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

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

Case No. 47/16-6155

13 **MICAR INTERNATIONAL, INC.**
14 **DBA 905 SMOG & AUTO REPAIR;**
MIGUEL ANGEL CARRANZA,
15 **PRESIDENT**
6960 Camino Maquiladora #G
16 San Diego, CA 92154

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

17 **Automotive Repair Dealer Registration**
No. ARD 240846
18 **Smog Check Station License No. RC 240846**
Lamp Station License No. LS 240846, Class A
19 **Brake Station License No. BS 240846, Class C**

20 and

21 **FERNANDO ZUNIGA**
1005 Saturn Blvd. #B
22 San Diego, CA 92154

23 **Smog Check Inspector License No. EO638563**
Brake Adjuster License No. BA 638563,
24 **Class C**
Lamp Adjuster License No. LA 638563,
25 **Class A**

26 Respondents.

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1 Complainant alleges:

2 **PARTIES**

3 1. Patrick Dorais (Complainant) brings this Accusation and Petition to Revoke
4 Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair
5 (Bureau), Department of Consumer Affairs.

6 Respondent 905 Smog & Auto Repair

7 2. On or about October 3, 2005, the Bureau issued Automotive Repair Dealer
8 Registration Number ARD 240846 to Micar International, Inc. doing business as 905 Smog &
9 Auto Repair, with Miguel Angel Carranza as its President (905 Smog & Auto Repair). The
10 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
11 charges brought herein and will expire on July 31, 2018, unless renewed.

12 3. On or about October 26, 2005, the Bureau issued Smog Check Station License
13 Number RC 240846 to Respondent 905 Smog & Auto Repair. The Smog Check Station License
14 was in full force and effect at all times relevant to the charges brought herein and will expire on
15 July 31, 2018, unless renewed.

16 4. On or about October 13, 2005, the Bureau issued Lamp Station License Number LS
17 240846, Class A to 905 Smog & Auto Repair. The Lamp Station License was in full force and
18 effect at all times relevant to the charges brought herein and will expire on July 31, 2018, unless
19 renewed.

20 5. On or about October 13, 2005, the Bureau issued Brake Station License Number BS
21 240846, Class C to 905 Smog & Auto Repair. The Brake Station License was in full force and
22 effect at all times relevant to the charges brought herein and will expire on July 31, 2018, unless
23 renewed.

24 Respondent Fernando Zuniga

25 6. On or about October 5, 2016, the Bureau issued Smog Check Inspector License
26 Number EO 638563 to Fernando Zuniga (Respondent Zuniga). The Smog Check Inspector
27 License was in full force and effect at all times relevant to the charges brought herein and will
28 expire on June 30, 2018, unless renewed.

1 7. On or about September 14, 2015, the Bureau issued Brake Adjuster License Number
2 BA 638563, Class C to Respondent Zuniga. The Brake Adjuster License was in full force and
3 effect at all times relevant to the charges brought herein and will expire on June 30, 2019, unless
4 renewed.

5 8. On or about November 20, 2015, the Bureau issued Lamp Adjuster License Number
6 LA 638563, Class A to Respondent Zuniga. The Lamp Adjuster License was in full force and
7 effect at all times relevant to the charges brought herein and will expire on June 30, 2019, unless
8 renewed.

9 9. In a prior disciplinary action entitled *Micar International, Inc. dba 905 Smog & Auto*
10 *Repair, Miguel Angel Carranza, President; and Miguel Angel Carranza*, Case No. 77/14-62, the
11 Bureau issued a Decision and Order effective October 6, 2015, in which Respondent Miguel
12 Angel Carranza's Brake Adjuster License Number BA 138952, and Lamp Adjuster License
13 Number LA 138952, were revoked. Respondent Micar International, Inc.'s Automotive Repair
14 Dealer Registration No. ARD 240846, Lamp Station License No. LS 240846, and Brake Station
15 License No. BS 240846 were revoked. However, the revocation of Automotive Repair Dealer
16 Registration No. ARD 240846, Lamp Station License No. LS 240846, and Brake Station License
17 No. BS 240846 was stayed and Respondent was placed on probation for three (3) years on the
18 following terms and conditions. A copy of that Decision and Order is attached as Exhibit A and is
19 incorporated by reference.

20 **JURISDICTION AND STATUTORY PROVISIONS FOR ACCUSATION**

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

23 11. Section 9889.1 of the Code provides, in pertinent part, that any license issued may be
24 suspended or revoked by the Bureau.

