

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

In the Matter of the Accusation Against:

MARTHA YURIDIA MARTINEZ dba DN SMOG

3382 Firestone Blvd. #B

South Gate, CA 90280

Mailing Address:

935 E. 107th St.

Los Angeles, CA 90002

Automotive Repair Dealer Registration No. ARD 291984

Smog Check Test Only Station License No. TC 291984

and

MARTHA YURIDIA MARTINEZ

935 E. 107th St.

Los Angeles, CA 90002

Smog Check Inspector License No. EO 641389

Respondents.

Case No. 79/22-15950

OAH No. 2023110262

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on December 4, 2024.

IT IS SO ORDERED Oct. 29, 2024.



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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In the Matter of the Accusation Against:

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and

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Smog Check Inspector License No. EO 641389

Respondent

Agency Case No. 79/22-15950

OAH No. 2023110262

PROPOSED DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on January 22, 23, and July 25, 2024.

Complainant, Patrick Dorais, Chief, Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs (Department), was represented by M. Travis Peery, Deputy Attorney General. Respondent Martha Yuridia Martinez, individually and doing business as DN Smog, was represented by William Ferreira, Attorney at Law.

This matter is governed by the Automotive Repair Act (Repair Act), codified in Business and Professions Code section 9880 through 9889.68, the Motor Vehicle Inspection Program (Inspection Program or Smog Check Program), codified in Health and Safety Code sections 44000 through 44127, and implementing regulations. Each regulation cited below is a section of title 16 of the California Code of Regulations.

Testimony and documents were received in evidence. The record was held open until August 15, 2024, for respondent's brief, and until August 30, 2024, for Complainant's response. Respondent's Closing Brief was timely filed on August 15, 2024, and marked for identification as Exhibit Q. Complainant's Response to Respondent's Closing Brief was timely filed on August 30, 2024, and marked for identification as Exhibit 54. The record closed and the matter was submitted for decision on August 30, 2024.

STATEMENT OF THE CASE

The Bureau's contention that respondent clean plugged 11 vehicles is based on measurements of performance by each vehicle's engine during smog testing, measurements that the Bureau's experts consider abnormal and hence not the result of bona fide smog tests. Respondent contends the anomalous test results do not prove clean plugging, except perhaps, as one possibility among others, by customers who might surreptitiously install devices that mimic an engine's functioning.

Respondent also contends she has changed her practice the better to prevent clean plugging or other illegal activity by others.

FINDINGS OF FACT

1. Complainant served the Accusation on August 22, 2023. Respondent timely requested a hearing in her Notice of Defense dated September 1, 2023.

Licensure

2. Respondent became registered with the Bureau as an Automotive Repair Dealer (ARD), registration number ARD 291984, on September 7, 2018. The registration is scheduled to expire on September 30, 2024.

3. The Bureau issued respondent a Smog Check, Test Only, Station license number TC 291984 (TC License) on October 5, 2018. The TC license is scheduled to expire on September 30, 2024.

4. The Bureau certified respondent's smog check station, whose fictitious business name is DN Smog, as a Star Station on February 5, 2019. The Bureau suspended the certification on May 24, 2023.

5. The Bureau issued respondent Smog Check Inspector license number EO 641389 (EO License) on September 10, 2018. The EO license is scheduled to expire on September 30, 2024.

Air Quality Standards

6. The Legislature found and declared in Health and Safety Code section 43000, subdivisions (a) and (b), that vehicles' emissions are a major cause of air

pollution, such that “the control and elimination of those air pollutants is of prime importance for the protection and preservation of the public health and well-being.”

7. State and federal law together protect the public against air pollution. As stated in Health and Safety Code section 44000, the legislative intent in enacting the Smog Check Program is “to meet or exceed the air quality standards established by the amendments enacted to the federal Clean Air Act in 1990 . . . , to enhance and improve the existing vehicle inspection and maintenance network, and to periodically monitor the performance of the network against stated objectives.”

Smog Check Inspection Procedures

8. Efforts to ensure air quality depend on licensees skilled in following detailed procedures, including standardized and computerized readings and measurements of the functioning and emissions of a vehicle’s engine. Regulation 3340.45 states: “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.”

9. The Smog Check Manual sets out procedures for performing different types of official Smog Check inspections, also called smog checks or tests, using different test equipment, depending on such things as the year a vehicle was manufactured and whether its fuel is gasoline or diesel. In following the Smog Check Manual’s procedures, licensed Smog Check stations and inspectors, also referred to as technicians, must follow the electronic prompts transmitted by inspection systems. One such system is the BAR-97 Emission Inspection System. Regulation 3340.1 defines this system:

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"BAR-97 Emissions Inspection System" or "EIS" means tamper-resistant test equipment meeting the requirements of subsection (a) of section 3340.17 of the California Code of Regulations and is certified by the Bureau for use in the Smog Check Program. The EIS collects and measures emissions data, and where applicable On-Board Diagnostics (OBD) data, then transmits inspection results to the Vehicle Information Database.

10. Modern vehicles facilitate smog testing by being equipped with computers. As set out in Regulation 3340.1:

"On-Board Diagnostics" or "OBD" means the automotive electronic system that uses onboard computer(s) to monitor emission systems in-use, detects malfunctions of the monitored emission systems, illuminates a malfunction indicator light (MIL) to notify the vehicle operator of detected malfunctions, and stores fault codes identifying the detected malfunctions.

11. A system like the BAR-97 EIS that also prompts technicians is the OBD Inspection System (OIS), defined in Regulation 3340.1:

"OBD Inspection System" or "OIS" consists of an OBD Data Acquisition Device (DAD) working in conjunction with commercial off-the-shelf computer, bar code scanner, data entry device, and printer. The DAD is the inspection equipment that meets the requirements of subsection (b) of

section 3340.17 of the California Code of Regulations and is certified by the bureau for use in the Smog Check Program. The DAD facilitates OBD data transfer between the inspected vehicle and the OIS computer. The OIS computer relays inspection information to and from the DAD to the Vehicle Information Database (VID).

12. As respondent pointed out at the hearing, she and smog technicians in general must rely on smog systems like the BAR-97 or OIS to measure emissions and engine performance. Detailed information on emissions and performance are transmitted to the VID, but not necessarily accessible to the technician who performs a smog test.

