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7

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

12 In the Matter of the Accusation Against:

Case No. 79/20-15198

13 **DARREN XU, Member**
14 **BRYAN ROSS KURNOFF, Member**
15 **MAXWELL CARY ELLIS, Member**
16 **CLEAR SKY ASSOCIATES III, LLC**
dba 101 EXPRESS SMOG
5320 Old Redwood Highway, #D
Petaluma, CA 94954

ACCUSATION

17 **Mailing Address:**
18 **2708 Wilshire Blvd., Unit 225**
19 **Santa Monica, CA 90403**

20 **Automotive Repair Dealer Registration No.**
ARD 295886
21 **Smog Check, Test Only, Station No.**
TC 295886

22 **JORGE ARMANDO SANCHEZ**
23 **7835 Burton Ave.**
Rohnert Park, CA 94928

24 **Smog Check Inspector License No.**
25 **EO 639930,**

26 Respondents.
27
28

1 **PARTIES**

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

4 2. On November 18, 2019, the Bureau issued Automotive Repair Dealer Registration
5 No. ARD 295886 to Darren Xu, Member; Bryan Ross Kurnoff, Member; Maxwell Cary Ellis,
6 Member; and Clear Sky Associates III, LLC dba 101 Express Smog (Respondent 101 Express
7 Smog). This automotive repair dealer registration was in full force and effect at all times relevant
8 to the charges brought in this accusation and will expire on November 30, 2021, unless renewed.

9 3. On December 5, 2019, the Bureau issued Smog Check, Test Only, Station No.
10 TC 295886 Respondent 101 Express Smog. This smog check station license was in full force and
11 effect at all times relevant to the charges brought in this accusation and will expire on November
12 30, 2021, unless renewed.

13 4. On January 11, 2017, the Bureau issued Smog Check Inspector License No.
14 EO 639930 to Jorge Armando Sanchez (Respondent Sanchez). This smog check inspector
15 license was in full force and effect at all times relevant to the charges brought in this accusation
16 and will expire on November 30, 2022, unless renewed.

17 **JURISDICTION**

18 5. This accusation is brought before the Director of the Department of Consumer
19 Affairs (Director) for the Bureau under the authority of the following laws.

20 6. Business and Professions Code section 118, subdivision (b), states:

21 “The suspension, expiration, or forfeiture by operation of law of a license issued by a
22 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
23 order of a court of law, or its surrender without the written consent of the board, shall not, during
24 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
25 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
26 provided by law or to enter an order suspending or revoking the license or otherwise taking
27 disciplinary action against the licensee on any such ground.”

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1 7. Business and Professions Code section 9882, subdivision (a), states in part:

2 “There is in the Department of Consumer Affairs a Bureau of Automotive Repair under
3 the supervision and control of the director. The duty of enforcing and administering this chapter
4 is vested in the chief who is responsible to the director. The director may adopt and enforce those
5 rules and regulations that he or she determines are reasonably necessary to carry out the purposes
6 of this chapter and declaring the policy of the Bureau, including a system for the issuance of
7 citations for violations of this chapter as specified in Section 125.9.”

8 8. Business and Professions Code section 9884.13 states:

9 “The expiration of a valid registration shall not deprive the director or chief of jurisdiction
10 to proceed with any investigation or disciplinary proceeding against an automotive repair dealer
11 or to render a decision invalidating a registration temporarily or permanently.”

12 9. Business and Professions Code section 9884.22, subdivision (a), states:

13 “Notwithstanding any other provision of law, the director may revoke, suspend, or deny at
14 any time any registration required by this article on any of the grounds for disciplinary action
15 provided in this article. The proceedings under this article shall be conducted in accordance with
16 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
17 Code, and the director shall have all the powers granted therein.”

18 10. Health and Safety Code section 44002 states:

19 “The department shall have the sole and exclusive authority within the state for
20 developing and implementing the motor vehicle inspection program in accordance with this
21 chapter.

