inspection and the OIS software
14 communicates with BAR's central database through the Internet connection. The bar code
15 scanner is used to input technician information, the vehicles identification number ("VIN"), and
16 DMV renewal information. The printer provides a Vehicle Inspection Report ("VIR") containing
17 inspection results for motorists and a Smog Check Certificate of Compliance number for passing
18 vehicles.

19 19. During an OIS inspection, engine operating parameters are retrieved from the
20 vehicle's OBD II system and recorded to the VID. This is accomplished during the functional
21 portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when
22 prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- 23 • Engine speed in revolutions per minute (RPM)
- 24 • Throttle position as measured by a throttle position sensor (TPS) mounted onto
25 the throttle shaft. Measured in a percentage of opening from 0% at idle and near
26 or up to 100% at full throttle.
- 27 • Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
28 connected to an intake manifold source, measured in kilo pascals (kpa). Typical

1 readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum,
2 25kpa to 45kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at
3 sea level.

- 4 • Mass air flow as measured by a mass air flow sensor (MAF) mounted in the
5 engine's air intake tract. Measured in grams per second (gps).²
- 6 • Ignition timing is set by the vehicle PCM based on engine speed and load, and is
7 measured in degrees Before Top Dead Center (BTDC).

8 20. During normal engine operation at idle, engine speed is relatively steady around its
9 target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or
10 MAF readings are also steady. For the engine speed to increase, the throttle would have to be
11 opened to increase airflow through the engine. The engine's management systems supply fuel and
12 spark timing appropriate to any changes in throttle position and engine speed. An increase in
13 throttle, measured by the TPS, which increases engine RPM, would result in corresponding
14 increases in MAF as well as a change in MAP. Stated another way, any movement in the throttle
15 from the idle position will result in an increase of airflow through the engine with corresponding
16 increases RPM and/or MAF along with changes in MAP.

17 21. During an OIS Smog Check inspection, along with other visual and functional
18 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
19 with the engine idling and, when requested by the OIS analyzer, and an elevated or increased
20 engine speed.

21 22. Data retrieved and recorded during an OIS smog check includes; the eVIN, which is
22 the digitally stored VIN programmed into the vehicle's Powertrain Control Module ("PCM"); the
23 communication protocol, which is the manufacturer/vehicle specific language the PCM uses to
24 relay information; and the number of Parameter Identifications ("PIDs"), which is the number of
25 specific data values each PCM uses related to emissions controls.

26 ² Not all vehicles include both MAP and MAF parameters. Many vehicles will have either
27 MAP or MAF parameters separately.
28

1 23. If the vehicle passes the visual, functional and tailpipe tests, it passes the overall
2 inspection and a Certificate of Compliance is issued and transmitted electronically to the Vehicle
3 Information Database (“VID”). These Certificates of Compliance are purchased in blocks of fifty
4 (50) through the EIS or OIS from the VID, using a pre-arranged electronic bank account debit
5 system or by check, via mail, from Bureau Headquarters in Sacramento. Each Certificate of
6 Compliance has a unique control number so that it can be tracked to determine which Smog
7 Check Station purchased the Certificate of Compliance and to which vehicle it was issued.

8 24. The VID contains registration data from Department of Motor Vehicles (“DMV”)
9 plus emission standards, vehicle smog check inspections, smog check stations and technicians,
10 and Certificates of Compliance. The VID receives the passing smog check results immediately
11 following the inspection. During the vehicle registration process, the DMV accesses the VID to
12 verify that the vehicle has been tested and certified. The Bureau can also access the VID to view
13 test data on smog check inspections performed at any Smog Check Station, or search for, retrieve,
14 and print a test record for a particular vehicle which has been tested. The EIS or OIS, depending
15 on the test type, also prints a Vehicle Inspection Report (“VIR”), which is a physical record of the
16 test results and shows the Certificate of Compliance number that was issued if the vehicle passed
17 the smog inspection.