BAR's December 2018 Inspection of DN Smog

13. On December 18, 2018, Kevin Sanderson, of the Bureau's South El Monte Field Office, inspected respondent's smog check station, DN Smog. Such an inspection is authorized under Health and Safety Code section 44001, subdivision (b)(5)(E), and is part of: "An enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven." Mr. Sanderson and respondent discussed three types of illegal practice that lead to issuing a fraudulent certificate of compliance: clean plugging, clean gassing, and clean tanking. In each type a technician substitutes test results from a source other than the vehicle reportedly tested. The source of the results may be another vehicle or a defeat device or simulator, machines that mimic data from vehicles' on-board computers.

14. Clean plugging and other terms pertinent here are defined in Regulation 3340.1:

"On-Board Diagnostics II" or "OBD II" means the second generation of On-Board Diagnostics consisting of standardized monitors, vehicle connectors, and data found in most light-duty vehicles sold in California beginning with the 1996 model year.

"Clean plugging" means using a substitute vehicle's OBD system, or another source, to generate data readings or diagnostic information in order to cause the OIS to issue a certificate of compliance for the test vehicle.

During the December 18, 2018 inspection, Mr. Sanderson advised respondent that the Bureau was empowered to counter illegal practices such as clean plugging with a financial penalty and administrative and criminal prosecution. Mr. Sanderson summarized his observations and discussion with respondent in a Station Inspection Report, Exhibit 5.

15. On February 26, 2019, the day before an inspection, described below, by Program Representative III (PR III) Mark D. Casillas, Southern California Field Operations Headquarters, BAR, respondent tested a 1996 Toyota RAV4, VIN JT3YP10V9T0117858, California license plate 3PWY337. The vehicle's OBD System gave results that caused it to fail the smog test, as shown in the Smog Check Vehicle Inspection Report (VIR) respondent signed, Exhibit 7.

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February 2019 Station Inspection

16. PR III Casillas did not testify at the administrative hearing, but wrote the Station Inspection Report, Exhibit 6, regarding a February 27, 2019 inspection of DN Smog. PR II Specialist (PR II (s)) Marc Ortega, who accompanied PR III Casillas at the station inspection. PR III Casillas wrote that on arriving he observed David Cruz, respondent's brother, a technician with revoked license EO 637519, was in the process of using a defeat device in testing a 1996 Toyota RAV4, California license plate 3PWY337, that respondent had tested the day before. Exhibit 7 is a VIR that respondent signed on February 26, 2019, showing that the vehicle failed its smog test that day.

17. Respondent was present at the February 2019 inspection. She surrendered the defeat device, named the OBDNator, Series 3, that Mr. Cruz was using. Before this incident, the Bureau had charged Mr. Cruz administratively and criminally for fraudulent smog inspections at three locations. In addition to the defeat device, Bureau personnel discovered 13 bar codes, seen in Exhibit 8, that identify vehicles digitally. Instead of having the vehicle to be tested available, an inspector intending fraud scans a bar code such as those in Exhibit 8 so that the smog testing equipment falsely reports that a vehicle not present is being tested. Set out in Exhibit 9 are VIR's for nine vehicles purportedly tested at DN Smog by technician Dennis Ramirez, license number EO 632575, on February 12, 2019. DN Smog issued each of the nine vehicles a certificate of compliance. The bar codes in Exhibit 8 identify the vehicles whose VIR's are seen in Exhibit 9. Following the February 2019 inspection at DN Smog, respondent's OIS equipment was disabled until such time as she might schedule a conference with BAR representatives.

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18. PR III Casillas inspected DN Smog again on March 1, 2019, again accompanied by PR II (s) Ortega. Respondent told PR III Casillas that during the previous inspection, Mr. Cruz was helping a personal friend, using a defeat device that she had not been aware of and did not plan to use. Respondent then told PR III Casillas that she would not allow use of any defeat devices at DN Smog and all future tests would be conducted according to laws and regulations. PR III Casillas told respondent it was illegal to allow anyone to use her BAR license or BAR-supplied access code, a personal identification number (PIN). PR III Casillas informed respondent that a formal office conference would take place within 60 days.

19. On December 10, 2019, Bureau personnel, PR III Casillas, PR II (s) Ortega, and PR II (s) Magaña, conducted a surveillance operation and an audit inspection at DN Smog. In his Station Inspection Report, PR III Casillas wrote that when he arrived Mr. Cruz and another man were about to test a 2002 Volvo S60, California license plate 4VBC276, VIN YV1RS61R722101099, using a defeat device. The man with Mr. Cruz was not identified, as he, Mr. Cruz, and respondent would not answer questions or cooperate. Defeat devices were found and confiscated, an OBDNator and an RPM simulator, both photographed by PR II (s) Magaña and depicted in Exhibit 12.

20. The Accusation alleges, and the October 2024 Report states, that during the surveillance Bureau personnel were alerted to the illegal use at DN Smog of a defeat device to test a 2005 Audi, California license plate 5LVT751, as well as the 2002 Volvo S60, California license plate 4VBC276. PR III Casillas's December 10, 2019 Station Inspection Report, Exhibit 11, does not mention the 2005 Audi, California license plate 5LVT751. Respondent's OBD System was locked, its access to the VID disabled, "pending further investigatory interviews," as stated in the report, page A97 of Exhibit 11. In addition to this report, PR III Casillas prepared an Evidence/Property Record –

Field Report, dated, like the report, December 10, 2019, that lists the two defeat devices found, among other items. Exhibit 13 includes a December 10, 2019 VIR showing that the Volvo S60, California license plate 4VBC276, passed its smog test that day, and an DN Smog invoice for \$40 for the test, a reasonable price.

21. Respondent offered video evidence of events at DN Smog on December 10, 2019. Respondent claims that that day, when Bureau personnel, including PR III Casillas, were inspecting DN Smog, PR III Casillas acted inappropriately, including by pushing respondent. She also claims that over her protest and demand that he stop, PR III Casillas went through her personal effects by going through the purse she had left in her office.

22. A videotape recording of the parties on December 10, 2019, shows that there was a confused altercation, during which there was shouting by PR III Casillas and respondent. There was also some pushing against respondent by PR III Casillas, but its extent is not clear on the videotape. It is also unclear whether, as respondent shouted in the recording, PR III Casillas hit her. Respondent's brother protested PR III Casillas's conduct, but so far as the recording shows, he was not involved in the physical altercation. It appears that any physical contact was between respondent and PR III Casillas only. PR II (s) Ortega recalled that respondent jumped on the back of PR III Casillas and she fell when he shook her off. The videotape does not show whether this is so.