22 “For the purposes of administration and enforcement of this chapter, the department, and
23 the director and officers and employees thereof, shall have all the powers and authority granted
24 under Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475)
25 and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions
26 Code and under Chapter 33 (commencing with Section 3300) of Title 16 of the California Code
27 of Regulations. Inspections and repairs performed pursuant to this chapter, in addition to meeting
28 the specific requirements imposed by this chapter, shall also comply with all requirements

1 imposed pursuant to Division 1 (commencing with Section 1) and Division 1.5 (commencing
2 with Section 475) and Chapter 20.3 (commencing with Section 9880) of Division 3 of the
3 Business and Professions Code and Chapter 33 (commencing with Section 3300) of Title 16 of
4 the California Code of Regulations.”

5 11. Health and Safety Code section 44072 states:

6 “Any license issued under this chapter and the regulations adopted pursuant to it may be
7 suspended or revoked by the director. The director may refuse to issue a license to any applicant
8 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted
9 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
10 of the Government Code, and the director shall have all the powers granted therein.”

11 12. Health and Safety Code section 44072.6 states:

12 “The expiration or suspension of a license by operation of law or by order or decision of
13 the director or a court of law, or the voluntary surrender of a license by a licensee shall not
14 deprive the director of jurisdiction to proceed with any investigation of, or action or disciplinary
15 proceedings against, the licensee, or to render a decision suspending or revoking the license.”

16 **STATUTORY PROVISIONS**

17 13. Business and Professions Code section 9884.7 states in part:

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

23 “(1) Making or authorizing in any manner or by any means whatever any statement
24 written or oral which is untrue or misleading, and which is known, or which by the exercise of
25 reasonable care should be known, to be untrue or misleading.

26 . . .

27 “(4) Any other conduct that constitutes fraud.

28 . . .

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

3 14. Business and Professions Code section 9884.8 states in part:

4 “All work done by an automotive repair dealer, including all warranty work, shall be
5 recorded on an invoice and shall describe all service work done and parts supplied.”

6 15. Business and Professions Code section 9889.22 states:

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

11 16. Business and Professions Code section 17200 states:

12 “As used in this chapter, unfair competition shall mean and include any unlawful, unfair
13 or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and
14 any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
15 Business and Professions Code.”

16 17. Business and Professions Code section 17500 states in part:

17 “It is unlawful for any person, firm, corporation or association, or any employee thereof
18 with intent directly or indirectly to dispose of real or personal property or to perform services,
19 professional or otherwise, or anything of any nature whatsoever or to induce the public to enter
20 into any obligation relating thereto, to make or disseminate or cause to be made or disseminated
21 before the public in this state, or to make or disseminate or cause to be made or disseminated
22 from this state before the public in any state, in any newspaper or other publication, or any
23 advertising device, or by public outcry or proclamation, or in any other manner or means
24 whatever, including over the Internet, any statement, concerning that real or personal property or
25 those services, professional or otherwise, or concerning any circumstance or matter of fact
26 connected with the proposed performance or disposition thereof, which is untrue or misleading,
27 and which is known, or which by the exercise of reasonable care should be known, to be untrue or
28 misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so

1 made or disseminated any such statement as part of a plan or scheme with the intent not to sell
2 that personal property or those services, professional or otherwise, so advertised at the price
3 stated therein, or as so advertised.”

4 18. Health and Safety Code section 44012 states in part:

5 “The test at the smog check stations shall be performed in accordance with procedures
6 prescribed by the department and may require loaded mode dynamometer testing in enhanced
7 areas, two-speed idle testing, testing utilizing a vehicle’s onboard diagnostic system, or other
8 appropriate test procedures as determined by the department in consultation with the state
9 board. . . . The department shall ensure, as appropriate to the test method, the following:

10 . . .

11 “(f) A visual or functional check is made of emission control devices specified by the
12 department, including the catalytic converter in those instances in which the department
13 determines it to be necessary to meet the findings of Section 44001. The visual or functional
14 check shall be performed in accordance with procedures prescribed by the department.”

