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8  
9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:

Case No. 79/22-15950

14 **MARTHA YURIDIA MARTINEZ**  
15 **DBA DN SMOG**  
16 **3382 Firestone Blvd., #B**  
**South Gate, CA 90280**

**ACCUSATION**

17 **Mailing Address:**  
18 **935 E. 107<sup>th</sup> St.**  
**Los Angeles, CA 90002**

19 **Automotive Repair Dealer Registration No.**  
20 **ARD 291984**  
**Smog Check Test Only Station License No.**  
**TC 291984,**

21 **and**

22 **MARTHA YURIDIA MARTINEZ**  
23 **935 E. 107<sup>th</sup> St.**  
**Los Angeles, CA 90002**

24 **Smog Check Inspector License No. EO**  
25 **641389**

26 Respondent.

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1 **PARTIES**

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

4 2. On or about September 7, 2018, the Bureau issued Automotive Repair Dealer  
5 Registration Number ARD 291984 to Martha Yuridia Martinez dba DN Smog (Respondent). The  
6 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the  
7 charges brought herein and will expire on September 30, 2023, unless renewed.

8 3. On or about October 5, 2018, the Bureau issued Smog Check Test Only Station  
9 License Number TC 291984 to Respondent. The Smog Check Test Only Station License was in  
10 full force and effect at all times relevant to the charges brought herein and will expire on  
11 September 30, 2023, unless renewed.

12 4. On or about September 10, 2018, the Bureau issued Smog Check Inspector License  
13 Number EO 641389 to Respondent. The Smog Check Inspector License was in full force and  
14 effect at all times relevant to the charges brought herein and will expire on September 30, 2024,  
15 unless renewed.

16 5. On or about February 5, 2019, DN Smog was certified as a STAR Station. This  
17 certification will remain unless the Automotive Repair Dealer Registration and/or Smog Check  
18 Station License is revoked, canceled, licenses become delinquent, or the certification is  
19 suspended.

20 **JURISDICTION**

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

23 7. Business and Professions Code (Bus. & Prof. Code) section 118, subdivision (b),  
24 provides that suspension, expiration, surrender, or cancellation of a license shall not deprive the  
25 Director of jurisdiction to proceed with a disciplinary action during the period within which the  
26 license may be renewed, restored, reissued or reinstated.

27 8. Bus. & Prof. Code section 9884.7 provides that the Director may revoke an  
28 automotive repair dealer registration.

9. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

10. Health and Safety Code (Health & Saf. Code) section 44002 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.

11. Health & Saf. Code section 44072.6 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

12. Bus. & Prof. Code section 9884.7 states, in pertinent part:

(a) The director, if 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.

• • • •

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

• • • •

(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.

• • • •

(e) For purposes of this section, “fraud” includes, but is not limited to, violations of this chapter involving misrepresentations and all of the following:

(1) Any act or omission that is included within the definition of either “actual fraud” or “constructive fraud,” as those terms are defined in Sections 1572 and 1573 of the Civil Code.

(2) A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact.

(3) A promise or representation not made honestly and in good faith.

(4) An intentional failure to disclose a material fact.

(5) Any act in violation of Section 484 of the Penal Code.

13. Bus. & Prof. Code section 477 provides, in pertinent 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 Bus. & Prof. Code.

14. Health & Saf. Code section 44012 provides, in pertinent part, that tests at smog check stations shall be performed in accordance with procedures prescribed by the department.

15. Health & Saf. Code section 44015, subdivision (b), provides that a certificate of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section 44012.

16. Health & Saf. Code section 44032 provides that qualified technicians shall perform tests of emissions control devices and systems in accordance with Health & Saf. Code section 44012.

17. Health & Saf. Code section 44072.2 states, in pertinent part:

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 . . .

18. Health & Saf. Code section 44072.10 states, in pertinent part:

. . . .

(c) The department shall revoke the license of any smog check technician or station licensee 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.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

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

19. Health & Saf. 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.

### **REGULATORY PROVISIONS**

20. California Code of Regulations (CCR), 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.”

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

22. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check 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

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

3 23. CCR, title 16, section 3340.41 states, in pertinent part:

4 . . . .