25 12. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
26 registration shall not deprive the Bureau of jurisdiction to proceed with a disciplinary proceeding
27 against an automotive repair dealer or to render a decision invalidating a registration temporarily
28 or permanently.

1 13. Section 9889.7 of the Code provides, in pertinent part, that the expiration or
2 suspension of a license, or the voluntary surrender of a license by a licensee shall not deprive the
3 Bureau of jurisdiction to proceed with any investigation of or action or disciplinary proceedings
4 against such licensee, or to render a decision suspending or revoking such license.

5 14. Section 9884.7 of the Code states:

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

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

12 ...

13 (4) Any other conduct which constitutes fraud.

14 ...

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

16 ...

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

20 15. Section 9884.8 of the Code states:

21 All work done by an automotive repair dealer, including all warranty work,
22 shall be recorded on an invoice and shall describe all service work done and parts
supplied. Service work and parts shall be listed separately on the invoice, which shall
23 also state separately the subtotal prices for service work and for parts, not including
sales tax, and shall state separately the sales tax, if any, applicable to each. If any
24 used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that
fact. If a part of a component system is composed of new and used, rebuilt or
25 reconditioned parts, that invoice shall clearly state that fact. The invoice shall include
a statement indicating whether any crash parts are original equipment manufacturer
26 crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy
of the invoice shall be given to the customer and one copy shall be retained by the
27 automotive repair dealer.

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22. California Code of Regulations, title 16, section 3321, subdivision (c)(2) provides, in pertinent part, that when the entire brake system on any vehicle has been inspected or tested and found to be in compliance with all requirements of the Vehicle Code and Bureau regulations, and the vehicle has been road-tested, the brake adjustment certificate shall certify that the entire system meets all such requirements.

23. California Code of Regulations, title 16, section 3371, provides, in pertinent part, that no dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading.

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

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

COST RECOVERY

25. Section 125.3 of the Code provides, in pertinent part, that the Director may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

UNDERCOVER OPERATION #1

26. On July 11, 2016, a Bureau undercover operator drove a Bureau-documented 2006 Ford F150 truck to the 905 Smog & Auto Repair for repairs. The following introduced malfunctions were placed on the vehicle: installation of a right front brake rotor that was machined below the minimum thickness specifications and needed replacement, installation of Tamper Indicators on each of the wheels to detect if any of the wheels had been removed, and creation of a defect in the lighting system by misadjusting the left front headlamp and placing

1 Tamper Indicators on it to detect any adjustment(s). In order for this vehicle to properly pass an
2 official brake and lamp inspection it would need to have the right front brake rotor replaced, and
3 the left front headlamp would need to be adjusted correctly.

4 27. The undercover operator spoke with an employee at 905 Smog & Auto Repair and
5 requested a Brake and Lamp inspection, and a Smog Check Inspection. The undercover operator
6 received an unsigned estimate of \$90.00 for the inspections. After the inspections were complete,
7 the employee told the undercover operator that the only thing that failed was the reverse lights.
8 The undercover operator paid \$90.00 in cash, and received a copy of the signed invoice, a copy of
9 the Vehicle Inspection Report for the Smog Check Inspection, the DMV vehicle registration
10 document, and the Certificate of Compliance-Brake Adjustment certificate indicating that the
11 license of Fernando Zuniga was used to perform the brake certification. The undercover operator
12 then left the facility and transferred custody of the vehicle to a Bureau representative.

13 28. A Bureau representative later reinspected the vehicle. The right front brake rotor that
14 was machined below the minimum thickness level remained on the vehicle, and the condition of
15 the right front brake rotor prevented the Ford F-150 from complying with the requirements of the
16 laws and regulation for issuance of a Certificate of Compliance-Brake Adjustment for the brake
17 system. Therefore, no Certificate of Compliance-Brake Adjustment should have been issued.

18 **FIRST CAUSE FOR DISCIPLINE – 905 SMOG & AUTO REPAIR**

19 **(Untrue, False or Misleading Statements)**

20 29. Respondent 905 Smog & Auto Repair has subjected its registration and licenses to
21 disciplinary action under Code section 9884.7(a)(1), and California Code of Regulations, title 16,
22 section 3371, in that it invoiced and charged for inspecting the entire brake system and issued a
23 Certificate of Compliance-Brake Adjustment stating the brake system was in compliance, when in
24 fact the vehicle should have failed the inspection. The invoice documented that the front disc
25 brake rotors were above the manufacturer service limits, when in fact the right front brake rotor
26 was below the minimum discard thickness.