15 19. Health and Safety Code section 44015 states in part:

16 “(a) A licensed smog check station shall not issue a certificate of compliance, except as
17 authorized by this chapter

18 “(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed
19 to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.”

20 20. Health and Safety Code section 44032 states in part:

21 “Qualified technicians shall perform tests of emission control devices and systems in
22 accordance with Section 44012.”

23 21. Health and Safety Code section 44059 states:

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

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1 26. California Code of Regulations, title 16, section 3340.41, states in part:
2 “(c) No person shall enter into the emissions inspection system any vehicle identification
3 information or emission control system identification data for any vehicle other than the one
4 being tested. Nor shall any person knowingly enter into the emissions inspection system any
5 false information about the vehicle being tested.”
6 27. California Code of Regulations, title 16, section 3340.42, states in part:
7 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced
8 by section 3340.45.
9 “(a) All vehicles subject to a smog check inspection, shall receive one of the following
10 test methods:
11 . . .
12 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
13 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.”
14 28. California Code of Regulations, title 16, section 3340.45, states in part:
15 “(a) All Smog Check inspections shall be performed in accordance with requirements and
16 procedures prescribed. . . .”
17 29. California Code of Regulations, title 16, section 3371, states in part:
18 “No dealer shall publish, utter, or make or cause to be published, uttered, or made any
19 false or misleading statement or advertisement which is known to be false or misleading, or
20 which by the exercise of reasonable care should be known to be false or misleading.”
21 30. California Code of Regulations, title 16, section 3373, states:
22 “No automotive repair dealer or individual in charge shall, in filling out an estimate,
23 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
24 withhold therefrom or insert therein any statement or information which will cause any such
25 document to be false or misleading, or where the tendency or effect thereby would be to mislead
26 or deceive customers, prospective customers, or the public.”

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1 **COST RECOVERY**

2 31. Business and Professions Code section 125.3, subdivision (a), states:

3 “Except as otherwise provided by law, in any order issued in resolution of a disciplinary
4 proceeding before any board within the department or before the Osteopathic Medical Board
5 upon request of the entity bringing the proceedings, the administrative law judge may direct a
6 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
7 to exceed the reasonable costs of the investigation and enforcement of the case.”

8 **SMOG CHECK PROGRAM**

9 32. Beginning March 9, 2015, California’s Smog Check Program required smog
10 inspectors and stations to use a functional computer test during smog inspections for most model
11 year 2000 and newer gasoline and hybrid vehicles, and most 1998 and newer diesel vehicles.
12 This test requires using a cable to connect the station’s inspection system to the onboard
13 diagnostic computer system of vehicle being tested. The inspection system then retrieves
14 information from the vehicle’s computer, including the vehicle’s eVIN, the communication
15 protocol, and the number of parameter identifications (PIDs). This data is sent to the Bureau’s
16 vehicle information database.

17 33. The vehicle identification number (VIN) is physically present on all vehicles. The
18 VIN is manually entered into the inspection system by the smog check technician. The VIN also
19 is programmed into the vehicle’s computer on 2005 and newer vehicles, and was often
20 programmed into the computer on earlier vehicles. This electronically programmed VIN (eVIN)
21 is transmitted by the vehicle’s computer during a smog check and should match the physical VIN
22 on the vehicle that is manually entered by the technician.

23 34. The communication protocol describes the specified communication language
24 used by the vehicle’s computer to communicate with the station’s inspection system. The
25 communication protocol is programmed into the vehicle’s computer during manufacture and does
26 not change.

27 35. PIDs are data points reported by the vehicle’s computer to the station’s inspection
28 device. Examples of PIDs are engine speed (rpm), vehicle speed, engine temperature, and other

input and output values used by the inspection device. The PID count is the number of data points reported by the vehicle's computer. The PID count is programmed into the vehicle's computer during manufacture.