5 (b) No person shall enter any access or qualification number other than as  
6 authorized by the Bureau into the EIS or OIS, nor in any way tamper with the EIS or  
OIS.

7 (c) No person shall enter any vehicle identification information or emission  
8 control system identification data for any vehicle other than the one being tested into  
the EIS or OIS. Nor shall any person enter into the EIS or OIS any false information  
9 about the vehicle being tested . . . .

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

#### 12 **COST RECOVERY**

13 25. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request  
14 the administrative law judge to direct a licentiate found to have committed a violation or  
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
16 and enforcement of the case.

#### 17 **CALIFORNIA’S SMOG CHECK PROGRAM**

18 26. California’s Smog Check Program requires most vehicles in the State to undergo a  
19 smog check inspection every two years or when the vehicle’s title is transferred.

20 27. A smog check inspection in certain Enhanced areas of the State is an Acceleration  
21 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known  
22 as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons (HC),  
23 Carbon Monoxide (CO), Oxides of Nitrogen (NOx), Carbon Dioxide (CO<sup>2</sup>) and Oxygen (O<sup>2</sup>).  
24 The first part of the test is a loaded mode test of the vehicle’s tailpipe emissions on a  
25 dynamometer. The vehicle’s drive wheels are placed on rollers, and the vehicle is driven to  
26 simulate driving conditions while the emissions are sampled by the EIS.

27 28. In Basic areas of the State, or depending on a vehicle’s configuration, a similar test  
28 called a Two Speed Idle test is performed, but instead of applying a load to the vehicle’s drive

1 wheels with a dynamometer, the EIS measures the emissions of HC, CO, O<sup>2</sup>, and CO<sup>2</sup> at idle as  
2 well as 2500 revolutions per minute (rpm).

3 29. In the visual portion of a smog check, the technician inspects the emission control  
4 components to verify that the required emission control devices are present and properly  
5 connected.

6 30. An On-Board Diagnostics (OBD II) functional test is also performed on most 1996 to  
7 1999 model year vehicles. The EIS retrieves information through the Diagnostic Link Connector  
8 (DLC) from the vehicle's on-board computer about its ability to communicate, the status of the  
9 I/M readiness monitors and the MIL light command. The I/M readiness monitors tell whether or  
10 not the OBD II system has run a sufficient number of self-tests on the vehicle's emission and  
11 engine control systems. A failure of one or more of the OBD II functional criteria, depending on  
12 model year, will result in the vehicle failing its smog check inspection. In addition to reporting  
13 the outcome of the OBD II functional test, the smog check inspection results also show  
14 Diagnostic Trouble Codes (DTC) if there are any in the vehicle's on-board computer memory.

15 31. The inspector enters the results of the visual and functional inspections into the EIS.  
16 The EIS unit makes the determination whether or not the vehicle passes the inspection based on  
17 the results of the tailpipe, visual and functional tests.

18 32. The EIS is connected by internet connection to Bureau's Vehicle Information  
19 Database (VID). If the vehicle passes the visual, functional and tailpipe tests, it passes the overall  
20 inspection. A Certificate of Compliance is issued and transmitted electronically to the VID.

21 33. Beginning March 9, 2015, California's Smog Check Program was updated to require  
22 the use of an On-Board Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check  
23 equipment required in all areas of the State when inspecting most model-year 2000 and newer  
24 gasoline and hybrid vehicles. The system consists of a certified Data Acquisition Device (DAD),  
25 computer, bar code scanner, and printer. The DAD is an OBD scan tool that, when requested by  
26 the BAR-OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle  
27 indicates it supports is requested by the BAR-OIS software and will be retrieved. The DAD  
28 connects between the BAR-OIS computer and the vehicle's DLC. The bar code scanner is used to

1 input inspector information, the vehicle identification number (VIN), and Department of Motor  
2 Vehicles renewal information. The printer provides a Vehicle Inspection Report (VIR)  
3 containing inspection results for motorists and a Smog Check Certificate of Compliance number  
4 for passing vehicles.