18 25. The smog check technician must sign the VIR under penalty of perjury to indicate
19 that the inspection was done within Bureau guidelines. Smog Check Stations are required by law
20 to maintain a copy of the VIR along with a copy of the repair invoice for three years. The
21 consumer’s VIR serves as a receipt and proof that the VID was updated and a Certificate of
22 Compliance was issued. Licensed Smog Check Technicians are the only persons authorized by
23 the Bureau to perform official inspections. They are issued a personal access code and a license,
24 which are used to gain access to the EIS and OIS to perform smog check inspections.
25 Unauthorized use of another technician’s access code or license is prohibited.

26 26. Respondents have engaged in numerous acts or omissions constituting violations of
27 the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*) and Motor
28 Vehicle Inspection Program (Health and Safety Code section 44000 *et seq.*) through their practice

of “clean plugging.”³ Respondent Delgado-Lugo’s OIS Test Data available on the State database indicates that Respondent Delgado-Lugo is involved in fraudulent smog inspection activities. A Bureau representative initiated an investigation based on information transmitted to the VID for smog check inspections performed by Respondent Delgado-Lugo. The investigation revealed that the data related to certain vehicles certified by Respondent Delgado-Lugo contained a pattern of unmistakable discrepancies between the information transmitted during the inspections and documented information known about the vehicles at issue. Specifically, the representative compared the data received from the certified vehicles to data from vehicles of the same year, make, and model and determined that the data from at least ten (10) of the certified vehicles were fraudulently tested by Respondent Delgado-Lugo during the smog inspection using the “clean plugging” method as follows:

Fraudulent Inspection #1:

27. Bureau representative Steve Koch (Koch) reviewed the OIS Test Data for Culichi Smog Check. The review indicates on February 14, 2023, a 2003 Chevrolet Corvette Z06, CA license U146B0, VIN 1G1YY12S235111701 (2003 Z06), was tested and smog certificate # TE115701C was issued under licensed Smog Check Technician #EO643273, Delgado-Lugo.

28. The Dynamic PID Chart for the 2003 Z06 shows between time stamp 81 and 9645 engine speed is steady at approximately 725 RPM before slightly dropping to approximately 550 RPM. During this time the throttle is fixed at 5.1% opening, the MAF is fixed at 6.87 gps, MAP is fixed at 36 kPa, and the ignition timing advance for #1 cylinder is fixed at 10.5 degrees BTDC. After time stamp 18829 the engine speed accelerates to approximately 2500 RPM at time stamp 34959 before decreasing to approximately 1700 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 5.1% opening, the MAF is fixed at the same 6.87 gps, the MAP is fixed at the same 36 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 10.5 degrees BTDC.

³ “Clean plugging” refers to the use of another vehicle’s properly functioning On Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog compliance and/or not present for testing.

29. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, MAP and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2003 Z06 being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #2:

30. Koch reviewed the OIS Test Data for Culichi Smog Check. The review indicates on February 27, 2023, a 2004 Toyota Corolla CE, CA license 5DRM999, VIN 1NXBR32E74Z225891 (2004 Corolla), was tested and smog certificate # TE267899C was issued under licensed Smog Check Technician #EO643273, Delgado-Lugo.

31. The Dynamic PID Chart for the 2004 Corolla shows between time stamp 225 and 18634 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at 10.6% opening, the MAF is fixed at 2.12 gps, and the ignition timing advance for #1 cylinder is fixed at 11 degrees BTDC. After time stamp 18634 the engine speed accelerates to approximately 1500 RPM, then increases again to approximately 2000 RPM. RPM then decreases to approximately 1650 RPM, before increasing to approximately 2150 RPM and decreasing to approximately 1700 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 10.6% opening, the MAF is fixed at the same 2.12 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 11 degrees BTDC.

32. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2004 Corolla being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

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Previous Failing Test: 2004 Corolla:

33. A failing test was performed on the 2004 Corolla at another station on February 23, 2023. The 2004 Corolla failed the inspection for incomplete OBDII readiness monitors. The dynamic data collected during the inspection had the expected change in throttle position, MAF and ignition timing.