36. The Bureau is aware of methods used by some stations and inspectors to issue improper or fraudulent smog certificates. One method is known as "clean plugging." Clean plugging is connecting the test cable to a properly functioning vehicle or other source instead of the vehicle actually being smog tested. The properly functioning vehicle or other source then generates passing diagnostic readings that are attributed to the vehicle being tested.

37. However, a vehicle's eVIN, communication protocol, and PID count provide a unique combination. These data points can be compared to the eVIN, the communication protocol, and the PID count provided by similar vehicles inspected to determine whether a vehicle has been clean plugged.

FACTUAL ALLEGATIONS

38. A Bureau representative performed a focused review of the Bureau's vehicle information database for vehicles that were issued certificates of compliance at Respondent 101 Express Smog. The representative obtained the following information for each test detail:

- VIN: VIN entered by smog inspector
- Cert ID: certificate of compliance number
- eVIN: digitally stored VIN in the vehicle's computer
- Communication protocol: the "type" of communication established by the station's inspection system with the onboard diagnostic computer system of vehicle being tested
- PID count: number of data points reported by the vehicle computer
- Similar or "Like" Vehicles: data for similar vehicles derived and compiled from smog tests conducted statewide

39. The data transmitted during five of these inspections was inconsistent with the data transmitted by similar vehicles inspected. Consequently, the representative concluded that five smog check certificates were fraudulently issued by using clean plugging.

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1 **Clean Plug #1**

2 40. a. On February 1, 2020, Respondent Sanchez issued a smog certificate of
3 compliance at Respondent 101 Express Smog for a 2002 Toyota Camry LE, VIN ending 305.
4 The Bureau's vehicle information database showed an eVIN ending 068 was transmitted, which
5 did not match the Toyota's VIN. It also showed the communication protocol was JVPW and the
6 PID count was 22.

7 b. Comparative test data for 1,000 similar 2002 Toyota Camry LE vehicles
8 show that 99.8 percent of the time no eVIN is transmitted, the communication protocol is I914,
9 and the PID count is 21.

10 c. This Toyota also had a smog check inspection on October 12, 2017, at a
11 different smog check station. During that inspection, no eVIN was transmitted, the
12 communication protocol was I914, and the PID count was 21. This data is consistent with the
13 data expected from an inspection of a 2002 Toyota Camry LE.

14 d. Additionally, on February 1, 2020, the same day Respondent Sanchez
15 issued the smog certificate of compliance for the Toyota, he issued a smog certificate of
16 compliance at Respondent 101 Express Smog for a 2006 Chevrolet Silverado C1500. The test
17 data in the Bureau's vehicle information database for that Chevrolet showed an eVIN ending 068
18 was transmitted, which matched the VIN for the Chevrolet and also matched the eVIN
19 transmitted for the Toyota. It also showed the communication protocol for the Chevrolet as
20 JVPW and the PID count as 22, both of which matched the test data transmitted for the Toyota.

21 **Clean Plug #2**

22 41. a. On September 18, 2020, Respondent Sanchez issued a smog certificate of
23 compliance at 101 Express Smog for a 2002 Volkswagen Jetta GLS, VIN ending 408. The
24 Bureau's vehicle information database showed an eVIN ending 963 was transmitted, which did
25 not match the Volkswagen's VIN. It also showed the communication protocol was ICAN11bt5
26 and the PID count was 39/15.

27 b. Comparative test data for 1,000 similar 2002 Volkswagen Jetta GLS
28 vehicles show that 99.8 percent of the time no eVIN is transmitted, the communication protocol is

1 I914, and the PID count is 18 or 18/5.

2 c. This Volkswagen also had a smog check inspection on March 22, 2019, at
3 Respondent 101 Express Smog. During that inspection, no eVIN was transmitted, the
4 communication protocol was I914, and the PID count was 18. This data is consistent with the
5 data expected from an inspection of a 2002 Volkswagen Jetta GLS.