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

- 9 • Engine speed in revolutions per minute (RPM)
- 10 • Throttle position as measured by a throttle position sensor (TPS) mounted onto the  
11 throttle shaft. Measured in a percentage of opening from 0% at idle and near or up to 100% at full  
12 throttle.
- 13 • Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)  
14 connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a  
15 normally aspirated vehicle as follows: 0 kpa being absolute vacuum, 25 to 45 kpa at idle, 101 kpa  
16 at full throttle, same as atmospheric pressure at sea level.
- 17 • Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's  
18 air intake tract. Measured in grams per second (gps).

19 35. During normal engine operation at idle, engine speed is relatively steady around its  
20 target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or  
21 MAF readings are also steady. For the engine speed to increase, the throttle would have to be  
22 opened in order to increase airflow through the engine. The engine's management systems  
23 supply fuel and spark timing appropriate to any changes in throttle position and engine speed.  
24 An increase in throttle, measured by the TPS, which increases engine RPM, would result in a  
25 corresponding increases in MAF as well as a change in MAP. Any movement in the throttle from  
26 the idle position will result in an increase of airflow through the engine with corresponding  
27 increases RPM and MAF along with changes in MAP.

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36. During an OIS Smog Check inspection, along with other visual and functional inspections, there is an OBD II query portion of the inspection. The OBD II query is performed with the engine idling and, when requested by the OIS analyzer, and an elevated or increased engine speed. The increase in engine speed is performed by the inspector by stepping on the throttle pedal or manually opening the throttle resulting in a corresponding increase in engine RPMs by allowing an increase in airflow into the engine.

37. The Bureau has become aware of methods that some Smog Check stations and Smog Check inspectors use to fraudulently issue smog certificates to vehicles that may not pass a smog check test on their own, or in some instances, are not even present during the time the test is performed. “Clean plugging” is a method by which another vehicle’s OBD II system, or another source such as defeat devices, are used to generate passing data readings or diagnostic information for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance, and or not present for testing. Defeat devices attempt to simulate engine operation during a smog check inspection by transmitting OBD II data to the VID which has been modified or replaced entirely for the purportedly inspected vehicle during the functional portion of the OIS inspection.

## FACTUAL ALLEGATIONS

### *Station Inspections and Office Conference*

38. On or about December 18, 2018, the Bureau conducted a station inspection at DN Smog and informed Respondent that any fraudulent Smog Inspection, such as a clean pipe, clean plug, or clean gas, would result in a financial penalty, and administrative, and potentially criminal prosecutions.<sup>1</sup>

39. On or about February 27, 2019, the Bureau conducted an audit inspection at DN Smog during which revoked Smog Check inspector David Cruz was observed conducting a Smog Check inspection on a 1996 Toyota RAV4 (VIN #JT3YP10V9T0117858, CA license #3PWY337) using a defeat device while Respondent was present and observing. The following

<sup>1</sup> According to Bureau records, between September 14, 2018 and September 23, 2022, Respondent (EO 641389) was the only licensed Smog Check Inspector authorized to perform Smog Check inspections at DN Smog.

1 items were identified at DN Smog which were surrendered to the Bureau: a Vehicle Inspection  
2 Report (VIR) for a previous failing inspection of the same 1996 Toyota RAV4 being fraudulently  
3 certified at the time of the audit inspection; bar coded vehicle information with VIRs for previous  
4 inspections, a pay ledger, and the defeat device. During a subsequent station inspection on March  
5 1, 2019, Respondent stated she would not allow any further or additional electronic defeat devices  
6 to be utilized at her facility and that all future tests would be conducted completely, accurately,  
7 and consistent with all laws and regulations.

