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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. 79/20-6135

13 **MC & AR, INC. DBA PALMDALE**
14 **RADIATOR & EXPRESS MUFFLER,**
15 **MARISA ELANE CHAVEZ,**
16 **PRESIDENT/SECRETARY/TREASURER**
2641 E. Palmdale Blvd, #18-20
Palmdale, CA 93550

ACCUSATION

17 **Automotive Repair Dealer Registration No.**
18 **ARD 277773**
19 **Smgo Check, Station License No.**
20 **RC 277773,**

21 **and**

22 **ROGELIO ROSALES**
23 **10042 East Ave S10**
24 **Little Rock, CA 93543**

25 **Smog Check Inspector License No.**
26 **EO 637163**

27 Respondents.
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1 **PARTIES**

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

4 ***MC & AR, Inc. dba Palmdale Radiator & Express Muffler, Marisa Elane Chavez,***
5 ***President/Secretary/Treasurer***

6 2. On or about September 9, 2014, the Bureau issued Automotive Repair Dealer
7 Registration Number ARD 277773 to MC & AR, Inc. dba Palmdale Radiator & Express Muffler,
8 Marisa Elane Chavez, President/Secretary/Treasurer (Respondent Palmdale Radiator). The
9 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
10 charges brought herein and will expire on September 30, 2021, unless renewed.

11 3. On or about September 29, 2014, the Bureau issued Smog Check Test and Repair
12 Station License Number RC 277773 to MC & AR, Inc. dba Palmdale Radiator & Express
13 Muffler, Marisa Elane Chavez, President/Secretary/Treasurer. The Smog Check Test and Repair
14 Station License was in full force and effect at all times relevant to the charges brought herein and
15 will expire on September 30, 2021, unless renewed.

16 4. On or about August 30, 2017, the Bureau certified Palmdale Radiator & Express
17 Muffler as a STAR Station. The certification will remain active unless the Automotive Repair
18 Dealer registration and/or Smog Check Test and Repair Station License is revoked, canceled,
19 licenses become delinquent, or the certification is invalidated.

20 ***Rogelio Rosales***

21 5. On or about July 30, 2014, the Bureau issued Smog Check Inspector License Number
22 EO 637163 to Rogelio Rosales (Respondent Rosales). The Smog Check Inspector License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on May 31,
24 2022, unless renewed.

25 **JURISDICTION**

26 6. Business and Professions Code section 9884.7 provides that the Director may revoke
27 an automotive repair dealer registration.

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

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

9. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY PROVISIONS

10. Business and Professions Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

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(4) Any other conduct that constitutes fraud.

• • • •

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

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

1 11. Business and Professions Code section 477 provides, in pertinent part, that “Board”
2 includes “bureau,” “commission,” “committee,” “department,” “division,” “examining
3 committee,” “program,” and “agency.” “License” includes certificate, registration or other
4 means to engage in a business or profession regulated by the Bus. & Prof. Code.

5 12. Health and Safety Code section 44012 provides, in pertinent part, that tests at smog
6 check stations shall be performed in accordance with procedures prescribed by the department.

7 13. Health and Safety Code section 44015, subdivision (b), provides that a certificate of
8 compliance shall be issued if a vehicle meets the requirements of Health and Safety Code section
9 44012.

10 14. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

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

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

19 15. Health and Safety Code section 44072.10 states, in pertinent part:

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21 (c) The department shall revoke the license of any smog check technician or
22 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
23 the following:

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

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16. Health and Safety Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

REGULATORY PROVISIONS

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

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

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

19. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check station “shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly.”

20. CCR, title 16, section 3340.41, subdivision (c), states that “[n]o person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.”

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

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1 **COST RECOVERY**

2 22. Business and Professions Code section 125.3 provides, in pertinent part, that a Board
3 may request the administrative law judge to direct a licensee found to have committed a
4 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
5 investigation and enforcement of the case.

6 **UNDERCOVER OPERATIONS: MAY 19, 2020**

7 23. On or about March 19, 2020, Bureau Representative Allen Palad documented a 2007
8 Dodge (2007 Dodge) with two (2) hollowed out catalytic converters rendering them inoperative
9 and defective. This resulted in the illumination of the vehicle's malfunction indicator light
10 (MIL), a condition which will cause the vehicle to fail a properly performed California OIS Smog
11 Check Inspection¹.