6 d. Additionally, on September 18, 2020, the same day Respondent Sanchez
7 issued the smog certificate of compliance for the Volkswagen, he issued a smog certificate of
8 compliance at Respondent 101 Express Smog for a 2012 Ford Focus SE. The test data in the
9 Bureau's vehicle information database for the Ford showed an eVIN ending 963 was transmitted,
10 which matched the VIN for the Ford and also matched the eVIN transmitted for the Volkswagen.
11 It also showed the communication protocol for the Ford as ICAN11bt5 and the PID count as
12 39/15, both of which matched the test data transmitted for the Volkswagen.

13 **Clean Plug #3**

14 42. a. On October 23, 2020, Respondent Sanchez issued a smog certificate of
15 compliance at 101 Express Smog for a 2002 Ford Ranger Super Cab, VIN ending 396. The
16 Bureau's vehicle information database showed no eVIN was transmitted for the Ford, the
17 communication protocol was I914, and the PID count was 16.

18 b. Comparative test data for 891 similar 2002 Ford Ranger Super Cab
19 vehicles show that 99.9 percent of the time an eVIN is transmitted which matches the vehicle's
20 VIN, the communication protocol is JPWM, and the PID count is 21.

21 c. This Ford also had a smog check inspection on August 24, 2018, at
22 Respondent 101 Express Smog. During that inspection, an eVIN was transmitted which matched
23 the vehicle's VIN, the communication protocol was JPWM, and the PID count was 21. This data
24 is consistent with the data expected from an inspection of a 2002 Ford Ranger Super Cab.

25 **Clean Plug #4**

26 43. a. On October 24, 2020, Respondent Sanchez issued a smog certificate of
27 compliance at 101 Express Smog for a 2009 Mercedes-Benz C300, VIN ending 272. The
28 Bureau's vehicle information database showed an eVIN ending 644 was transmitted, which did

1 not match the Mercedes-Benz's VIN. It also showed the communication protocol was
2 ICAN29bt5 and the PID count was 13/13/39.

3 b. Comparative test data for 1,000 similar 2002 Mercedes-Benz C300
4 vehicles show that 99.8 percent of the time an eVIN is transmitted which matches the vehicle's
5 VIN, the communication protocol is ICAN11bt5, and the PID count is 43/12, 45, 45/12, 47, or
6 47/12.

7 c. This Mercedes-Benz also had a smog check inspection on June 14, 2018, at
8 a different smog check station. During that inspection, an eVIN was transmitted which matched
9 the vehicle's VIN, the communication protocol was ICAN11bt5, and the PID count was 47/12.
10 This data is consistent with the data expected from an inspection of a 2002 Mercedes-Benz C300.

11 d. Additionally, on October 24, 2020, the same day Respondent Sanchez
12 issued the smog certificate of compliance for the Mercedes-Benz, he issued a smog certificate of
13 compliance at Respondent 101 Express Smog for a 2012 Honda Civic Hybrid. The test data in
14 the Bureau's vehicle information database for that Honda showed an eVIN ending 644 was
15 transmitted, which matched the VIN for the Honda and also matched the eVIN transmitted for the
16 Mercedes-Benz. It also showed the communication protocol for the Honda as ICAN29bt5 and
17 the PID count as 13/13/39, both of which matched the test data transmitted for the Mercedes-
18 Benz.

19 **Clean Plug #5**

20 44. a. On October 28, 2020, Respondent Sanchez issued a smog certificate of
21 compliance at 101 Express Smog for a 2004 GMC Envoy, VIN ending 628. The Bureau's
22 vehicle information database showed no eVIN was transmitted, the communication protocol was
23 I914, and the PID count was 17.

24 b. Comparative test data for 561 similar 2004 GMC Envoy vehicles show that
25 99.6 percent of the time an eVIN is transmitted which matches the vehicle's VIN, the
26 communication protocol is JVPW, and the PID count is 19.