8 40. On or about December 10, 2019, the Bureau conducted a surveillance operation and  
9 an audit inspection at DN Smog during which Respondent, revoked Smog Check inspector David  
10 Cruz, and another unidentified male were observed performing a Smog Check inspection on a  
11 2002 Volvo S60 (VIN #YV1RS61R722101099, CA license #4VBC276) using a defeat device.  
12 The Bureau located and secured this defeat device as well as an RPM simulator defeat device at  
13 DN Smog. Respondent declined to cooperate with the Bureau's audit inspection or respond to  
14 questions regarding the defeat devices. During a subsequent office conference with Respondent  
15 and her attorney on January 6, 2020, Respondent was advised that future violations of the  
16 Automotive Repair Act may be incorporated into any future formal disciplinary action against her  
17 Automotive Repair Dealer registration, Smog Check Station license, and Smog Check Inspector  
18 license.

19 41. On the following dates, the Bureau conducted follow-up station audits due to  
20 OIS/DAD lock-outs for improbable Smog Check data: February 9, 2022; March 1, 2022, May 17,  
21 2022; June 29, 2022; and July 22, 2022. During each station audit, the Bureau admonished  
22 Respondent to perform complete and accurate Smog Check inspections in accordance with all  
23 applicable laws, regulations, the Smog Check inspection manual, and analyzer screen prompts,  
24 and advised her that continued inappropriate smog activity would result in a future analyzer lock-  
25 outs and/or disciplinary action. During the station audit on June 29, 2022, Respondent stated that  
26 she personally performs all Smog Check inspections under her license, does not share her license  
27 or personal access codes, and signs all Vehicle Inspection Reports (VIRs).

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1 ***Investigation***

2 42. On or about October 24, 2022, a Bureau Representative conducted a detailed review  
3 of the VID data for Smog Check inspections performed at DN Smog which showed a pattern of  
4 vehicles being certified with engine operating parameters that did not correspond to normal  
5 engine operation, confirming the vehicles receiving smog certifications were not tested during the  
6 OBD II functional test, which constitutes clean plugging. The Bureau's review of the Smog  
7 Check activities at DN Smog confirmed eleven (11) Smog Check Certificates of Compliance  
8 were fraudulently issued to vehicles after inspections performed by Respondent.

9 **Clean Plug Number 1 – 2004 Chevrolet Colorado**

10 43. OIS Test data for DN Smog indicated that on June 7, 2022, a 2004 Chevrolet  
11 Colorado, VIN #1GCCS136548105217, CA License #8P26942 (2004 Colorado), was tested and  
12 Smog Certificate of Compliance #SS175786C was issued by DN Smog, under Respondent's  
13 Smog Check Technician License.

14 44. However, the steady idle and steady elevated engine speeds with the associated  
15 varying throttle positions and subsequent varying MAP and MAF readings as set forth in the  
16 underlying OIS Test Data for the inspection of the 2004 Chevrolet Colorado are not characteristic  
17 and therefore not expected for normal engine operation. These discrepancies confirm that the  
18 OIS DAD was not connected to the 2004 Colorado during the certification process as required,  
19 thereby rendering this a fraudulent inspection by way of Clean Plugging.

20 **Clean Plug Number 2 – 2006 Mercedes-Benz CLS 500C**

21 45. OIS Test data for DN Smog indicated that on June 8, 2022, a 2006 Mercedes-Benz  
22 CLS 500C, VIN #WDDDJ75X76A041246, CA Licence #8GUD590 (2006 CLS 500C), was  
23 tested and smog certificate #SS175790C was issued by DN Smog, under Respondent's Smog  
24 Check Technician License.

25 46. However, the steady idle and steady elevated engine speeds with the associated  
26 varying throttle positions and subsequent varying MAP and MAF readings as set forth in the  
27 underlying OIS Test Data for the inspection of the 2006 CLS 500C are not characteristic and  
28 therefore not expected for normal engine operation. These discrepancies confirm that the OIS

1 DAD was not connected to the 2006 CLS 500C during the certification process as required,  
2 thereby rendering this a fraudulent inspection by way of Clean Plugging.

3 **Clean Plug Number 3 – 2002 Chevrolet Avalanche C1500**

4 47. OIS Test data for DN Smog indicated that on June 9, 2022, a 2002 Chevrolet  
5 Avalanche C1500, VIN#3GNEC13T92G108034, CA License #EFCTIVO (2002 Avalanche), was  
6 tested and smog certificate #SS175792C was issued by DN Smog, under Respondent's Smog  
7 Check Technician License.

