

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

In the Matter of the Accusation Against:

**PONCE'S SMOG CHECK; GUMARO
PONCE, OWNER**

11000 S. Figueroa Street, Unit B
Los Angeles, CA 90061

Mailing Address:

2433 Elm Avenue
Long Beach, CA 90806
Automotive Repair Dealer Registration No.
ARD 240046
Smog Check, Test & Repair Station
License No. RC 240046
Lamp Station License No. LS 240046
Brake Station License No. BS 240046

and

GUMARO PONCE

2433 Elm Avenue
Long Beach, CA 90806
Smog Check Inspector (EO) License No.
145832
Smog Check Repair Technician (EI)
License No. 145832 (formerly Advanced
Emission Specialist Technician License
No. EA 145832)
Brake Adjuster License No. BA 145832
Lamp Adjuster License No. LA 145832

Respondents.

Case No. 77/11-11

OAH No. 2014041261

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective November 13, 2014.

DATED: October 16, 2014


TAMARA COLSON

Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 ANTONIO LOPEZ, JR.
Deputy Attorney General
4 State Bar No. 206387
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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Attorneys for Complainant
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:
13 **PONCE'S SMOG CHECK; GUMARO**
PONCE, OWNER
14 11000 S. Figueroa Street, Unit B
Los Angeles, CA 90061
15 **Mailing Address:**
2433 Elm Avenue
16 Long Beach, CA 90806
Automotive Repair Dealer Registration No.
17 **ARD 240046**
Smog Check, Test & Repair Station License
18 **No. RC 240046**
Lamp Station License No. **LS 240046**
19 Brake Station License No. **BS 240046**

Case No. 77/11-11

OAH No. 2014041261

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

20 and

21 **GUMARO PONCE**
2433 Elm Avenue
22 Long Beach, CA 90806
Smog Check Inspector (EO) License No.
23 145832 Smog Check Repair Technician
(EI) License No. 145832
24 (formerly Advanced Emission Specialist
Technician License EA 145832)
25 Brake Adjuster License No. BA 145832
26 Lamp Adjuster License No. LA 145832

Respondents.

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 **PARTIES**

4 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
5 brought this action solely in his official capacity and is represented in this matter by Kamala D.
6 Harris, Attorney General of the State of California, by Antonio Lopez, Jr., Deputy Attorney
7 General.

8 2. Respondent Ponce's Smog Check; Gumaro Ponce ("Respondent") is represented in
9 this proceeding by attorney Russell J. Cole, whose address is: 523 West Sixth Street, Suite 707
10 Los Angeles, CA 90014.

11 3. In 2005, the Bureau of Automotive Repair issued Automotive Repair Dealer
12 Registration No. ARD 240046 to Ponce's Smog Check; Gumaro Ponce (Respondent). The
13 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
14 charges brought in Accusation No. 77/11-11 and will expire on June 30, 2015, unless renewed.

15 4. On or about July 19, 2005, the Bureau of Automotive Repair issued Smog Check,
16 Test & Repair Station License No. RC 240046 to Ponce's Smog Check; Gumaro Ponce
17 (Respondent). The Smog Check, Test & Repair Station License was in full force and effect at
18 all times relevant to the charges brought in Accusation No. 77/11-11 and will expire on June 30,
19 2015, unless renewed.

20 5. On or about August 11, 2005, the Bureau of Automotive Repair issued Lamp Station
21 License No. LS 240046, Class A, to Gumaro Ponce (Respondent). The Lamp Station License
22 was in full force and effect at all times relevant to the charges brought in Accusation No. 77/11-
23 11 and will expire on June 30, 2015, unless renewed.

24 6. On or about August 11, 2005, the Bureau of Automotive Repair issued Brake Station
25 License No. BS 240046, Class C, to Gumaro Ponce (Respondent). The Brake Station License
26 was in full force and effect at all times relevant to the charges brought in Accusation No. 77/11-
27 11 and will expire on June 30, 2015, unless renewed.

1 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
2 Order.

3 12. Respondent is fully aware of his legal rights in this matter, including the right to a
4 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
5 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
6 to the issuance of subpoenas to compel the attendance of witnesses and the production of
7 documents; the right to reconsideration and court review of an adverse decision; and all other
8 rights accorded by the California Administrative Procedure Act and other applicable laws.

9 13. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
10 every right set forth above.