27 c. This GMC Envoy also had a smog check inspection on October 9, 2018, at
28 a different smog check station. During that inspection, an eVIN was transmitted which matched

1 the vehicle's VIN, the communication protocol was JVPW, and the PID count was 19. This data
2 is consistent with the data expected from an inspection of a 2004 GMC Envoy.

3 **CAUSES FOR DISCIPLINE**

4 **RESPONDENT 101 EXPRESS SMOG**

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Untrue or Misleading Statements)**

7 45. Respondent 101 Express Smog has subjected its automotive repair dealership
8 registration and smog check station license to discipline for making untrue or misleading
9 statements (Bus. & Prof. Code, § 9884.7, subd. (a)(1); Health & Saf. Code, § 44072.2, subd. (d)).
10 The facts are set forth in paragraphs 38-44 above.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 46. Respondent 101 Express Smog has subjected its automotive repair dealership
14 registration and smog check station license to discipline for fraud (Bus. & Prof. Code, § 9884.7,
15 subd. (a)(4); Health & Saf. Code, § 44072.2, subd. (d)). The facts are set forth in paragraphs 38-
16 44 above.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Violation of Statutes and Regulations)**

19 47. Respondent 101 Express Smog has subjected its automotive repair dealership
20 registration and smog check station license to discipline for violating the Business and
21 Professions Code, the Health and Safety Code, and regulations adopted by the Bureau (Bus. &
22 Prof. Code, § 9884.7, subd. (a)(6); Health & Saf. Code, § 44072.2, subds. (a), (c), (d) & (h)). The
23 facts are set forth in paragraphs 38-44 above.

24 a. Respondent 101 Express Smog committed perjury (Bus. & Prof. Code,
25 § 9889.22; Health & Saf. Code, § 44059).

26 b. Respondent 101 Express Smog committed unfair competition (Bus. &
27 Prof. Code, § 17200).

28 c. Respondent 101 Express Smog made untrue or misleading statements (Bus.

1 & Prof. Code, § 17500).

2 d. Respondent 101 Express Smog did not perform the visual or functional
3 portion of smog tests in accordance with department procedures (Health & Saf. Code, § 44012,
4 subd (f)).

5 e. Respondent 101 Express Smog issued smog certificates of compliance for
6 vehicles that did not meet the visual or functional portion of the smog test procedure (Health &
7 Saf. Code, § 44015).

8 f. Respondent 101 Express Smog issued false and fraudulent smog
9 certificates of compliance (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)).

10 g. Respondent 101 Express Smog issued false and fraudulent smog
11 certificates of compliance for vehicles that were not tested in accordance with department
12 procedures (Cal. Code Regs., tit. 16, § 3340.35, subd. (c)).

13 h. Respondent 101 Express Smog did not perform onboard diagnostic tests on
14 vehicles it certified that it smog checked (Cal. Code Regs., tit. 16, § 3340.42, subd. (a)(3)).

15 i. Respondent 101 Express Smog did not perform smog tests in accordance
16 with department procedures (Cal. Code Regs., tit. 16, § 3340.45, subd. (a)).

17 j. Respondent 101 Express Smog made false statements or misleading
18 statements (Cal. Code Regs., tit. 16, § 3371).

19 k. Respondent 101 Express Smog made false statements or misleading
20 statements on a record (Cal. Code Regs., tit. 16, § 3373).

21 **RESPONDENT SANCHEZ**

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 48. Respondent Sanchez has subjected his smog check inspector license to discipline
25 for fraud (Health & Saf. Code, § 44072.2, subd. (d)). The facts are set forth in paragraphs 38-44
26 above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violation of Statutes and Regulations)**

3 49. Respondent Sanchez has subjected his smog check inspector license to discipline
4 for violating the Business and Professions Code, the Health and Safety Code, and regulations
5 adopted by the Bureau (Health & Saf. Code, § 44072.2, subds. (a), (c), (d) & (h)). The facts are
6 set forth in paragraphs 38-44 above.