23. PR II (s) Ortega called the police about the altercation. Two police officers answered the call, but by the time they appeared the parties were calm, though still at odds, as they reported to police. One of the officers told respondent that Bureau personnel were investigating as part of their job and were complaining that she

interfered. Respondent told the officer she understood that the Bureau has a right to investigate, but not to search her purse.

24. The Bureau inspected DN Smog at other times, but these later inspections were not so contentious. On some occasions Bureau personnel visited respondent's business because her smog testing equipment was automatically locked based on anomalous data transmitted to the VID. Examples are inspections on June 29, 2022, reported in Exhibit 19, and another on July 22, 2022, reported in Exhibit 20. An example of a relatively uneventful inspection is that on February 9, 2022. The report of that visit, Exhibit 16, notes some relatively minor deficiencies. Respondent was asked to replace a printer that was the cause of illegible VIR's. She was warned, Exhibit 16, page A116, a warning given her on more than one occasion, that "continued inappropriate smog activity will result in future analyzer lock-out."

January 2020 Conference

25. PR II (s) Magaña, PR III Casillas, and respondent signed a January 6, 2020 Office Conference Report. Her attorney, Adam B. Brown, accompanied respondent. The conference was to inform respondent, as stated in the report, Exhibit 14, page A107, of "abnormalities" in data transmitted from DN Smog to the VID and to "provide instruction for compliance."

26. PR II (s) Magaña submitted his Investigative Report concerning respondent on October 24, 2022. PR III Casillas, also at the headquarters, reviewed the report. It concluded respondent had clean plugged several vehicles, adding, at page A49 of Exhibit 4:

Based on the continued fraudulent Smog Check inspections performed by [respondent], as part of the administrative

filing, I recommend an Interim Suspension Order (ISO) pleading by the Attorney General against the ARD registration and Smog Check station license . . . and the individual Smog Check inspector license of [respondent].

ISO Hearing

27. A hearing on the Bureau's petition for an ISO took place on April 21, 2023. In opposing the petition, respondent submitted an April 18, 2023 declaration (April 18 Declaration) and April 19, 2023 supplemental declaration (April 19 Declaration). In paragraph 3 of the April 18 Declaration she states, Exhibit G, page B47: "I have never facilitated or participated in any fraudulent activity concerning the performance and certification of smog inspections, nor have I known anyone else to do so at my facility." In the next paragraph she states, Exhibit G, page B47, she has been advised by her legal counsel and others on "what steps I need to take to ensure this does not happen again at my facility." What is meant by "this" is not clear, but is reasonably interpreted to mean wrongdoing, if not by respondent herself then by a person like Mr. Cruz, observed at DN Smog with a defeat device.

Respondent's Audit Policy

28. Respondent's April 18 Declaration refers to a document entitled Smog Inspection Audit Policy and Procedures (Audit Policy). The Audit Policy has a technician's signature dated April 17, 2023.

29. On page B38, Exhibit E, the Policy requires smog technicians to use a scan tool supplied by respondent that they must plug into the vehicle being tested to "check for live data on RPM's." Respondent testified that this requirement prevents anomalous data, ensuring that all data during a smog test comes from a live engine, as

opposed to a defeat device. The Audit Policy has, at page B38, Exhibit E, several other requirements of the technicians to ensure that test results are from the vehicle actually tested at DN Smog, for instance that each vehicle to be tested is "recorded via surveillance so that each invoice matches each vehicle make and model." The Audit Policy states that respondent will audit all invoices for smog inspections and if any illegal activity by a technician is found, a complaint will be filed with BAR and reported to the police.

30. Another section of the Audit Policy lists resources available to the technician, such as computerized access to automotive reference publications, Alldata or Mitchell on Demand. The Audit Policy also advises technicians that, if in doubt, they may abort a smog test at any time without adverse consequences and may refer a customer to a State Referee facility. It reminds technicians that BAR sends undercover vehicles that are missing components necessary to pass a smog test to ascertain that a technician and smog station are performing tests correctly and not providing certificates of compliance to such vehicles.

31. A section of the Audit Policy is devoted to preventing improper Low Pressure Fuel Evaporative Tests (LPFET's) by means of clean tanking, measuring gas volume or displacement in a tank other than the tested vehicle's gasoline tank, a practice that is illegal under the Inspection Program. Respondent's Audit Policy makes any deviation from the laws and regulations governing any type of smog test grounds for termination of a technician's employment at DN Smog.

32. Respondent sets out how she has several incentives to perform only legal smog tests and disincentives to illegal tests.

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October 2024 Investigative Report

33. The station inspections at DN Smog and other matters noted by Bureau personnel in their dealings with respondent are summarized in an October 24, 2024 Investigative Report (October 2024 Report), Exhibit 4. The report includes parameter identification data (PID's), information about the performance of an engine and its anti-smog components, discussed in detail below. The information includes measurements that are visually presented in the graphs in the October 2024 report showing how the measurements changed over time during smog tests. PR III Casillas reviewed and signed the October 2024 Report, but its author was PR II (s) Nicholas H. Magaña, Southern California Field Operations Headquarters. Like PR III Casillas, PR II (s) Magaña did not testify at the hearing. PR II (s) Ortega was the Bureau expert who testified regarding the October 2024 Report and how its details, particularly the graphed information, demonstrates clean plugging.

Expert Testimony

34. The Bureau has employed Marc Ortega since February 14, 2005. A PR II Specialist (PR II (s)) since July 15, 2010, his duties include reviewing smog check data in the VID for anomalous data. He inspects smog stations to verify compliance with the Smog Check Program. He deals with the more complex consumer complaints.

35. PR II (s) Ortega has been a licensed smog technician since 1986. At that time he worked with the BAR-84 smog test system, predecessor of the BAR-90 and the BAR-97 currently in use. He estimated he smog tested thousands of vehicles when he worked as the sole inspector at a Toyota dealership. He holds several certifications from the National Institute for Automotive Service Excellence (ASE), including the ASE L1 as an Advanced Engine Performance Specialist, the ASE X1 as an Undercar

Specialist, and the ASE F1 Alternative Fuels Specialist. He has maintained his familiarity with smog testing since 1986 and regularly applies his knowledge to maintain his expertise.

Data on Normal Engine Performance and Abnormal Data

36. BAR and PR II (s) Ortega concluded that respondent clean plugged 11 vehicles based on PID's, the first two types of data described immediately below supplemented by one or sometimes two more types. Such PID's are transmitted to the VID during a smog test.:

RPM

The engine's speed is measured in revolutions per minute (RPM's). The revolutions are the number of rotations taken by the vehicle's crankshaft per minute.