Fraudulent Inspection #3:

34. Koch reviewed the OIS Test Data for Culichi Smog Check. The review indicates on February 28, 2023, a 2005 GMC New Sierra C3500, CA license 7T35918, VIN 1GDJC34U65E207038 (2005 Sierra C3500), was tested and smog certificate # IT260666C was issued under licensed Smog Check Technician #EO643273, Delgado-Lugo.

35. The Dynamic PID Chart for the 2005 Sierra C3500 shows between time stamp 440 and 18650 engine speed is steady at approximately 600 RPM. During this time the throttle is fixed at 13.7% opening, the MAF is fixed at 6.39 gps, MAP is fixed at 37 kPa, and the ignition timing advance for #1 cylinder is fixed at 15 degrees BTDC. After time stamp 18650 the engine speed accelerates and fluctuates between approximately 1625 RPM and 2000 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 13.7% opening, the MAF is fixed at the same 6.39 gps, the MAP is fixed at the same 37 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 15 degrees BTDC.

36. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, MAP and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2005 Sierra C3500 being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #4:

37. Koch reviewed the OIS Test Data for Culichi Smog Check. The review indicates on March 10, 2023, a 2004 Toyota Sienna XLE, CA license 7JFH471, VIN 5TDZA22C64S130519

(2004 Sienna), was tested and smog certificate # TE390052C was issued under licensed Smog Check Technician #EO643273, Delgado-Lugo.

38. The Dynamic PID Chart for the 2004 Sienna shows between time stamp 220 and 18069 engine speed is steady at approximately 700 RPM. During this time the throttle is fixed at 16.5% opening, the MAF is fixed at 3.84 gps, and the ignition timing advance for #1 cylinder is fixed at 20 degrees BTDC. After time stamp 18069 the engine speed accelerates and fluctuates between approximately 1625 RPM and 2000 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 16.5% opening, the MAF is fixed at the same 3.84 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 20 degrees BTDC.

39. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2004 Sienna being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #5:

40. Koch reviewed the OIS Test Data for Culichi Smog Check. The review indicates on March 14, 2023, a 2004 Nissan Titan XE, CA license 7K68971, VIN 1N6AA07AX4N527727 (2004 Titan), was tested and smog certificate # TE390093C was issued under licensed Smog Check Technician #EO643273, Delgado-Lugo.

41. The Dynamic PID Chart for the 2004 Titan shows between time stamp 218 and 20277 engine speed is steady at approximately 700 RPM. During this time the throttle is fixed at .4% opening, the MAF is fixed at 5.43 gps, and the ignition timing advance for #1 cylinder is fixed at 15 degrees BTDC. After time stamp 20277 the engine speed accelerates to approximately 2100 RPM before having an erratic, fluctuating engine speed between approximately 2250 and 1850 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at

the same .4% opening, the MAF is fixed at the same 5.43 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 15 degrees BTDC.

42. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2004 Titan being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #6:

43. Koch reviewed the OIS Test Data for Culichi Smog Check. The review indicates on March 17, 2023, a 2003 Toyota Corolla Matrix XR, CA license 5CDU455, VIN 2T1KR32E13C116908 (2003 Corolla), was tested and smog certificate # TE558264C was issued under licensed Smog Check Technician #EO643273, Delgado-Lugo.

44. The Dynamic PID Chart for the 2003 Corolla shows between time stamp 378 and 19026 engine speed is steady at approximately 700 RPM. During this time the throttle is fixed at 9.4% opening, the MAF is fixed at 1.78 gps, and the ignition timing advance for #1 cylinder is fixed at 15 degrees BTDC. After time stamp 19026 the engine speed accelerates to approximately 2150 RPM before having an erratic, fluctuating engine speed between approximately 1725 and 2100 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 9.4% opening, the MAF is fixed at the same 1.78 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 15 degrees BTDC.

45. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2003 Corolla being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

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Fraudulent Inspection #7:

46. Koch reviewed the OIS Test Data for Culichi Smog Check. The review indicates on March 18, 2023, a 2006 Honda Pilot LX, no plate, VIN 5FNYF28146B049979 (2006 Pilot), was tested and smog certificate # TE558268C was issued under licensed Smog Check Technician #EO643273, Delgado-Lugo.