12 24. From on or about March 10, 2020, through March 13, 2020, Bureau Representative
13 Ricardo Pantoja documented a 2002 Honda (2002 Honda) with a hollowed out catalytic converter
14 rendering it inoperative and defective. This resulted in the illumination of the vehicle's MIL, a
15 condition which will cause the vehicle to fail a properly performed California OIS Smog Check
16 Inspection.

17 25. On or about May 12, 2020, a Bureau undercover operator (operator) telephoned and
18 text messaged Respondent Rosales advising him that he had a 2007 Dodge and a 2002 Honda,
19 both with illuminated malfunction indicator lamps, that needed to have Smog Check Inspections
20 performed. Respondent Rosales advised the operator to bring the vehicles to Palmdale Radiator
21 & Express Muffler on May 19, 2020 at 1000 hours. Respondent Rosales advised the operator that
22 the cost for each Smog Check Inspection would be \$180.00, and the operator agreed.

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27 ¹ Beginning March 9, 2015, California's Smog Check Program was updated to require the
28 use of an On-Board Diagnostic Inspection System (BAR-OIS) when inspecting most model-year
2000 and newer gasoline and hybrid vehicles and 1998 and newer diesel vehicles subject to the
program.

1 26. On or about May 19, 2020, the operator drove the 2007 Dodge to Palmdale Radiator
2 & Express Muffler, arriving at approximately 1022 hours. The operator met with Respondent
3 Rosales and requested a Smog Check Inspection. At approximately 1154 hours, Respondent
4 Rosales advised the operator that the 2007 Dodge had passed the Smog Check Inspection, and
5 handed him a Vehicle Inspection Report (VIR) with certificate of compliance number
6 RI886429C. At Respondent Rosales's request, the operator paid him \$180.00 in cash for the
7 Smog Check Inspection, and let Respondent Rosales know that he would return shortly with the
8 2002 Honda. When the operator entered the 2007 Dodge to leave Respondent's facility, he
9 observed that the MIL was still illuminated.

10 27. On or about May 19, 2020, the operator drove the 2002 Honda to Palmdale Radiator
11 & Express Muffler, arriving at approximately 1242 hours. The operator met with Respondent
12 Rosales and requested a Smog Check Inspection.

13 28. While waiting at Respondent's facility, the operator observed Respondent Rosales
14 performing a Smog Check Inspection on what he later determined to be a 1997 Acura Integra,
15 California License # 3WVF876 (1997 Acura), in the test bay of Palmdale Radiator & Express
16 Muffler. The operator observed Respondent Rosales drive a late model green Ford Ranger in
17 front of the test bay, and behind the 1997 Acura which was still inside the bay. The operator then
18 observed Respondent Rosales insert an emissions sample probe into the exhaust tailpipe of the
19 Ford Ranger while continuing to perform the Smog Check Inspection on the 1997 Acura. These
20 actions are consistent with an illegal Smog Check Inspection known as clean piping².

21 29. At approximately 1403 hours Respondent Rosales advised the operator that the 2002
22 Honda had passed the Smog Check Inspection, and handed him a VIR with certificate of
23 compliance number RI886431C. At Respondent Rosales's request, the operator paid him
24 \$180.00 in cash for the Smog Check Inspection. When the operator entered the 2002 Honda to
25 leave Respondent's facility, he observed that the MIL was still illuminated.

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27 ² "Clean piping" refers to the use of the emission sample of a known clean vehicle to
28 substitute for the emissions of a vehicle that will not pass a smog inspection or is not present at
the time of the test.