TPS

The vehicle's throttle position is measured by a throttle position sensor (TPS). A throttle position is at zero percent when the engine is idling and increases up to 100 percent when the engine is at full throttle.

MAP

Manifold absolute pressure (MAP) is measured in an air intake manifold by a sensor that detects air pressure measured in kilopascals (kPa's). A MAP at one kPa would be equivalent to about one percent of atmospheric pressure at sea level. Typically the MAP of an idling engine is between 25 and 45 kPa's and, when the engine is at full throttle, the MAP is at 100 kPa's. Pressure at 100 kPa's is the equivalent of atmospheric pressure at sea level.

MAF

Mass air flow (MAF) is measured by a sensor mounted in the engine's air intake tract in grams per second (GPS).

37. The case against respondent is based primarily on PID's that were abnormal compared to the following description in the October 2022 Investigative Report, Exhibit 4, page A56:

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

38. RPM, TPS, MAF, and MAP were in evidence for each of six of the eleven vehicles, Vehicles 1, 2, 3, 6, 9, and 11, whose smog testing is at issue. The verbatim

conclusion in the October 2022 Investigative Report, Exhibit 4, regarding the data of each of these six vehicles was:

The steady idle and steady elevated engine speeds with the associated varying throttle positions and subsequent varying MAP and MAF readings are not characteristic or expected for normal engine operation. The discrepancies in the OIS Test Data prove the OIS Data Acquisition Device (DAD) was not connected to the . . . [vehicle] being certified, causing the issuance of a fraudulent Smog Certificate of Compliance

There is the same conclusion in the October 2022 Investigative Report, Exhibit 4, regarding Vehicles 4, 7, 10, except that while RPM, TPS, and MAF are mentioned, MAP is not because that type of data was not available for these vehicles. Regarding Vehicles 5 and 8, the conclusion is the same except that MAP is not mentioned, because that type of data was unavailable. The discrepancies in the data, the data that is not characteristic of normal engine operation, are visually apparent in the graphs in the Investigative Report, Exhibit 4, as set out below.

39. VEHICLE 1: a 2004 Chevrolet Colorado, VIN 1GCCS136548105217, California license plate 8P26942. Respondent tested Vehicle 1 on June 7, 2022, and issued Certificate of Compliance SS175786C. The VIR and OIS Test Details for this vehicle are in Exhibit 21. Page A57 of Exhibit 4 shows the graph of RPM as Vehicle 1 was tested. The graph has a sharp spike upward where the throttle was increased. The matching increases in RPM and the TPS occurred so that the engine could be smog tested in acceleration mode, when the engine is accelerated and RPM are held steady at the accelerated rate. The OIS prompted the technician, in this case respondent, to

accelerate to approximately 1,500 RPM in following test procedures mandated by the Bureau for a vehicle such as Vehicle 1. But the increase shown in RPM is not matched by the measurements for TPS, MAP, or MAF, though an engine so accelerated would necessarily show matching increases in these PID's. Instead, the three graphs, of TPS and MAF on Exhibit 4, page A58, and of MAP on page A59, show a line that wanders a little up and down as if at random. Vehicle 1 was clean plugged as shown in these PID's and the graphs that illustrate their changes. The VIR in Exhibit 47 shows that Vehicle 1 failed a smog test on May 20, 2022, at a smog station in Santa Maria, California.

40. Further analysis of the purported engine performance of Vehicle 1 during respondent's smog testing on June 7, 2022, may be made from the PID's, matched to dozens of specific times, generated by the vehicle, as shown in Exhibit 22. Exhibit 22 has more graphic representation of PID's, in addition to those in Exhibit 4, such as Engine Coolant Temperature on page A131, that support the Bureau's conclusion of clean plugging.

41. The VIR's and OIS Test Details for each of 10 more vehicles that respondent purportedly smog tested, Vehicles 2 through 11 below, were admitted into evidence. The PID's of these other vehicles are similar to the PID's of Vehicle 1, abnormal in how they changed over time during purported smog tests by respondent:

VEHICLE 2: a 2006 Mercedes-Benz CLS 500C, VIN WDDDJ75X76A041246, California license plate 8GUD590. Respondent tested Vehicle 2 on June 8, 2022, and issued Certificate of Compliance SS175790C.

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VEHICLE 3: a 2002 Chevrolet Avalanche C1500, VIN 3GNEC13T92G108034, California license plate EFCTIVO. Respondent tested Vehicle 3 on June 9, 2022, and issued Certificate of Compliance SS175792C.

VEHICLE 4: a 2002 Toyota Tacoma Double Cab Prerunner, VIN 5TEGN92N42Z082895, California license plate 7P88861. Respondent tested Vehicle 4 on June 9, 2022, and issued Certificate of Compliance SS175793C. Exhibit 48 shows that Vehicle 4 failed a smog test on April 19, 2022, at a smog station in Huntington Park, California. Also in Exhibit 48 are the Inspection Details, as specific as those for Vehicle 1 in Exhibit 22, for the April 19, 2022 smog test. The graphic representations of PID's at the time of the failed test, Exhibit 48, pages A305 and A306, are strikingly different from the graphic representations of the vehicle's PID's when purportedly tested by respondent on June 9, 2022.

VEHICLE 5: a 2001 Jeep Grand Cherokee Laredo, VIN 1J4GX48S81C690940, California license plate 5NKW740. Respondent tested Vehicle 5 on June 6, 2022, and issued Certificate of Compliance SS175794C. Exhibit 49 shows that Vehicle 5 failed a smog test on June 2, 2022, at a smog station in Bell Gardens, California.

VEHICLE 6: a 2002 Chevrolet Silverado C1500, VIN 1GCECA4V32E295092, California license plate 6Y88034. Respondent tested Vehicle 6 on June 29, 2022, and issued Certificate of Compliance SS175796C.

VEHICLE 7: a 2006 Nissan Quest S, VIN 5N1BV28U06N101902, California license plate 5USL749. Respondent tested Vehicle 7 on June 29, 2022, and issued Certificate of Compliance SS175797C.

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VEHICLE 8: a 2005 Honda Odyssey LX, VIN 5FNRL38275B068102, California license plate 5MRP125. Respondent tested Vehicle 8 on June 29, 2022, and issued Certificate of Compliance SS175799C.