47. The Dynamic PID Chart for the 2006 Pilot shows between time stamp 187 and 17710 engine speed is steady at approximately 675 RPM. During this time the throttle is fixed at 13.7% opening, the MAP is fixed at 29 kPa, and the ignition timing advance for #1 cylinder is fixed at 10 degrees BTDC. After time stamp 17710 the engine speed accelerates to approximately 2125 RPM before decelerating to approximately 1800 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 13.7% opening, the MAP is fixed at the same 29 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 10 degrees BTDC.

48. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAP, and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2006 Pilot being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #8:

49. Koch reviewed the OIS Test Data for Culichi Smog Check. The review indicates on March 18, 2023, a 2001 Toyota Tacoma Xtracab Prerunner, CA license 84317Z2, VIN 5TESN92N51Z809180 (2001 Tacoma), was tested and smog certificate # TE558276C was issued under licensed Smog Check Technician #EO643273, Delgado-Lugo.

50. The Dynamic PID Chart for the 2001 Tacoma shows between time stamp 190 and 17967 engine speed is steady at approximately 850 RPM. During this time the throttle is fixed at 11.4% opening, the MAF is fixed at 4.33 gps, and the ignition timing advance for #1 cylinder is fixed at 12.5 degrees BTDC. After time stamp 17967 the engine speed accelerates to

1 approximately 2700 RPM before decreasing to approximately 1725 RPM at time stamp 46092,
2 then accelerating to approximately 2275 RPM. From the time the engine RPM increases off idle
3 to the higher RPMs, the throttle is fixed at the same 11.4% opening, the MAF is fixed at the same
4 4.33 gps, and the ignition timing advance for #1 cylinder is also still fixed at the same 12.5
5 degrees BTDC.

6 51. During the entire period the dynamic data was collected, the only parameter that
7 changed was engine RPM. The throttle position, MAF, and ignition timing advance readings
8 remained unchanged even though the engine speed was increased. These readings are not
9 characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data
10 prove the OIS was not connected to the 2001 Tacoma being certified, causing the issuance of a
11 fraudulent Smog Check Certificate of Compliance.

12 **Fraudulent Inspection #9:**

13 52. Koch reviewed the OIS Test Data for Culichi Smog Check. The review indicates on
14 March 18, 2023, a 2001 Chevrolet Tilt Master W35042, CA license 6W85029, VIN
15 4KBB4B1R71J801806 (2001 Tilt Master), was tested and smog certificate # TE558277C was
16 issued under licensed Smog Check Technician #EO643273, Delgado-Lugo.

17 53. The Dynamic PID Chart for the 2001 Tilt Master shows between time stamp 61 and
18 17708 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed
19 at 0% opening, the MAF is fixed at 7.47 gps, MAP is fixed at 31 kPa, and the ignition timing
20 advance for #1 cylinder is fixed at 16 degrees BTDC. After time stamp 17708 the engine speed
21 accelerates to approximately 2375 RPM before decreasing to approximately 2025 RPM. From the
22 time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0%
23 opening, the MAF is fixed at the same 7.47 gps, the MAP is fixed at the same 31 kPa, and the
24 ignition timing advance for #1 cylinder is also still fixed at the same 16 degrees BTDC.

25 54. During the entire period the dynamic data was collected, the only parameter that
26 changed was engine RPM. The throttle position, MAF, MAP and ignition timing advance
27 readings remained unchanged even though the engine speed was increased. These readings are
28

not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2001 Tilt Master being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

Fraudulent Inspection #10:

55. Koch reviewed the OIS Test Data for Culichi Smog Check. The review indicates on March 22, 2023, a 2000 Chevrolet Tahoe C1500, CA license 7ABD214, VIN 1GNEC13TXYJ131071 (2000 Tahoe), was tested and smog certificate # TE558293C was issued under licensed Smog Check Technician #EO643273, Delgado-Lugo.