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1 **SECOND CAUSE FOR DISCIPLINE – 905 SMOG & AUTO REPAIR**

2 **(Fraud)**

3 30. Respondent 905 Smog & Auto Repair has subjected its registration and licenses to
4 disciplinary action under Code section 9884.7(a)(4) in that it misrepresented to the undercover
5 operator that 905 Smog & Auto Repair inspected the brake system on the vehicle and that it was
6 in passable condition. 905 Smog & Auto Repair knew that the brake system had not been
7 properly inspected; 905 Smog & Auto Repair intended the undercover operator to rely on this
8 misrepresentation; and 905 Smog & Auto Repair charged for the service and accepted payment.

9 **THIRD CAUSE FOR DISCIPLINE – 905 SMOG & AUTO REPAIR**

10 **(Certificate Issued to Nonconforming Vehicle)**

11 31. Respondent 905 Smog & Auto Repair has subjected its registration and licenses to
12 disciplinary action under Code section 9889.16 in that upon an inspection or after an adjustment
13 purportedly made in conformity with the instructions of the Bureau, 905 Smog & Auto Repair
14 issued Certificate of Compliance-Brake Adjustment to a non-conforming vehicle in violation of
15 California Code of Regulations, title 16, section 3321, subdivision (c)(2).

16 **FOURTH CAUSE FOR DISCIPLINE – FERNANDO ZUNIGA**

17 **(Certificate Issued to Nonconforming Vehicle)**

18 32. Respondent Fernando Zuniga's licenses are subject to disciplinary action under Code
19 section 9889.16 in that upon an inspection or after an adjustment purportedly made in conformity
20 with the instructions of the Bureau, he issued a Certificate of Compliance-Brake Adjustment to a
21 non-conforming vehicle in violation of California Code of Regulations, title 16, section 3321,
22 subdivision (c)(2).

23 **FIFTH CAUSE FOR DISCIPLINE – FERNANDO ZUNIGA**

24 **(False or Misleading Certificate)**

25 33. Respondent Fernando Zuniga's licenses are subject to disciplinary action under Code
26 section 9889.22 in that his license was used to inspect and certify the brake system on the Ford
27 Truck. The certificate of compliance withheld or inserted information which would cause the
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1 document to be false or misleading, indicating it was in compliance, when in fact it was not, in
2 violation of Title 16, California Code of Regulations, section 3373.

3 **UNDERCOVER OPERATION #2**

4 34. On October 19, 2016, a Bureau undercover operator drove a Bureau-documented
5 1997 Toyota Camry to the 905 Smog & Auto Repair for repairs. The following introduced
6 malfunctions were placed on the vehicle: a right front brake rotor which was below the minimum
7 discard dimension (the brake rotor was below the minimum thickness level and was in need of
8 replacement), and Tamper Indicators were installed on the each of the wheels in order to detect if
9 any of the wheels had been removed. A defect was created in the lighting system by misaiming
10 the right front headlamp, and Tamper Indicators were placed on it to detect any adjustment(s). In
11 order for this vehicle to properly pass an official brake and lamp inspection it would need to have
12 the front right brake rotor replaced, and the right front headlamp would need to be adjusted
13 correctly.

14 35. The undercover operator spoke with an employee at 905 Smog & Auto Repair and
15 requested a Brake and Lamp inspection, and a Smog Check Inspection. The undercover operator
16 received an unsigned estimate of \$90.00 for the inspections. After the inspections were complete,
17 the undercover operator paid \$90.00 in cash, and received a copy of the signed invoice, a copy of
18 the Vehicle Inspection Report for the Smog Check Inspection, the DMV vehicle registration
19 document, the Certificate of Compliance-Brake Adjustment certificate, and the Certificate of
20 Compliance-Lamp Adjustment certificate indicating that the license of Fernando Zuniga was used
21 to perform the brake and lamp certifications. The undercover operator then left the facility and
22 transferred custody of the vehicle to a Bureau representative.