VEHICLE 9: a 2007 Honda Accord EX, VIN 1HGCM56867A175435, California license plate 7LEL933. Respondent tested Vehicle 9 on September 1, 2022, and issued Certificate of Compliance SW436966C. Exhibit 50 shows that Vehicle 9 failed a smog test performed by respondent on August 29, 2022, at DN Smog. Also in Exhibit 50 are the Inspection Details, as specific as those for Vehicle 1 in Exhibit 22 and Vehicle 4 in Exhibit 48, for respondent's August 29, 2022 smog test. The graphic representations of PID's at the time of the failed test, Exhibit 50, page A321, are strikingly different from the graphic representations of the vehicle's PID's when purportedly tested by respondent on June 9, 2022.

VEHICLE 10: a 2002 Ford Excursion Limited, VIN 1FMNU42S02EA78022, California license plate 4VCV512. Respondent tested Vehicle 10 on September 13, 2022, and issued Certificate of Compliance SW692508C.

VEHICLE 11: a 2001 Chevrolet Express Cutaway G3500, VIN 1GBJG314111107721, California license plate 6J89415. Respondent tested Vehicle 11 on September 20, 2022, and issued Certificate of Compliance SW692528C. Exhibit 53 shows that respondent clean plugged Vehicle 11 again on December 20, 2023, at DN Smog. Also in Exhibit 53 are the Inspection Details, as specific as those for Vehicle 1 in Exhibit 22 and Vehicle 4 in Exhibit 48, for respondent's December 20, 2023 smog test. The graphic representations of PID's are similar to the graphs for this vehicle in Exhibit 4, page A73, in that MAP, Exhibit 53, page A433, and MAF, Exhibit 53, page A435, are erratic, wandering aimlessly over time, rather than matching the spike in RPM at the

corresponding times. This instance of clean plugging indicates that respondent was not following her Audit Policy and continued to resort to clean plugging.

42. Vehicles 1 through 11 are at times referred to below collectively as the Eleven Vehicles. The Certificates of Compliance for each of the Eleven Vehicles were purchased through and delivered to the OIS platform at DN Smog using an Automated Clearing House (ACH) payment method. The certificates were delivered between May 31, 2022, and September 8, 2022, and were under the exclusive control of DN Smog for issuance by OIS platform CV015409, as shown in the Certificate Purchase History, Exhibit 28.

Respondent's Evidence

43. Respondent did not have experience with smog testing until she started her business, DN Smog. Her interest in the automotive industry started with her father, who worked on automobiles for years.

44. Respondent denied any wrongdoing and any knowledge of wrongdoing at DN Smog, consistent with the declarations she submitted for the 2023 ISO hearing, her April 18 Declaration and April 19 Declaration. Respondent stated that the bar codes that Bureau personnel found at DN Smog, depicted in Exhibit 8, she had never seen before and did not belong to her. She thought that PR III Casillas found the bar codes by looking through a bag belonging to her brother, Mr. Cruz. He was on the premises because he would lend his expertise in diagnosing problems in vehicles respondent worked on. Respondent stated that she never allowed her brother access to the smog testing equipment at DN Smog.

45. Respondent recalled that on December 10, 2019, PR III Casillas came to DN Smog shouting, "Where is it?" Mr. Cruz was watching television. Bureau personnel

put his hands behind his back and PR III Casillas searched him. Respondent also recognized PR II (s) Magaña and PR II (s) Ortega. In the past, when Bureau personnel had asked for invoices or other paperwork, respondent had, as she stated, always cooperated and provided them whatever they asked without demur. On this occasion Bureau personnel searched the premises never having announced an inspection. Shortly after they started, respondent started videotaping them. Respondent said she could not recall, in all the commotion, who called the police, musing that it may have been her brother, it may have been one of the Bureau personnel.

46. PR III Casillas entered respondent's office, a small room she estimated at approximately five feet by five feet. Her brother asked PR III Casillas to leave the office and was pushed away. Respondent saw that PR III Casillas was looking through her personal effects, including her purse. She asked him to stop and he pushed her to the ground, stopping her recording briefly. It hurt enough that she later sought medical attention. X-rays were taken. Respondent had medical treatment, including x-rays, as shown in Exhibit M, redacted appropriately to preserve privacy. A few seconds after she had stopped, respondent resumed recording. Respondent denied that she ever jumped on PR III Casillas's back, as PR II (s) testified.

47. Respondent offered facts in denying anyone at DN Smog was responsible for clean plugging. As reported in an inspection report, Exhibit 18, on May 17, 2022, PR II (s) Magaña advised respondent that her Smog DaDdy, a type of DAD, was missing a warranty seal that she must have if she wished to continue using it. In email correspondence after that, respondent learned that she would have to leave the device with the supplier for weeks, because it needed to be tested before the supplier could issue a new warranty seal. As that would have left respondent unable to perform smog tests for weeks, she opted to purchase a new one to avoid delay. The new device

worked for only a year. Respondent wrote a May 13, 2023 email to the supplier of the device, stating it was not communicating properly with other components of her smog testing equipment. It was replaced again. Respondent acknowledged that she did not use the DAD she later replaced to test any of the Eleven Vehicles, but she maintains that defective or malfunctioning smog equipment like a DAD may have caused the anomalous results that are the basis of the Bureau's case against her.

48. Exhibit F has copies of three VIR's following smog tests respondent performed in 2022, on October 20, 21, and November 1. The vehicles failed because of modified software the customer had had installed. Respondent considered it likely that problems with her smog equipment, such as the Smog DaDdy, and modifications by customers were the cause of anomalous data generated by one or more of the Eleven Vehicles. In this connection it should also be remembered, as respondent stated, that the Eleven Vehicles were a very small percentage, about 0.71 percent, of the vehicles smog tested at DN Smog between June and September 2022.

Costs

49. In his December 1, 2022 declaration PR II (s) Magaña describes costs incurred by the Bureau for his work in investigating this matter, a total of \$5,049.50. PR III Casillas describes additional costs the Bureau incurred for his work in investigating this matter, a total of \$642.84. The Certification of Prosecution Costs; Declaration of M. Travis Peery describes the work of counsel and personnel in his office in prosecuting this matter, a total of \$8,073.75 incurred by the Bureau. These costs, totaling \$13,766.09, are reasonable in light of the span of time covered by the investigative work, the quantity of technical data analyzed and discussed, and the various laws and regulations that were taken into account.

50. Respondent presented no evidence to the effect that she might have difficulty paying costs, or that considerations relating to costs, such as those in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, should be taken into account.