8 48. However, the steady idle and steady elevated engine speeds with the associated  
9 varying throttle positions and subsequent varying MAP and MAF readings as set forth in the  
10 underlying OIS Test Data for the inspection of the 2002 Avalanche are not characteristic and  
11 therefore not expected for normal engine operation. These discrepancies confirm that the OIS  
12 DAD was not connected to the 2002 Avalanche during the certification process as required,  
13 thereby rendering this a fraudulent inspection by way of Clean Plugging.

14 **Clean Plug Number 4 – 2002 Toyota Tacoma Double Cab Prerunner**

15 49. OIS Test data for DN Smog indicated that on June 9, 2022, a 2002 Toyota Tacoma  
16 Double Cab Prerunner, VIN #5TEGN92N42Z082895, CA License #7P88861 (2002 Tacoma),  
17 was tested and smog certificate #SS175793C was issued by DN Smog, under Respondent's Smog  
18 Check Technician License.

19 50. However, the steady idle and steady elevated engine speeds with the associated  
20 varying throttle positions and subsequent varying MAF readings as set forth in the underlying  
21 OIS Test Data for the inspection of the 2002 Tacoma are not characteristic and therefore not  
22 expected for normal engine operation. These discrepancies confirm that the OIS DAD was not  
23 connected to the 2002 Tacoma during the certification process as required, thereby rendering this  
24 a fraudulent inspection by way of Clean Plugging.

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**Clean Plug Number 5 – 2001 Jeep Grand Cherokee Laredo**

51. OIS Test data for DN Smog indicated that on June 9, 2022, a 2001 Jeep Grand Cherokee Laredo, VIN #1J4GX48S81C690940, CA License 5NKW740 (2001 Grand Cherokee), was tested and smog certificate #SS175794C was issued by DN Smog, under Respondent's Smog Check Technician License.

52. However, the steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP readings as set forth in the underlying OIS Test Data for the inspection of the 2001 Grand Cherokee are not characteristic and therefore not expected for normal engine operation. These discrepancies confirm that the OIS DAD was not connected to the 2001 Grand Cherokee during the certification process as required, thereby rendering this a fraudulent inspection by way of Clean Plugging.

**Clean Plug Number 6 – 2002 Chevrolet Silverado C1500**

53. OIS Test data for DN Smog indicated that on June 29, 2022, a 2002 Chevrolet Silverado C1500, VIN#1GCECA4V32E295092, CA License 6Y88034 (2002 Silverado), was tested and smog certificate #SS175796C was issued by DN Smog, under Respondent's Smog Check Technician License.

54. However, the steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP and MAF readings as set forth in the underlying OIS Test Data for the inspection of the 2002 Silverado are not characteristic and therefore not expected for normal engine operation. These discrepancies confirm that the OIS DAD was not connected to the 2002 Silverado during the certification process as required, thereby rendering this a fraudulent inspection by way of Clean Plugging.

**Clean Plug Number 7 – 2006 Nissan Quest S**

55. OIS Test data for DN Smog indicated that on June 29, 2022, a 2006 Nissan Quest S, VIN #5N1BV28U06N101902, CA License #5USL749 (2006 Quest), was tested and smog certificate #SS175797C was issued by DN Smog, under Respondent's Smog Check Technician License.

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1           56. However, the steady idle and steady elevated engine speeds with the associated  
2 varying throttle positions and subsequent varying MAF readings as set forth in the underlying  
3 OIS Test Data for the inspection of the 2006 Quest are not characteristic and therefore not  
4 expected for normal engine operation. These discrepancies confirm that the OIS DAD was not  
5 connected to the 2006 Quest during the certification process as required, thereby rendering this a  
6 fraudulent inspection by way of Clean Plugging.

7           **Clean Plug Number 8 – 2005 Honda Odyssey LX**

8           57. OIS Test data for DN Smog indicated that on June 29, 2022, a 2005 Honda Odyssey  
9 LX, VIN #5FNRL38275B068102, CA License #5MRP125 (2005 Odyssey), was tested and smog  
10 certificate #SS175799C was issued by DN Smog, under Respondent's Smog Check Technician  
11 License.