23 36. A Bureau representative later reinspected the vehicle. The defective right front brake
24 rotor (which was machined below the minimum discard thickness level) remained on the vehicle.
25 The condition of the right front brake rotor would prevent the Camry from complying with the
26 requirements of the laws and regulations for issuance of a Certificate of Compliance-Brake
27 Adjustment for the brake system. The condition of the misaimed headlamp prevented the Camry
28 from complying with the requirements of the laws and regulations for issuance of a Certificate of

1 Compliance-Lamp Adjustment for the lighting system. Therefore, no Certificate of Compliance-
2 Brake Adjustment or Certificate of Compliance-Lamp Adjustment should have been issued.

3 **SIXTH CAUSE FOR DISCIPLINE – 905 SMOG & AUTO REPAIR**

4 **(Untrue, False or Misleading Statements)**

5 37. Respondent 905 Smog & Auto Repair has subjected its registration and licenses to
6 disciplinary action under Code section 9884.7(a)(1), and California Code of Regulations, title 16,
7 section 3371, in that it invoiced and charged for inspecting the entire brake system and lamp
8 system and issued Certificates of Compliance stating the brake and lamp systems were in
9 compliance, when in fact the vehicle should have failed the inspection. The front disc brake
10 rotors were certified as above the manufacturer service limits, when in fact the right front brake
11 rotor was below the minimum discard thickness. The headlamps were certified as not in need of
12 adjustment, when in fact the right front headlamp was misadjusted.

13 **SEVENTH CAUSE FOR DISCIPLINE – 905 SMOG & AUTO REPAIR**

14 **(Fraud)**

15 38. Respondent 905 Smog & Auto Repair has subjected its registration and licenses to
16 disciplinary action under Code section 9884.7(a)(4) in that it misrepresented to the undercover
17 operator that 905 Smog & Auto Repair inspected the brake and lamp systems on the vehicle and
18 they were in passable condition. 905 Smog & Auto Repair knew that the brake and lamp systems
19 had not been properly inspected and they intended the undercover operator to rely on these
20 misrepresentations; and 905 Smog & Auto Repair charged for the service and accepted payment.

21 **EIGHTH CAUSE FOR DISCIPLINE – 905 SMOG & AUTO REPAIR**

22 **(Certificates Issued to Nonconforming Vehicle)**

23 39. Respondent 905 Smog & Auto Repair has subjected its registration and licenses to
24 disciplinary action under Code section 9889.16 in that upon an inspection or after an adjustment
25 purportedly made in conformity with the instructions of the Bureau, 905 Smog & Auto Repair
26 issued Certificates of Compliance for a brake adjustment and lamp adjustment to a non-
27 conforming vehicle in violation of California Code of Regulations, Title 16, 3316, subdivision
28 (d)(2), and California Code of Regulations, title 16, section 3321, subdivision (c)(2).

1 **NINTH CAUSE FOR DISCIPLINE – FERNANDO ZUNIGA**

2 **(Certificates Issued to Nonconforming Vehicle)**

3 40. Respondent Fernando Zuniga's licenses are subject to disciplinary action under Code
4 section 9889.16 in that upon an inspection or after an adjustment purportedly made in conformity
5 with the instructions of the Bureau, he issued Certificates of Compliance for a brake adjustment
6 and lamp adjustment to a non-conforming vehicle in violation of California Code of Regulations,
7 Title 16, 3316, subdivision (d)(2), and California Code of Regulations, title 16, section 3321,
8 subdivision (c)(2).

9 **TENTH CAUSE FOR DISCIPLINE – FERNANDO ZUNIGA**

10 **(False or Misleading Certificate)**

11 41. Respondent Fernando Zuniga's licenses are subject to disciplinary action under Code
12 section 9889.22 in that his licenses were used to inspect and certify the brake and lamp systems
13 on the Toyota Camry. The certificates of compliance withheld or inserted information which
14 would cause the document to be false or misleading, indicating it was compliant when in fact it
15 was not, in violation of California Code of Regulations, Title 16, section 3373.

16 **OTHER MATTERS**

17 42. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily
18 or permanently or refuse to validate, the registrations for all places of business operated in this
19 state by an automotive repair dealer upon a finding that the automotive repair dealer has engaged
20 in a course of repeated and willful violations of the laws and regulations pertaining to an
21 automotive repair dealer.

22 43. Under Code section 9889.9, if Lamp Station License Number LS 240846 and Brake
23 Station License Number BS 240846 is revoked or suspended following a hearing under Article 7
24 of the Automotive Repair Act, any additional license issued under Articles 5 and 6 in the name of
25 Miguel Angel Carranza, may be likewise revoked or suspended.

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44. Under Health & Safety Code section 44072.8, if the Smog Check Station License is revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Miguel Angel Carranza.