LEGAL CONCLUSIONS

PRINCIPLES OF LAW

1. Complainant bears the burden of proof. The evidentiary standard the Bureau must meet is proof by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

Pertinent Statutes and Regulations

2. The Director of the Department is authorized under Business and Professions Code section 9884.7 to impose discipline on an ARD registration based on:

Under subdivision (a)(1), "[m]aking 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."

Under subdivision (a)(4), "any . . . conduct that constitutes fraud."

Under subdivision (a)(6), "failure in any material respect to comply with the provisions of this chapter [20.3 of Division 3 of the Business and Professions Code, sections 9880 through 9889.68 (the Repair Act)] or regulations adopted pursuant to it."

Under subdivision (c), “a course of repeated and willful violations of [the Repair Act] or regulations adopted pursuant to it.” In such a case, the director may discipline the registration of any business operated by an ARD.

3. Health and Safety Code section 44072.2, subdivision (a), states that license discipline is appropriate for various statutory violations, including:

Under Health and Safety Code section 44012, if a smog test is not performed in accordance with procedures prescribed by the Department.

Under Health and Safety Code section 44015, subdivision (b), if a certificate of compliance is issued to a vehicle that does not meet the testing requirements of Health and Safety Code section 44012.

Under Health and Safety Code section 44032, if a smog test is performed by a person other than a qualified smog check technician at a licensed smog check station and if the test is not performed in accordance with Section 44012.

4. Health and Safety Code section 44072.2, subdivision (c), states that license discipline is appropriate if a licensee “[v]iolates any of the regulations adopted by the director pursuant to this chapter [5 of Part 5 of Division 26 of the Health and Safety Code, sections 44000 through 44127 (the Inspection Program)]”. Regulations pertinent here that implement the Inspection Program include:

Regulation 3340.24, subdivision (c), authorizing license discipline “if the licensee falsely or fraudulently issues . . . a certificate of compliance

Regulation 3340.30, subdivision (a), requiring a licensee to “[i]nspect, test and repair vehicles, as applicable, 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 [5.5 of Chapter 1 of Division 33 of Title 16 of the Regulations].” Health and Safety Code section 44035, subdivision (a), provides for license discipline for “failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct . . . [under] rules and regulations governing” license discipline.

Regulation 3340.35, subdivision (c), requiring that a licensee issue a “certificate of compliance . . . 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.”

Regulation 3340.41, subdivision (c), mandating that: “No person shall enter any vehicle identification information or emission control system identification data for any vehicle other than the one being tested into the EIS Nor shall any person enter into the EISany false information about the vehicle being tested.”

Regulation 3340.42, requiring that smog inspections use one of the several test methods the Bureau prescribes and that they are done according to Bureau’s specifications, including, under subdivision (a)(3), “[a]n OBD-focused test, [for].....gasoline-powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.”

5. Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10, subdivision (c), provide for disciplinary action if a licensee issues a fraudulent certificate of compliance. Health and Safety Code section 44072.2, subdivision (d), states that license discipline is appropriate if a licensee “commits any act involving dishonesty, fraud, or deceit whereby another is injured. Health and Safety Code section 44072.10, subdivision (c), provides:

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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) [C]lean plugging . . . or any other fraudulent inspection practice, as defined by the department.

6. Health and Safety Code section 44072.8, similarly to Business and Professions Code section 9884.7, subdivision (c), provides that if license discipline is imposed following an administrative hearing “any additional license issued . . . in the name of the licensee may be likewise revoked or suspended by the director.”

7. Regulation 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 & Safety Code, and section 3340.42 of this article.”

8. Regulation 3340.24, subdivision (c), provides that the Bureau may discipline a license 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.”

9. Regulation 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 this article and has all the required emission control equipment and devices installed and functioning correctly.

10. Regulation 3340.41 states, in pertinent part:

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

(c) No person shall enter any vehicle identification information or emission 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 about the vehicle being tested

11. Subdivision (a)(1) of Regulation 3340.42 provides that certain vehicles, such as those tested in Los Angeles County, with model years 1976 to 1999, are subject to a loaded mode test that measures hydrocarbon (HC), carbon monoxide (CO), carbon dioxide (CO₂) and oxides of nitrogen (NO_x) emissions. The BAR-97 or EIS is used for this test, using Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer certified by the Bureau. Tested emissions are compared to statewide test results.

12. Subdivision (a)(3) of Regulation 3340.42 states that gasoline-powered vehicles in model year 2000 and newer must be tested with an OBD-focused test.

Costs

13. Business and Professions Code section 125.3 states that in administrative proceedings an agency such as the Bureau may recover reasonable costs for investigation and prosecution.

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ANALYSIS

14. Respondent allowed defeat devices on the premises of DN Smog, one surrendered to Bureau personnel in February 2019. Respondent claimed during a March 2019 station inspection that she was unaware of the device or that it was being used by Mr. Cruz on the premises. The claim lacks credibility. DN Smog is a small smog station, with few personnel. Because the premises are of small size, quickly walkable from one side of the property to the other, its personnel, including respondent, know of or can easily observe the activities of others on the premises. No Bureau personnel observed respondent using a defeat device, but she must have had some awareness of the presence and use of at least one, the OBDNator.

15. It follows that respondent's April 18 Declaration should not be given much credence. In the declaration, Exhibit G, page B47, respondent disclaims any participation in or knowledge of anyone's "fraudulent activity concerning the performance and certification of smog inspections" at DN Smog. If respondent did not have actual knowledge of fraudulent activity, she should have had. At a minimum, she chose not to inquire into what Mr. Cruz and a companion of his were doing at her facility, though there were warning signs. Bureau personnel observed defeat devices at DN Smog. Respondent should have observed them too. Respondent's credibility in this regard is the more suspect because, in contrast to the disclaimer in her April 18 Declaration of any observation or knowledge of wrongdoing, she closely scrutinized the activity of Bureau personnel during the December 2019 inspection of her premises, and was, in addition, quick to protest loudly what she considered wrongdoing by the Bureau.

16. The Bureau's credibility is undermined by the aggressive conduct by PR III Casillas as shown in the videotape of the December 10, 2019 inspection. He should

have made more effort to avoid any physical contact with respondent and he should not have been shouting at her. Bureau personnel such as PR III Casillas are in such situations representatives of state power and authority and must be careful not to abuse, or even appear to abuse, their position. It cannot be concluded on the evidence presented that PR III Casillas was abusive, or that he was aware he was looking through respondent's purse, but his conduct, shouting and refusing to acknowledge that respondent might be correct that he was overstepping bounds, was inappropriate. The reports he wrote that are in evidence are subject to the suspicion that by December 10, 2019, he had pre-judged respondent as a wrongdoer, and was determined to prove himself correct.