56. The Dynamic PID Chart for the 2000 Tahoe shows between time stamp 26 and 17703 engine speed is steady at approximately 750 RPM. During this time the throttle is fixed at 7.1% opening, the MAF is fixed at 4.63 gps, MAP is fixed at 33 kPa, and the ignition timing advance for #1 cylinder is fixed at 17.5 degrees BTDC. After time stamp 17703 the engine speed accelerates to approximately 2000 RPM before having a fluctuating engine speed between approximately 1800 RPM and 2100 RPM. From the time the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 7.1% opening, the MAF is fixed at the same 4.63 gps, the MAP is fixed at the same 33 kPa, and the ignition timing advance for #1 cylinder is also still fixed at the same 17.5 degrees BTDC.

57. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, MAP and ignition timing advance readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS was not connected to the 2000 Tahoe being certified, causing the issuance of a fraudulent Smog Check Certificate of Compliance.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements - Respondent Culichi Smog Check)

58. Respondent Culichi Smog Check's registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(1), in that on and between February 14, 2023, and March 22, 2023, Respondent Delgado-Lugo made or authorized statements which he knew or in

1 the exercise of reasonable care should have known to be untrue or misleading, as follows:
2 Respondent Delgado-Lugo certified that the vehicles set forth above in paragraphs 27-57, had
3 passed inspection and were in compliance with applicable laws and regulations. In fact,
4 Respondent Delgado-Lugo conducted the inspections on those vehicles using the clean plugging
5 method in order to issue smog certificates of compliance and did not test or inspect the vehicles as
6 required by Health and Safety Code section 44012.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Fraud - Respondent Culichi Smog Check)**

9 59. Respondent Culichi Smog Check's registration is subject to disciplinary action
10 pursuant to section 9884.7, subdivision (a)(4), in that on and between February 14, 2023, and
11 March 22, 2023, Respondent Culichi Smog Check's employee Respondent Delgado-Lugo
12 committed acts which constitute fraud by issuing electronic certificates of compliance for the
13 vehicles set forth above in paragraphs 27-57, without performing bona fide inspections of the
14 emission control devices and systems on those vehicles, thereby depriving the People of the State
15 of California of the protection afforded by the Motor Vehicle Inspection Program.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Motor Vehicle Inspection Program –**
18 **Respondent Culichi Smog Check)**

19 60. Respondent Culichi Smog Check's smog station license is subject to disciplinary
20 action pursuant to Health and Safety Code section 44072.2, subdivision (a), in conjunction with
21 Health and Safety Code section 44072.10 subdivision (c), in that on and between February 14,
22 2023, and March 22, 2023, regarding the vehicles set forth above in paragraphs 27-57,
23 Respondent Culichi Smog Check failed to comply with the following sections of the Health and
24 Safety Code:

25 (a) **Section 44012:** Respondent Culichi Smog Check's employee Respondent Delgado-
26 Lugo failed to ensure that the emission control tests were performed on the vehicles, in
27 accordance with procedures prescribed by the department.
28

(b) **Section 44015**: Respondent Culichi Smog Check's employee Respondent Delgado-Lugo issued electronic certificates of compliance for the vehicles, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program - Respondent Culichi Smog Check)

61. Respondent Culichi Smog Check's smog station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on and between February 14, 2023, and March 22, 2023, regarding the vehicles set forth above in paragraphs 27-57, Respondent Delgado-Lugo failed to comply with the following provisions of the California Code of Regulations, Title 16, as follows:

(a) **Section 3340.35, subdivision (c)**: Respondent Culichi Smog Check's employee Respondent Delgado-Lugo issued electronic certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42, Title 16, of the California Code of Regulations.