12           58. However, the steady idle and steady elevated engine speeds with the associated  
13 varying throttle positions and subsequent varying MAP readings as set forth in the underlying  
14 OIS Test Data for the inspection of the 2005 Odyssey are not characteristic and therefore not  
15 expected for normal engine operation. These discrepancies confirm that the OIS DAD was not  
16 connected to the 2005 Odyssey during the certification process as required, thereby rendering this  
17 a fraudulent inspection by way of Clean Plugging.

18           **Clean Plug Number 9 – 2007 Honda Accord EX**

19           59. OIS Test data for DN Smog indicated that on September 1, 2022, a 2007 Honda  
20 Accord EX, VIN #1HGCM56867A175435, CA License #7LEL933 (2007 Accord), was tested  
21 and smog certificate #SW436966C was issued by DN Smog, under Respondent's Smog Check  
22 Technician License.

23           60. However, the steady idle and steady elevated engine speeds with the associated  
24 varying throttle positions and subsequent varying MAP and MAF readings as set forth in the  
25 underlying OIS Test Data for the inspection of the 2007 Accord are not characteristic and  
26 therefore not expected for normal engine operation. These discrepancies confirm that the OIS  
27 DAD was not connected to the 2007 Accord during the certification process as required, thereby  
28 rendering this a fraudulent inspection by way of Clean Plugging.

1                   **Clean Plug Number 10 – 2002 Ford Excursion Limited**

2           61.    OIS Test data for DN Smog indicated that on September 13, 2022, a 2002 Ford  
3 Excursion Limited, VIN #1FMNU42S02EA78022, CA License #4VCV512 (2002 Excursion),  
4 was tested and smog certificate #SW692508C was issued by DN Smog, under Respondent's  
5 Smog Check Technician License.

6           62.    However, the steady idle and steady elevated engine speeds with the associated  
7 varying throttle positions and subsequent varying MAF readings as set forth in the underlying  
8 OIS Test Data for the inspection of the 2002 Excursion are not characteristic and therefore not  
9 expected for normal engine operation. These discrepancies confirm that the OIS DAD was not  
10 connected to the 2002 Excursion during the certification process as required, thereby rendering  
11 this a fraudulent inspection by way of Clean Plugging.

12                   **Clean Plug Number 11 – 2001 Chevrolet Express Cutaway G3500**

13           63.    OIS Test data for DN Smog indicated that on September 20, 2022, a 2001 Chevrolet  
14 Express Cutaway G3500, VIN #1GBJG314111107721, CA License #6J89415 (2001 Express),  
15 was tested and smog certificate #SW692528C was issued by DN Smog, under Respondent's  
16 Smog Check Technician License.

17           64.    However, the steady idle and steady elevated engine speeds with the associated  
18 varying throttle positions and subsequent varying MAP and MAF readings as set forth in the  
19 underlying OIS Test Data for the inspection of the 2001 Express are not characteristic and  
20 therefore not expected for normal engine operation. These discrepancies confirm that the OIS  
21 DAD was not connected to the 2001 Express during the certification process as required, thereby  
22 rendering this a fraudulent inspection by way of Clean Plugging.

23                                   **FIRST CAUSE FOR DISCIPLINE**

24                                   **(Untrue of Misleading Statements)**

25           65.    Respondent's Automotive Repair Dealer Registration is subject to disciplinary action  
26 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that she made statements  
27 which were known to be untrue or misleading or, which by exercise of reasonable care should  
28 have been known to be untrue or misleading, by issuing electronic smog certificates of

1 compliance for the eleven (11) vehicles set forth in paragraphs 43-64, above, certifying that those  
2 vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles  
3 had not been so inspected. Complainant refers to, and by this reference incorporates, the  
4 allegations contained in paragraphs 42 through 64, above, as though set forth fully herein.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 66. Respondent's Automotive Repair Dealer Registration is subject to disciplinary action  
8 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that she committed acts that  
9 constitute fraud by issuing electronic certificates of compliance to the eleven (11) vehicles set  
10 forth in paragraphs 43-64, above, without performing bone fide inspections of the emission  
11 control devices and systems on those vehicles, thereby depriving the People of the State of  
12 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant  
13 refers to, and by this reference incorporates, the allegations contained in paragraphs 42 through  
14 64, above, as though set forth fully herein.