17. The Bureau's position is in a sense salvaged by PR II (s) Ortega. He was not present for all of the altercation on December 10, 2019, but he, like PR II (s) Magaña too, witnessed some of it and resisted any temptation to participate. He acknowledged that an altercation took place and his description of it is believable. Respondent argues that he misrepresented parts of the incident, but that is not the case. PR II (s) Ortega did not remember the sequence of events exactly and gave inaccurate testimony regarding some details of what occurred, but his memory of certain details was at fault, not his honesty. Throughout the hearing, PR II (s) Ortega gave his testimony in clear, level toned, believable terms, both regarding events imperfectly remembered from years ago, and the highly technical details of the Bureau's findings regarding clean plugging based on a close reading of the PID's of each of the Eleven Vehicles.

18. The Bureau's case against respondent relies heavily on expert testimony. Highly technical expertise is required to interpret the correlation of PID's as presented in this matter and thence to conclude that clean plugging occurred. It should be noted

here that a trier of fact need not accept or believe expert testimony and may reject expert testimony, even if the testimony is not contradicted, as the court observed in *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890. On the other hand, the testimony of "one credible witness may constitute substantial evidence," including the testimony of a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d. 1040, 1052.) In this case, the expert testimony of PR II (s) Ortega ought to be accepted and credited. He gave convincing testimony that a defeat device was responsible for the data on throttle positions and RPM, as well as in some cases MAP and MAF, purportedly produced by the engines of the Eleven Vehicles.

19. Respondent was not obligated to produce her own expert to contradict the Bureau's. But in such a highly technical case, her not doing so made her arguments difficult to accept and ultimately of no avail. It is not believable that customers installed defeat devices in their vehicles unbeknownst to respondent and thus were responsible for the clean plugging observed in some or all of the Eleven Vehicles.

20. Respondent's Audit Policy has strong provisions for preventing any type of fraudulent smog test, including clean plugging. It evidences an admirable remedial measure on respondent's part. But it is not enough to avoid disciplinary action against her license, given the number of vehicles she has been found to have clean plugged and the provision in Health and Safety Code section 44072.10, subdivision (c), that the Department "shall revoke" a license in the case of fraudulently certified vehicles.

21. That the Eleven Vehicles were less than one percent of all vehicles smog tested at DN Smog between June and September 2022 is of slight consequence. The percentage is indeed very small, but even few instances of fraudulent activity are of serious concern, representing a substantial threat to state and federal anti-smog

efforts. Any fraudulent activity in certifying vehicles as compliant with these efforts deprives the legal system and the public of finding out the magnitude of a vehicle's pollution, and whether it should be fixed to bring it in line with laws and regulations or removed from public thoroughfares altogether.

22. The ISO hearing was, as such hearings are, limited, not the full hearing that allows the parties fully to document and argue their positions, as indeed the ALJ at the ISO hearing wrote in denying the ISO. Denial of an ISO is not a circumstance favoring either party at a later administrative hearing such as occurred here. The denial was based on declarations the parties submitted. At the administrative hearing, in contrast, the Bureau's expert, PR II (s) Ortega, testified for hours, for more than a day, and was extensively and thoroughly cross-examined. Respondent too testified at length, including on cross-examination. The demeanor of each witness while testifying could be scrutinized and weighed in ways unavailable to the ALJ who evaluated the arguments for and against an ISO. The decision against an ISO is of very limited significance here.

23. Respondent disputed Complainant's conclusions based on all the data for all Eleven Vehicles. Focusing on Vehicle 11, respondent argued that if the PID's are erratic, that may be attributed to imperfect operation of components, whether the engine itself, or its sensors, or its computers. As respondent emphasized, not all engines and not all sensors and computers can be expected to work as expected always, or always to generate PID's such as the Bureau expects to see. In any event, in respondent's view, the Bureau failed to take matters such as imperfect engine and computer operations and failure of or misreporting by sensors into account, and thus failed to prove its case for clean plugging.

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24. Respondent argued that Complainant's case might be convincing if the Bureau did not rely so heavily, if not exclusively, on the three and sometimes four types of PID's generated by the engines and sensors of the Eleven Vehicles. Thus respondent argued that to make its case the Bureau might have used surveillance to see whether respondent had each of the Eleven Vehicles on the premises of DN Smog and connected to the smog equipment there. Or the Bureau might have gathered other PID's, such as computer protocols, that defeat devices are known to misreport, to see whether the protocols reported to the VID matched the protocols installed by manufacturers of the Eleven Vehicles. The case against respondent could probably be made more convincing, but Complainant's evidence was strong and convincing enough. That other evidence was not collected or used does not substantially lessen the credibility of the evidence the Bureau gathered and presented.

First Cause for Discipline

25. Cause exists to discipline respondent's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(1). The certificates of compliance respondent issued to the Eleven Vehicles constituted statements that she knew, or by exercise of reasonable care she should have known, to be untrue or misleading. By issuing the certificates, respondent effectively stated that the vehicles were smog tested, whereas they were not. Rather, a device, not the vehicle purportedly tested, generated the anomalous PID's transmitted to the VID.

Second Cause for Discipline

26. Cause exists to discipline respondent's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(4). Respondent's conduct in issuing certificates of compliance to the Eleven Vehicles constituted fraud. By issuing

the certificates, respondent falsely represented that the vehicles were smog tested, but they were not.

Third Cause for Discipline

27. Cause exists to discipline respondent's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(6). Respondent failed in a material respect to comply with the provisions of the Repair Act or regulations adopted pursuant to it. Under Regulation 3340.45, adopted pursuant to the Repair Act, smog tests must be performed according to the Smog Check Manual. Respondent did not test the Eleven Vehicles using required procedures under the Smog Check Manual.

Fourth Cause for Discipline

28. Cause exists to discipline respondent's TC License under Health and Safety Code section 44072.2, subdivision (a), in that respondent failed to comply with Health and Safety Code section 44012. Respondent failed to ensure that a smog test was performed on each of the Eleven Vehicles and instead allowed a device, not the vehicle purportedly tested, was used in an attempt to make it seem that each of the Eleven Vehicles was smog tested.

29. Cause exists to discipline respondent's TC License under Health and Safety Code section 44072.2, subdivision (a), in that respondent failed to comply with Health and Safety Code section 44015, subdivision (b). Respondent did not smog test any of the Eleven Vehicles according to procedures required under Health and Safety Code section 44012.