45. Under Health and Safety Code section 44072.8, if Fernando Zuniga's Smog Check Inspector License Number EO 638563 is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Fernando Zuniga may be likewise revoked or suspended.

46. Under Code section 9889.9, if Lamp Adjuster License Number LA 638563 and Brake Adjuster License Number BA 638563 are revoked or suspended following a hearing under Article 7 of the Automotive Repair Act, any additional license issued under Articles 5 and 6 in the name of Fernando Zuniga may be likewise revoked or suspended.

JURISDICTION FOR PETITION TO REVOKE PROBATION

47. This Petition to Revoke Probation is brought before the Director of Consumer Affairs (Director) for the Bureau of Automotive Repair under Probation Term and Condition Number 8 of the Decision and Order in Micar International, Inc. dba 905 Smog & Auto Repair, Miguel Angel Carranza, President; and Miguel Angel Carranza, Case No. 77/14-62. That term and condition states:

Violation of Probation. Should the Director of Consumer Affairs determine that Respondents have failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard suspend or revoke any licenses and registrations issued to Respondents.

FIRST CAUSE TO REVOKE PROBATION

(Obey All Laws)

7. At all times after the effective date of Respondent's probation, Condition 2 stated:

Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

8. The registration and licenses issued to Respondent Micar International, Inc. doing business as 905 Smog & Auto Repair, with Miguel Angel Carranza as its President are subject to

1 revocation because they failed to comply with Probation Condition 2, referenced above, in that
2 Respondent was non-compliant with statutes, regulations and rules governing automotive
3 inspections, as more fully described in paragraphs 26-41, above, which are incorporated herein by
4 reference.

5 PRAYER

6 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
7 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of
8 Consumer Affairs issue a decision:

9 1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
10 No. 77/14-62 and imposing the disciplinary order that was stayed thereby revoking Automotive
11 Repair Dealer Registration No. ARD 240846 issued to Micar International, Inc. doing business as
12 905 Smog & Auto Repair, with Miguel Angel Carranza as its President;

13 2. Revoking or suspending Automotive Repair Dealer Registration No. ARD 240846,
14 issued to Micar International, Inc. doing business as 905 Smog & Auto Repair, with Miguel
15 Angel Carranza as its President;

16 3. Revoking or suspending any other Automotive Repair Dealer Registration issued to
17 Miguel Angel Carranza;

18 4. Revoking or suspending Smog Check Station License No. RC 240846, issued to
19 Micar International, Inc. doing business as 905 Smog & Auto Repair, with Miguel Angel
20 Carranza as its President;

21 5. Revoking or suspending any other license issued under Chapter 5 of Part 5 of
22 Division 26 of the Health and Safety Code in the name of Miguel Angel Carranza;

23 6. Revoking or suspending Lamp Station License No. LS 240846, Class A, issued to
24 Micar International, Inc. doing business as 905 Smog & Auto Repair, with Miguel Angel
25 Carranza as its President;

26 7. Revoking or suspending Brake Station License No. BS 240846, Class C, issued to
27 Micar International, Inc. doing business as 905 Smog & Auto Repair, with Miguel Angel
28 Carranza as its President;

1 8. Revoking or suspending any other license issued under Articles 5 and 6 of Chapter
2 20.3 of Division 3 of the Code in the name of Miguel Angel Carranza;

3 9. Revoking or suspending Smog Check Inspector License No. EO 638563, issued to
4 Fernando Zuniga;

5 10. Revoking or suspending any other license issued under Chapter 5 of Part 5 of
6 Division 26 of the Health and Safety Code in the name of Fernando Zuniga;

7 11. Revoking or suspending Brake Adjuster License No. BA 638563, Class C, issued to
8 Fernando Zuniga;

9 12. Revoking or suspending Lamp Adjuster License No. LA 638563, Class A, issued to
10 Fernando Zuniga.

11 13. Revoking or suspending any other license issued under Articles 5 and 6, Chapter 5 of
12 Chapter 20.3 of Division 3 of the Code, in the name of Fernando Zuniga;

13 14. Ordering Micar International, Inc. doing business as 905 Smog & Auto Repair, with
14 Miguel Angel Carranza and its President and Fernando Zuniga to pay the Director of Consumer
15 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 125.3; and

17 15. Taking such other and further action as deemed necessary and proper.
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20 DATED:

August 22, 2017 *Patrick Dorais*

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

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