11 CULPABILITY

12 14. Respondent admits the truth of each and every charge and allegation in Accusation
13 No. 77/11-11.

14 15. Respondent agrees that his Automotive Repair Dealer Registration is subject to
15 discipline and he agrees to be bound by the Director's probationary terms as set forth in the
16 Disciplinary Order below.

17 CONTINGENCY

18 16. This stipulation shall be subject to approval by the Director of Consumer Affairs or
19 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
20 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
21 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
22 or participation by Respondent or his counsel. By signing the stipulation, Respondent
23 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
24 prior to the time the Director considers and acts upon it. If the Director fails to adopt this
25 stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
26 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
27 the parties, and the Director shall not be disqualified from further action by having considered
28 this matter.

1 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
2 automotive inspections, estimates and repairs.

3 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
4 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
5 conspicuously displayed in a location open to and frequented by customers and shall remain
6 posted during the entire period of actual suspension.

7 4. **Reporting.** Respondent or Respondent's authorized representative must report in
8 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
9 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
10 maintaining compliance with the terms and conditions of probation.

11 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
12 any financial interest which any partners, officers, or owners of the Respondent facility may have
13 in any other business required to be registered pursuant to Section 9884.6 of the Business and
14 Professions Code.

15 6. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
16 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

17 7. **Jurisdiction.** If an accusation is filed against Respondent during the term of
18 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
19 until the final decision on the accusation, and the period of probation shall be extended until such
20 decision.

21 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
22 Respondent has failed to comply with the terms and conditions of probation, the Department may,
23 after giving notice and opportunity to be heard, suspend or revoke the licenses.

24 9. **Continuing Education Courses.** During the period of probation, Respondent shall
25 attend and successfully complete a Bureau certified Licensed Inspector training course (68 hours)
26 within 180 days of the effective date of the decision. If proof of completion of the course is not
27 furnished to the Bureau within the 180 day period, Respondents' license shall be immediately
28 suspended until such proof is received.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs

Dated: 8/14/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General



ANTONIO LOPEZ, JR.
Deputy Attorney General
Attorneys for Complainant

LA2011501505

Exhibit A

Accusation No. 77/11-11

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
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3 GREGORY J. SALUTE
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Attorneys for Complainant
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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
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12 In the Matter of the Accusation Against:

Case No. 77/11-11

13 **PONCE'S SMOG CHECK**
14 **GUMARO PONCE, OWNER**
15 **11000 S. Figueroa Street, Unit B**
16 **Los Angeles, CA 90061**
17 **Mailing Address:**
18 **2433 Elm Avenue**
19 **Long Beach, CA 90806**
20 **Automotive Repair Dealer Reg. No. ARD 240046**
21 **Smog Check Test & Repair Station License No.**
22 **RC 240046**
23 **Lamp Station License No. LS 240046**
24 **Brake Station License No. BS 240046**

ACCUSATION

19 and

20 **GUMARO PONCE**
21 **2433 Elm Avenue**
22 **Long Beach, CA 90806**
23 **Advanced Emission Specialist Technician**
24 **License No. EA 145832**
25 **Brake Adjuster License No. BA 145832**
26 **Lamp Adjuster License No. LA 145832**

24 Respondents.

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1 Complainant alleges:

2 **PARTIES/LICENSE INFORMATION**

3 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
4 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

5 **Ponce's Smog Check; Gumaro Ponce, Owner**

6 2. In or about 2005, the Director of Consumer Affairs ("Director") issued Automotive
7 Repair Dealer Registration Number ARD 240046 ("registration") to Gumaro Ponce
8 ("Respondent"), owner of Ponce's Smog Check. Respondent's registration was in full force and
9 effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless
10 renewed.

11 3. On or about July 19, 2005, the Director issued Smog Check Test & Repair Station
12 License Number RC 240046 ("smog check station license") to Respondent. Respondent's smog
13 check station license was in full force and effect at all times relevant to the charges brought herein
14 and will expire on June 30, 2012, unless renewed.

15 4. On or about August 11, 2005, the Director issued Lamp Station License Number
16 LS 240046 to Respondent. Respondent's lamp station license was in full force and effect at all
17 times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

18 5. On or about August 11, 2005, the Director issued Brake Station License Number
19 BS 240046 to Respondent. Respondent's brake station license was in full force and effect at all
20 times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

21 **Gumaro Ponce**

22 6. In or about 2003, the Director issued Advanced Emission Specialist Technician
23 License Number EA 145832 ("technician license") to Respondent. Respondent's technician
24 license was in full force and effect at all times relevant to the charges brought herein and will
25 expire on December 31, 2012, unless renewed.