15 **THIRD CAUSE FOR DISCIPLINE**

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

17 67. Respondent's Automotive Repair Dealer Registration is subject to disciplinary action  
18 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that she failed in a material  
19 respect to comply with the provisions of this chapter or regulations adopted pursuant to it when  
20 she issued electronic certificates of compliance for the eleven (11) vehicles set forth in paragraphs  
21 43-64, above, without performing bona fide inspections of the emission control devices and  
22 systems on those vehicles, thereby depriving the People of the State of California of the  
23 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this  
24 reference incorporates, the allegations contained in paragraphs 42 through 64, above, as though  
25 set forth fully herein.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

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

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
7 performed on the eleven (11) vehicles identified in paragraphs 43-64, above, in accordance with  
8 procedures prescribed by the department.

9 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of  
10 compliance to the eleven (11) vehicles identified in paragraphs 43-64, above, without properly  
11 testing and inspecting those vehicles to determine if they were in compliance with Health & Saf.  
12 Code section 44012.

13 Complainant refers to, and by this reference incorporates, the allegations contained in  
14 paragraphs 42 through 64, above, as though set forth fully herein.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

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

21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
22 electronic smog certificates of compliance for the eleven (11) vehicles identified in paragraphs  
23 43-64, above.

24 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the eleven  
25 (11) vehicles identified in paragraphs 43-64, above, in accordance with Health & Saf. Code  
26 sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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1 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of  
2 compliance for the eleven (11) vehicles identified in paragraphs 43-64, above, even though those  
3 vehicles had not been inspected in accordance with section 3340.42.

4 d. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information  
5 into the emissions inspection system for the eleven (11) vehicles identified in paragraphs 43-64,  
6 above.

7 e. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted  
8 on the eleven (11) vehicles identified in paragraphs 43-64, above, were done in accordance with  
9 the Bureau's specifications.

10 Complainant refers to, and by this reference incorporates, the allegations contained in  
11 paragraphs 42 through 64, above, as though set forth fully herein.

#### 12 **SIXTH CAUSE FOR DISCIPLINE**

##### 13 **(Dishonesty, Fraud or Deceit)**

14 70. Respondent's Smog Check Test Only Station License is subject to disciplinary action  
15 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in conjunction with Health &  
16 Saf. Code section 44072.10, subdivision (c), in that she committed dishonest, fraudulent, or  
17 deceitful acts whereby another was injured by issuing electronic smog certificates of compliance  
18 for the eleven (11) vehicles described in paragraphs 43-64, above, without performing bona fide  
19 inspections of the emission control devices and systems on those vehicles, thereby depriving the  
20 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
21 Program. Complainant refers to, and by this reference incorporates, the allegations contained in  
22 paragraphs 42 through 64, above, as though set forth fully herein.

#### 23 **SEVENTH CAUSE FOR DISCIPLINE**

##### 24 **(Violations of the Motor Vehicle Inspection Program)**

25 71. Respondent's Smog Check Inspector License is subject to disciplinary action  
26 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that she failed to comply with  
27 the following sections of that code:

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1 a. **Section 44032:** Respondent failed to perform tests of emission control devices and  
2 systems of the eleven (11) vehicles identified in paragraphs 43-64, above, in accordance with  
3 Health & Saf. Code section 44012.

4 b. **Section 44015, subdivision (b):** Respondent caused electronic smog certificates of  
5 compliance to be issued for the eleven (11) vehicles identified in paragraphs 43-64, above,  
6 without ensuring that they were properly tested and inspected to determine if they were in  
7 compliance with Health & Saf. Code section 44012.

8 Complainant refers to, and by this reference incorporates, the allegations contained in  
9 paragraphs 42 through 64, above, as though set forth fully herein.