7 a. Respondent Sanchez committed unfair competition (Bus. & Prof. Code,
8 § 17200).

9 b. Respondent Sanchez made untrue or misleading statements (Bus. & Prof.
10 Code, § 17500).

11 c. Respondent Sanchez committed perjury (Bus. & Prof. Code, § 9889.22;
12 Health & Saf. Code, § 44059).

13 d. Respondent Sanchez did not perform the visual or functional portion of a
14 smog test in accordance with department procedures (Health & Saf. Code, § 44012, subd (f)).

15 e. Respondent Sanchez did not perform a test of emission control devices and
16 systems (Health & Saf. Code, § 44032).

17 f. Respondent Sanchez issued a false and fraudulent smog certificate of
18 compliance (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)).

19 g. Respondent Sanchez did not perform a smog test in accordance with
20 statutes and department procedures (Cal. Code Regs., tit. 16, § 3340.30, subd. (a)).

21 h. Respondent Sanchez entered information and data into the emission
22 inspection system for a vehicle other than the one being tested (Cal. Code Regs., tit. 16, §
23 3340.41, subd. (c)).

24 i. Respondent Sanchez did not perform an onboard diagnostic test on a
25 vehicle he certified that he smog checked (Cal. Code Regs., tit. 16, § 3340.42, subd. (a)(3)).

26 j. Respondent Sanchez did not perform a smog test in accordance with
27 department procedures (Cal. Code Regs., tit. 16, § 3340.45, subd. (a)).

28 k. Respondent Sanchez made false statements or misleading statements on a

1 record (Cal. Code Regs., tit. 16, § 3373).

2 **OTHER MATTERS**

3 50. Under Business and Professions Code section 9884.7, subdivision (c), the Director
4 may suspend, revoke, or place on probation the automotive repair dealer registration for all places
5 of business operated in this state by Respondent 101 Express Smog upon a finding that it has or is
6 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
7 automotive repair dealer.

8 51. Under Health & Safety Code section 44072.8, if the smog check station license
9 issued to Respondent 101 Express Smog is revoked or suspended, any additional license issued
10 under division 26, chapter 5, part 5 of the Health and Safety Code in the name of the licensee also
11 may be revoked or suspended by the Director.

12 52. Under Health & Safety Code section 44072.8, if Respondent Sanchez's smog
13 check inspector license is revoked or suspended, any additional license issued under division 26,
14 chapter 5, part 5 of the Health and Safety Code in the name of the licensee also may be revoked
15 or suspended by the Director.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
18 accusation, and that following the hearing, the Director issues a decision:

19 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
20 Registration No. ARD 295886 to Respondent 101 Express Smog;

21 2. Revoking or suspending Smog Check, Test Only, Station License No. TC 295886
22 issued to Respondent 101 Express Smog;

23 3. Revoking, suspending, or placing on probation the automotive repair registration
24 for all places of business operated in this state by Darren Xu, Bryan Ross Kurnoff, Maxwell Cary
25 Ellis, Clear Sky Associates III, LLC, and 101 Express Smog.

26 4. Revoking or suspending any additional license issued in the name of Darren Xu,
27 Bryan Ross Kurnoff, Maxwell Cary Ellis, Clear Sky Associates III, LLC, and 101 Express Smog
28 under division 26, part 5, chapter 5 of the Health and Safety Code;

1 5. Revoking or suspending Smog Check Inspector License No. EO 639930 issued to
2 Respondent Sanchez;

3 6. Revoking or suspending any additional license issued to Respondent Sanchez
4 under division 26, part 5, chapter 5 of the Health and Safety Code;

5 7. Ordering Respondents 101 Express Smog and Sanchez to pay the Bureau the
6 reasonable costs of the investigation and enforcement of this case under Business and Professions
7 Code section 125.3; and

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

9 DATED: __March 4, 2021_____

Signature on File

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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