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Fifth Cause for Discipline

30. Cause exists to discipline respondent's TC License under Health and Safety Code section 44072.2, subdivision (c), in that respondent failed to comply with applicable regulations:

Under Regulation 3340.24, subdivision (c), respondent falsely or fraudulently issued a certificate of compliance for each of the Eleven Vehicles by clean plugging each vehicle.

Under Regulation 3340.30, subdivision (a), respondent failed to inspect or test the Eleven Vehicles in accordance with Health and Safety Code sections 44012 and 44035, and Regulation 3340.42. Respondent did not follow the requirement under Health and Safety Code section 44012 to ensure that a smog test was performed on each of the Eleven Vehicles. Under Health and Safety Code section 44035, subdivision (a), respondent failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct under the rules and regulations governing license discipline. Respondent did not follow the requirement under Regulation 3340.42 to perform an OBD-focused test on each of the Eleven Vehicles.

Under Regulation 3340.35, subdivision (c), respondent issued certificates of compliance for the Eleven Vehicles even though they were not inspected in accordance with Regulation 3340.42.

Under Regulation 3340.41, subdivision (c), in clean plugging the Eleven Vehicles, respondent knowingly entered false information about each vehicle into the emissions inspection system.

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Under Regulation 3340.42, respondent failed to ensure that the smog tests of the Eleven Vehicles met the Bureau's specifications.

Sixth Cause for Discipline

31. Cause exists to discipline respondent's TC License under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that respondent committed dishonest, fraudulent, or deceitful acts that caused injury to others by issuing certificates of compliance for the Eleven Vehicles by means of clean plugging. Respondent did not test the vehicles' smog control devices and systems as required by laws and regulations. Respondent thus subverted the Inspection Program and prevented the opportunity to find whether the Eleven Vehicles were compliant with anti-smog laws and regulations.

Seventh Cause for Discipline

32. Cause exists to discipline respondent's EO License under Health and Safety Code section 44072.2, subdivision (a), in that she failed to comply with certain provisions of the Health and Safety Code:

Under Health and Safety Code section 44032, the purported smog test of each of the Eleven Vehicles that resulted in a certificate of compliance issued to each was clean plugging, not a test in accordance with Health and Safety Code section 44012.

Under Health and Safety Code section 44015, subdivision (b), respondent caused certificates of compliance to be issued for the Eleven Vehicles by means of clean plugging, not smog tests in compliance with Health and Safety Code section 44012.

Eighth Cause for Discipline

33. Cause exists to discipline respondent's EO License under Health and Safety Code section 44072.2, subdivision (c), in that respondent failed to comply with certain regulations:

Under Regulation 3340.24, subdivision (c), by means of clean plugging, respondent falsely or fraudulently caused the issuance of a certificate of compliance to each of the Eleven Vehicles.

Under Regulation 3340.30, subdivision (a), respondent failed to perform a smog test of each of the Eleven Vehicles in accordance with Health and Safety Code sections 44012 and 44035, and Regulation 3340.42. As under the Fifth Cause for Discipline, respondent did not follow the requirement under Health and Safety Code section 44012 to ensure that a smog test was performed on each of the Eleven Vehicles. Under Health and Safety Code section 44035, subdivision (a), respondent failed to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct under the rules and regulations governing license discipline. Respondent did not follow the requirement under Regulation 3340.42 to perform an OBD-focused test on each of the Eleven Vehicles.

Under Regulation 3340.41, subdivision (c), in clean plugging the Eleven vehicles, respondent knowingly entered false information into the emissions inspection system regarding each of the Eleven Vehicles.

Under Regulation 3340.42, respondent failed to ensure that she smog tested the Eleven Vehicles in accordance with the Bureau's specifications, clean plugging them instead.

Ninth Cause for Discipline

34. Cause exists to discipline respondent's EO License under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that, as in the Sixth Cause for Discipline, respondent committed dishonest, fraudulent, or deceitful acts that caused injury to others by issuing certificates of compliance for the Eleven Vehicles by means of clean plugging. Respondent did not test the vehicles' smog control devices and systems as required by laws and regulations. Respondent thus subverted the Inspection Program and prevented the opportunity to find whether the Eleven Vehicles were compliant with anti-smog laws and regulations.

Other Matters

35. Under Business and Professions Code section 9884.7, subdivision (c), the wrongdoing by respondent is cause to discipline additional registration for any place of business respondent operates in California, and any licenses respondent may hold under the Inspection Program, as stated under Other Matters in the Accusation, page A33, lines 2 through 5. Respondent engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

36. Under Health and Safety Code section 44072.8, the wrongdoing by respondent is cause to discipline any additional Smog Check Test Only Station license respondent may hold under the Inspection Program, as stated under Other Matters in the Accusation, page A33, lines 6 through 9.

37. Under Health and Safety Code section 44072.8, the wrongdoing by respondent is cause to discipline any additional Smog Check Inspector license respondent may hold under the Inspection Program, as stated under Other Matters in the Accusation, page A33, lines 10 through 13.

38. For the protection of the public, and weighing all of the extensive evidence the parties presented, respondent's registration and licenses are appropriately revoked.

ORDER

1. The Automotive Repair Dealer registration number ARD 291984 that the Bureau of Automotive Repair issued to respondent, Martha Yuridia Martinez, doing business as DN Smog, is revoked.

2. The Smog Check, Test Only, Station license number TC 291984 that the Bureau of Automotive Repair issued to respondent, Martha Yuridia Martinez, doing business as DN Smog, is revoked.

3. The Smog Check Inspector license number EO 641389 that the Bureau of Automotive Repair issued to respondent, Martha Yuridia Martinez, doing business as DN Smog, is revoked.

4. The ARD registration for all places of business operated in California by respondent Martha Yuridia Martinez, individually and under any fictitious business name, including DN Smog, is revoked.

5. Any additional license issued to respondent Martha Yuridia Martinez, individually and under any fictitious business name, including as DN Smog, under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, the Motor Vehicle Inspection Program, is revoked.

6. Respondent shall be liable to reimburse the Bureau of Automotive Repair \$13,766.09 at such future time as the Bureau may grant her registration or licensure.

Respondent may be allowed, at the Bureau's discretion, to pay such costs on an installment basis.

DATE: **09/28/2024**

Signed Copy on File

THOMAS LUCERO

Administrative Law Judge

Office of Administrative Hearings