26 7. In or about 2005, the Director issued Brake Adjuster License Number BA 145832 to
27 Respondent. Respondent's brake adjuster license was in full force and effect at all times relevant
28 to the charges brought herein and will expire on December 31, 2013, unless renewed.

1 (h) Violates or attempts to violate the provisions of this chapter relating
to the particular activity for which he or she is licensed . . .

2 17. Bus. & Prof. Code section 9889.16 states:

3 Whenever a licensed adjuster in a licensed station upon an inspection or
4 after an adjustment, made in conformity with the instructions of the bureau,
5 determines that the lamps or the brakes upon any vehicle conform with the
6 requirements of the Vehicle Code, he shall, when requested by the owner or driver of
the vehicle, issue a certificate of adjustment on a form prescribed by the director,
7 which certificate shall contain the date of issuance, the make and registration number
of the vehicle, the name of the owner of the vehicle, and the official license of the
station.

8 18. Bus. & Prof. Code section 9889.9 states that "[w]hen any license has been revoked or
9 suspended following a hearing under the provisions of this article [Article 7 (commencing with
10 section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and
11 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the
12 director."

13 19. Bus. & Prof. Code section 22, subdivision (a), states:

14 "Board" as used in any provision of this Code, refers to the board in
15 which the administration of the provision is vested, and unless otherwise expressly
16 provided, shall include "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

17 20. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
18 "license" includes "registration" and "certificate."

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

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

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

25 22. Health & Saf. Code section 44072.8 states that when a license has been revoked or
26 suspended following a hearing under this article, any additional license issued under this chapter
27 in the name of the licensee may be likewise revoked or suspended by the director.

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1 COST RECOVERY

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

6 UNDERCOVER OPERATION #1: 2000 TOYOTA TACOMA PICKUP

7 24. On August 5, 2010, an undercover operator of the Bureau ("operator") took the
8 Bureau's 2000 Toyota Tacoma pickup to Respondent's facility and told Respondent that he
9 needed a brake and lamp inspection and certificates for a salvage vehicle. The rear brake drums
10 on the Bureau-documented vehicle were machined beyond the manufacturer's drum discard
11 specifications, the left headlamp was out of adjustment, and the license plate lamp bulbs were
12 defective. The operator signed and received a copy of a work order totaling \$60 for the
13 inspection. Respondent had the operator turn on the lights and turn signals as Respondent walked
14 around the vehicle. Respondent then had the operator put the vehicle in reverse and step on the
15 brakes. Respondent also opened the hood. Later, the operator noticed that Respondent was
16 carrying light bulbs and asked him if he was going to install them on the vehicle. Respondent
17 said "yes", then obtained the operator's authorization to replace the license plate bulbs on the
18 vehicle. After the work was completed, the operator paid Respondent \$60 and received copies of
19 an invoice, Certificate of Brake Adjustment No. [REDACTED] and Certificate of Lamp Adjustment
20 No. [REDACTED]. The operator never observed Respondent or anyone else at the facility test drive
21 the vehicle or remove the wheels.

22 25. On August 10, 2010, the Bureau inspected the vehicle and found that the defective
23 license plate lamp bulbs had been replaced; however, the left headlamp was still out of
24 adjustment and the rear brake drums were not within manufacturer's specifications. The Bureau
25 also found that the wheels had not been removed from the vehicle.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 26. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(1), Respondent made or authorized statements which he
5 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
6 follows:

7 a. Respondent certified under penalty of perjury on Brake Certificate No. [REDACTED]
8 that the applicable inspection was performed on the brake system on the Bureau's 2000 Toyota
9 Tacoma pickup. In fact, Respondent failed to inspect the brakes on the vehicle.

10 b. Respondent certified under penalty of perjury on Brake Certificate No. [REDACTED]
11 that the rear brake drums on the Bureau's 2000 Toyota Tacoma pickup were in a satisfactory
12 condition. In fact, the rear brake drums had been machined beyond the manufacturer's drum
13 discard diameter specifications.