10 **EIGHTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant**  
12 **to the Motor Vehicle Inspection Program)**

13 72. Respondent's Smog Check Inspector License is subject to disciplinary action  
14 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that she failed to comply with  
15 provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
17 electronic smog certificates of compliance for the eleven (11) vehicles identified in paragraphs  
18 43-64, above.

19 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the eleven  
20 (11) vehicles identified in paragraphs 43-64, above, in accordance with Health & Saf. Code  
21 sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

22 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information  
23 into the emissions inspection system for the eleven (11) vehicles identified in paragraphs 43-64,  
24 above.

25 d. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted  
26 on the eleven (11) vehicles identified in paragraphs 43-64, above, were done in accordance with  
27 the Bureau's specifications.

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1 Complainant refers to, and by this reference incorporates, the allegations contained in  
2 paragraphs 42 through 64, above, as though set forth fully herein.

3 **NINTH CAUSE FOR DISCIPLINE**

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

5 73. Respondent's Smog Check Inspector License is subject to disciplinary action  
6 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in conjunction with Health &  
7 Saf. Code section 44072.10, subdivision (c), in that she committed dishonest, fraudulent, or  
8 deceitful acts whereby another was injured by issuing electronic smog certificates of compliance  
9 for the eleven (11) vehicles identified in paragraphs 43-64, above, without performing bona fide  
10 inspections of the emission control devices and systems on those vehicles, thereby depriving the  
11 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
12 Program. Complainant refers to, and by this reference incorporates, the allegations contained in  
13 paragraphs 42 through 64, above, as though set forth fully herein.

14 **DISCIPLINARY CONSIDERATIONS**

15 74. To determine the degree of discipline, if any, to be imposed on Respondent,  
16 Complainant alleges that on and between December 18, 2018 and July 22, 2022, Bureau  
17 representatives conducted numerous station inspections and audit inspections of DN Smog, and  
18 an office conference during which they advised Respondent that she must perform complete and  
19 accurate Smog Check inspections in accordance with all applicable laws, regulations, the Smog  
20 Check Inspection Manual, and analyzer screen prompts. On two such station inspections—  
21 conducted on or about February 27, 2019 and December 10, 2019, Bureau representatives  
22 observed defeat devices being used during Smog Check Inspections at DN Smog. Complainant  
23 refers to, and by this reference incorporates, the allegations contained in paragraphs 38 through  
24 41, above, as though set forth fully herein.

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1 **OTHER MATTERS**

2 75. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
3 suspend, revoke, or place on probation the registration for all places of business operated in this  
4 state by Respondent, upon a finding that she has, or is, engaged in a course of repeated and willful  
5 violations of the laws and regulations pertaining to an automotive repair dealer.

6 76. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station  
7 License No. TC 291984, issued to Respondent, is revoked or suspended, any additional license  
8 issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said  
9 licensee may be likewise revoked or suspended by the director.

10 77. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
11 No. EO 641389, issued to Respondent, is revoked or suspended, any additional license issued  
12 under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee  
13 may be likewise revoked or suspended by the director.

14 **PRAYER**

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

18 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
19 291984, issued to Martha Yuridia Martinez dba DN Smog;

20 2. Revoking or suspending any other automotive repair dealer registration issued to  
21 Martha Yuridia Martinez;

22 3. Revoking or suspending Smog Check Test Only Station License Number TC 291984,  
23 issued to Martha Yuridia Martinez dba DN Smog;

24 4. Revoking or suspending Smog Check Inspector License Number EO 641389, issued  
25 to Martha Yuridia Martinez;

26 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
27 Division 26 of the Health & Saf. Code in the name of Martha Yuridia Martinez;

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1           6.     Ordering Martha Yuridia Martinez to pay the Bureau of Automotive Repair the  
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
3 Professions Code section 125.3; and,

4           7.     Taking such other and further action as deemed necessary and proper.  
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7           DATED: As of digital signature date  
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9           \_\_\_\_\_  
10          PATRICK DORAIS  
11          Chief  
12          Bureau of Automotive Repair  
13          Department of Consumer Affairs  
14          State of California  
15          Complainant

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