(b) **Section 3340.42**: Respondent Culichi Smog Check's employee Respondent Delgado-Lugo failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit - Respondent Culichi Smog Check)

62. Respondent Culichi Smog Check's smog station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10 subdivision (c), in that on and between February 14, 2023, and March 22, 2023, regarding the vehicles set forth above in paragraphs 27-57, Respondent Culichi Smog Check's employee Respondent Delgado-Lugo committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the

1 emission control devices and systems on the vehicles, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Violations of the Motor Vehicle Inspection Program – Respondent Delgado-Lugo)**

5 63. Respondent Delgado-Lugo’s smog check inspector license is subject to discipline
6 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on and between
7 February 14, 2023, and March 22, 2023, regarding the vehicles set forth above in paragraphs 27-
8 57, Respondent Delgado-Lugo failed to comply with section 44012 of the Health and Safety Code
9 in a material respect, as follows: Respondent Delgado-Lugo failed to perform the emission
10 control tests on those vehicles in accordance with procedures prescribed by the department.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
13 **Respondent Delgado-Lugo)**

14 64. Respondent Delgado-Lugo’s smog check inspector license is subject to discipline
15 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on and between
16 February 14, 2023, and March 22, 2023, regarding the vehicles set forth above in paragraphs 27-
17 57, Respondent Delgado-Lugo failed to comply with provisions of the California Code of
18 Regulations, title 16, as follows:

19 (a) **Section 3340.30, subdivision (a)**: Respondent Delgado-Lugo failed to inspect and
20 test those vehicles in accordance with Health and Safety Code section 44012.

21 (b) **Section 3340.41, subdivision (c)**: Respondent Delgado-Lugo entered false
22 information into the EIS.

23 (c) **Section 3340.42**: Respondent Delgado-Lugo failed to conduct the required smog
24 tests and inspections on those vehicles in accordance with the Bureau’s specifications.

25 **EIGHTH CAUSE FOR DISCIPLINE**

26 **(Dishonesty, Fraud or Deceit - Respondent Delgado-Lugo)**

27 65. Respondent Delgado-Lugo’s smog check inspector license is subject to discipline
28 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health

1 and Safety Code section 44072.10 subdivision (c), in that on and between February 14, 2023, and
2 March 22, 2023, regarding the vehicles set forth above in paragraphs 27-57, Respondent
3 Delgado-Lugo committed acts involving dishonesty, fraud or deceit whereby another was injured
4 by issuing electronic certificates of compliance for those vehicles without performing bona fide
5 inspections of the emission control devices and systems on the vehicles., thereby depriving the
6 People of the State of California of the protection afforded by the Motor Vehicle Inspection
7 Program.

8 **OTHER MATTERS**

9 66. Pursuant to Business & Professions Code section 9884.7, subdivision (c), the Director
10 may suspend, revoke, or place on probation the registration for all places of business operated in
11 this State by Respondent Culichi Smog Check upon a finding that Respondent Culichi Smog
12 Check has, or is, engaged in a course of repeated and willful violations of the laws and
13 regulations pertaining to an automotive repair dealer.

14 67. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station
15 License Number TC 301974 issued to Respondent Culichi Smog Check is revoked or suspended
16 following a hearing under this article, any additional license issued under Chapter 5, Part 5,
17 Division 26 in the name of said licensee may be likewise revoked or suspended by the Director.

18 68. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
19 Number EO 643273, issued to Respondent Delgado-Lugo, is revoked or suspended following a
20 hearing under this article, any additional license issued under Chapter 5, Part 5, Division 26 in the
21 name of said licensee may be likewise revoked or suspended by the Director.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Director of the Department of Consumer Affairs issue a
25 decision:

26 1. Revoking or suspending Automotive Repair Dealer License Number ARD 301974,
27 issued to Freddy Delgado-Lugo dba Culichi Smog Check;
28

2. Revoking or suspending any other Automotive Repair Dealer Registration issued to Respondent Freddy Delgado-Lugo;

3. Revoking or suspending Smog Check, Test-Only, Station License Number TC 301974, issued to Freddy Delgado-Lugo dba Culichi Smog Check;

4. 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 Respondent Freddy Delgado-Lugo;

5. Revoking or suspending Smog Check Inspector License Number EO 643273, issued to Freddy Delgado-Lugo;

6. Ordering Freddy Delgado-Lugo 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; and, if placed on probation, the costs of probation monitoring; and,

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

DATED: As of digital signature date

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

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