14 c. Respondent certified under penalty of perjury on Brake Certificate No. [REDACTED]
15 that the Bureau's 2000 Toyota Tacoma pickup had a stopping distance of 25 feet from a speed of
16 20 miles per hour as a result of a road-test. In fact, Respondent never road tested the vehicle.

17 d. Respondent certified under penalty of perjury on Lamp Certificate No. [REDACTED]
18 that the applicable adjustment had been performed on the lighting system on the Bureau's 2000
19 Toyota Tacoma pickup. In fact, the left headlamp was out of adjustment.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 27. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
23 Code section 9884.7, subdivision (a)(4), Respondent committed acts constituting fraud, as
24 follows: Respondent obtained payment from the operator for performing the applicable
25 inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's 2000
26 Toyota Tacoma pickup as specified by the Bureau and in accordance with the Vehicle Code. In
27 fact, Respondent failed to perform the necessary inspections, adjustments, and repairs in
28 compliance with Bureau Regulations or the Vehicle Code.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Bus. & Prof. Code)**

3 30. Respondent's brake and lamp station licenses are subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent
5 violated Bus. & Prof. Code section 9889.16 relating to his licensed activities, as set forth in
6 paragraph 28 above.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Regulations)**

9 31. Respondent's brake and lamp station licenses are subject to disciplinary action
10 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
11 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
12 (a), 3316, subdivision (d)(2), 3321, subdivision (c)(2), and 3356, subdivisions (a)(2)(A) and
13 (a)(2)(B), as set forth in paragraph 29 above.

14 **SEVENTH CAUSE FOR DISCIPLINE**

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

16 32. Respondent's brake and lamp station licenses are subject to disciplinary action
17 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed acts
18 involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph 27
19 above.

20 **EIGHTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with the Bus. & Prof. Code)**

22 33. Respondent's brake and lamp adjuster licenses are subject to disciplinary action
23 pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent
24 violated Bus. & Prof. Code section 9889.16 relating to his licensed activities, as set forth in
25 paragraph 28 above.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 34. Respondent's brake and lamp adjuster licenses are subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that he failed to comply with the
5 provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316,
6 subdivision (d)(2), 3321, subdivision (c)(2), and 3356, subdivisions (a)(2)(A) and (a)(2)(B), as set
7 forth in paragraph 29 above.

8 **UNDERCOVER OPERATION #2: 2003 MERCURY SABLE**

9 35. On September 28, 2010, an undercover operator of the Bureau ("operator") took the
10 Bureau's 2003 Mercury Sable to Respondent's facility and told Respondent that he needed a
11 brake and lamp inspection and certificates for a salvage vehicle. The rear brake drums on the
12 Bureau-documented vehicle were machined beyond the manufacturer's drum discard
13 specifications, the right headlamp was out of adjustment, and the back-up lamp bulbs were
14 defective. The operator signed and received a copy of a work order totaling \$50 for the
15 inspection. Respondent had the operator place the transmission in reverse gear, switch on the
16 lights and turn signals, and step on the brakes as Respondent walked around the vehicle.
17 Respondent then opened the hood. Respondent told the operator that the back-up lights did not
18 work. The operator asked Respondent if he could repair them. Respondent offered to issue the
19 certificates without repairing the back-up lights for an additional \$20. The operator accepted the
20 offer. Later, the operator paid Respondent \$70 and received copies of an invoice, Certificate of
21 Brake Adjustment No. [REDACTED] and Certificate of Lamp Adjustment No. [REDACTED]. The
22 operator never observed Respondent or anyone else at the facility test drive the vehicle or remove
23 the wheels.

24 36. On September 29, 2010, the Bureau inspected the vehicle and found that the right
25 headlamp was still out of adjustment, the defective back-up lamp bulbs were still in place on the
26 vehicle, and the rear brake drums were not within manufacturer's specifications. The Bureau also
27 found that the wheels had not been removed from the vehicle.

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1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 37. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(1), Respondent made or authorized statements which he
5 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
6 follows:

7 a. Respondent certified under penalty of perjury on Brake Certificate No. [REDACTED]
8 that the applicable inspection was performed on the brake system on the Bureau's 2003 Mercury
9 Sable. In fact, Respondent failed to inspect the brakes on the vehicle.