30. On or about May 27, 2020, Bureau Representatives Kenneth Harsla and Timothy Fowler performed a station inspection at Palmdale Radiator & Express Muffler. Upon entering the facility, Bureau Representative Harsla observed Respondent Rosales exit a vehicle and pick up a black backpack located on the OIS cabinet. Respondent Rosales then walked with the backpack towards the front of the shop, where Bureau Representative Harsla asked if he could see what was inside. Respondent Rosales handed the backpack to Bureau Representative Harsla and consented to him viewing the contents. In the bag, Bureau Representative Harsla found an On Board Diagnostic (OBD) defeat device which is commonly used in illegal clean plugging³ activities, and which Respondent Rosales admitted belonged to him. Respondent Rosales admitted to using the defeat device to perform fraudulent Smog Check Inspections at Palmdale Radiator & Express Muffler, and specifically admitted to performing the fraudulent Smog Check Inspections on the Bureau documented 2007 Dodge and 2002 Honda. Respondent also admitted to performing a clean pipe on the 1997 Acura just prior to his inspection of the Bureau's 2002 Honda.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

31. Respondent Palmdale Radiator's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that it made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading when it issued electronic smog certificates of compliance to the 2007 Dodge, 2002 Honda, and 1997 Acura, certifying those vehicles as being in compliance with applicable laws and regulations when, in fact, those vehicles had not been properly inspected. Respondent did not inspect any of the 3 vehicles as required by Health and Safety Code section 44012. Complainant hereby incorporates paragraphs 23 through 30, above, as though set forth fully herein.

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

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 32. Respondent Palmdale Radiator's Automotive Repair Dealer Registration is subject to
4 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4),
5 in that it committed acts that constitute fraud by issuing electronic smog certificates of
6 compliance for the 2007 Dodge, 2002 Honda, and 1997 Acura, without performing bona fide
7 inspections of the emission control devices and systems on those vehicles, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program. Complainant hereby incorporates paragraphs 23 through 30, above, as though set forth
10 fully herein.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 33. Respondent Palmdale Radiator's Automotive Repair Dealer Registration is subject to
14 disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6),
15 in that it failed in a material respect to comply with the provisions of this chapter or regulations
16 adopted pursuant to it when it issued electronic smog certificates of compliance for the 2007
17 Dodge, 2002 Honda, and 1997 Acura, without performing bona fide inspections of the emission
18 control devices and systems on those vehicles, thereby depriving the People of the State of
19 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
20 hereby incorporates paragraphs 23 through 30, above, as though set forth fully herein.

21 **FOURTH CAUSE FOR DISCIPLINE**

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

23 34. Respondent Palmdale Radiator's Smog Check Test and Repair Station License is
24 subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision
25 (a), in that it failed to comply with the following sections of that Code:

26 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
27 performed on the 2007 Dodge, 2002 Honda, and 1997 Acura, in accordance with procedures
28 prescribed by the department.

1 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
2 compliance for the 2007 Dodge, 2002 Honda, and 1997 Acura, without ensuring that the vehicles
3 were properly tested and inspected to determine if they were in compliance with Health and
4 Safety Code section 44012.

5 Complainant hereby incorporates paragraphs 23 through 30, above, as though set forth fully
6 herein.

7 **FIFTH CAUSE FOR DISCIPLINE**
8 **(Failure to Comply with Regulations Pursuant**
9 **to the Motor Vehicle Inspection Program)**

10 35. Respondent Palmdale Radiator's Smog Check Test and Repair Station License is
11 subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision
12 (c), in that it failed to comply with provisions of CCR, title 16, as follows:

13 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
14 electronic smog certificates of compliance for the 2007 Dodge, 2002 Honda, and 1997 Acura.

15 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 2007
16 Dodge, 2002 Honda, and 1997 Acura, in accordance with Health and Safety Code sections 44012
17 and 44035, and CCR, title 16, section 3340.42.

18 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
19 compliance for the 2007 Dodge, 2002 Honda, and 1997 Acura, even though the vehicles had not
20 been inspected in accordance with section 3340.42.

21 d. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
22 into the emissions inspection system for the 2007 Dodge, 2002 Honda, and 1997 Acura.

23 e. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
24 conducted on the 2007 Dodge, 2002 Honda, and 1997 Acura, in accordance with the Bureau's
25 specifications.

26 Complainant hereby incorporates paragraphs 23 through 30, above, as though set forth fully
27 herein.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 36. Respondent Palmdale Radiator's Smog Check Test and Repair Station License is
4 subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision
5 (d), in that it committed dishonest, fraudulent, or deceitful acts whereby another was injured by
6 issuing electronic smog certificates of compliance for the 2007 Dodge, 2002 Honda, and 1997
7 Acura, without performing bona fide inspections of the emission control devices and systems on
8 the vehicles, thereby depriving the People of the State of California of the protection afforded by
9 the Motor Vehicle Inspection Program. Complainant hereby incorporates paragraphs 23 through
10 30, above, as though set forth fully herein.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

13 37. Respondent Rosales's Smog Check Inspector License is subject to disciplinary action
14 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he failed to comply
15 with the following sections of that code:

16 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
17 performed on the 2007 Dodge, 2002 Honda, and 1997 Acura, in accordance with procedures
18 prescribed by the department.

19 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for the
20 2007 Dodge, 2002 Honda, and 1997 Acura, without ensuring that the vehicles were properly
21 tested and inspected to determine if they were in compliance with Health and Safety Code section
22 44012.

23 Complainant hereby incorporates paragraphs 23 through 30, above, as though set forth fully
24 herein.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 38. Respondent Rosales's Smog Check Inspector License is subject to disciplinary action
5 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that he failed to comply
6 with provisions of CCR, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
8 electronic smog certificates of compliance for the 2007 Dodge, 2002 Honda, and 1997 Acura.

9 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 2007
10 Dodge, 2002 Honda, and 1997 Acura, in accordance with Health and Safety Code sections 44012
11 and 44035, and CCR, title 16, section 3340.42.

12 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
13 compliance for the 2007 Dodge, 2002 Honda, and 1997 Acura, even though the vehicles had not
14 been inspected in accordance with section 3340.42

15 d. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
16 into the emissions inspection system for the 2007 Dodge, 2002 Honda, and 1997 Acura.

17 e. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 2007
18 Dodge, 2002 Honda, and 1997 Acura, in accordance with the Bureau's specifications.

19 Complainant hereby incorporates paragraphs 23 through 30 above, as though set forth fully.

20 **NINTH CAUSE FOR DISCIPLINE**

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

22 39. Respondent Rosales's Smog Check Inspector License is subject to disciplinary action
23 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Respondent
24 committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing
25 electronic smog certificates of compliance for the 2007 Dodge, 2002 Honda, and 1997 Acura,
26 without performing bona fide inspections of the emission control devices and systems on the
27 vehicles, thereby depriving the People of the State of California of the protection afforded by the
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Motor Vehicle Inspection Program. Complainant hereby incorporates paragraphs 23 through 30, above, as though set forth fully herein.

OTHER MATTERS

40. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent MC & AR, Inc., upon a finding that it has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

41. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test and Repair Station License No. RC 277773, issued to Respondent MC & AR, Inc. dba Palmdale Radiator & Express Muffler, Marisa Elane Chavez, President/Secretary/Treasurer, 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 said licensee may be likewise revoked or suspended by the director.

42. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector License No. EO 637163, issued to Rogelio Rosales, 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 said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 277773, issued to MC & AR, Inc. dba Palmdale Radiator & Express Muffler, Marisa Elane Chavez, President/Secretary/Treasurer;

2. Revoking or suspending any other automotive repair dealer registration issued to MC & AR, Inc.;

3. Revoking or suspending Smog Check Test and Repair Station License No. RC 277773, issued to MC & AR, Inc. dba Palmdale Radiator & Express Muffler, Marisa Elane Chavez, President/Secretary/Treasurer;

1 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
2 Division 26 of the Health and Safety Code in the name of MC & AR, Inc.;

3 5. Revoking or suspending Smog Check Inspector License No. EO 637163, issued to
4 Rogelio Rosales;

5 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
6 Division 26 of the Health and Safety Code in the name of Rogelio Rosales;

7 7. Ordering MC & AR, Inc. dba Palmdale Radiator & Express Muffler, Marisa Elane
8 Chavez, President/Secretary/Treasurer and Rogelio Rosales to pay the Director of Consumer
9 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
10 Business and Professions Code section 125.3; and

11 8. Taking such other and further action as deemed necessary and proper.
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15 DATED: December 9, 2020

/s/

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

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