10 b. Respondent certified under penalty of perjury on Brake Certificate No. [REDACTED]
11 that the rear brake drums on the Bureau's 2003 Mercury Sable were in a satisfactory condition.
12 In fact, the rear brake drums had been machined beyond the manufacturer's drum discard
13 diameter specifications.

14 c. Respondent certified under penalty of perjury on Brake Certificate No. [REDACTED]
15 that the Bureau's 2003 Mercury Sable had a stopping distance of 25 feet from a speed of 20 miles
16 per hour as a result of a road-test. In fact, Respondent never road tested the vehicle.

17 d. Respondent certified under penalty of perjury on Lamp Certificate No. [REDACTED]
18 that the applicable adjustment and repair had been performed on the lighting system on the
19 Bureau's 2003 Mercury Sable. In fact, the right headlamp was still out of adjustment and the
20 defective back-up lamp bulbs were still in place on the vehicle.

21 e. Respondent represented on the invoice that the charge for the brake and lamp
22 inspection on the Bureau's 2003 Mercury Sable was \$50 when, in fact, Respondent charged the
23 operator \$70 for the inspection.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Record the Odometer Reading)**

26 38. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
27 Code section 9884.7, subdivision (a)(2), in that Respondent caused or allowed the operator to sign
28 the work order which did not state the odometer reading of the Bureau's 2003 Mercury Sable.

1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 39. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(4), Respondent committed acts constituting fraud, as
5 follows:

6 a. Respondent obtained payment from the operator for performing the applicable
7 inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's 2003
8 Mercury Sable as specified by the Bureau and in accordance with the Vehicle Code. In fact,
9 Respondent failed to perform the necessary inspections, adjustments, and repairs in compliance
10 with Bureau Regulations or the Vehicle Code.

11 b. Respondent issued the lamp certificate for the Bureau's 2003 Mercury Sable in
12 exchange for \$20 when he knew that the back-up lamp bulbs on the vehicle were defective.

13 **THIRTEENTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with the Bus. & Prof. Code)**

15 40. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
16 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9889.16
17 of that Code in the following material respects: Respondent issued Brake Certificate No.
18 [REDACTED] and Lamp Certificate No. [REDACTED] as to the Bureau's 2003 Mercury Sable when
19 the vehicle was not in compliance with Bureau Regulations or the requirements of the Vehicle
20 Code.

21 **FOURTEENTH CAUSE FOR DISCIPLINE**

22 **(Violations of Regulations)**

23 41. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
24 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of
25 California Code of Regulations, title 16, in the following material respects:

26 a. **Section 3305, subdivision (a):** Respondent failed to perform the inspection of the
27 brake system and inspection, adjustment, and repair of the lighting system on the Bureau's 2003

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1 Mercury Sable in accordance with the specifications, instructions, and directives issued by the
2 Bureau and the vehicle manufacturer.

3 b. Section 3316, subdivision (d)(2): Respondent issued Lamp Certificate No.
4 [REDACTED] as to the Bureau's 2003 Mercury Sable when all of the lamps, lighting equipment,
5 and/or related electrical systems on the vehicle were not in compliance with Bureau regulations.

6 c. Section 3321, subdivision (c)(2): Respondent issued Brake Certificate No.
7 [REDACTED] as to the Bureau's 2003 Mercury Sable when the brake system on the vehicle had not
8 been completely tested or inspected.

9 **FIFTEENTH CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with the Bus. & Prof. Code)**

11 42. Respondent's brake and lamp station licenses are subject to disciplinary action
12 pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent
13 violated Bus. & Prof. Code section 9889.16 relating to his licensed activities, as set forth in
14 paragraph 40 above.

15 **SIXTEENTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations)**

17 43. Respondent's brake and lamp station licenses are subject to disciplinary action
18 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
19 comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision
20 (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 41 above.

21 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

23 44. Respondent's brake and lamp station licenses are subject to disciplinary action
24 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed acts
25 involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph 39
26 above.

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Bus. & Prof. Code)**

3 45. Respondent's brake and lamp adjuster licenses are subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent
5 violated Bus. & Prof. Code section 9889.16 relating to his licensed activities, as set forth in
6 paragraph 40 above.

7 **NINETEENTH CAUSE FOR DISCIPLINE**

8 **(Violations of Regulations)**

9 46. Respondent's brake and lamp adjuster licenses are subject to disciplinary action
10 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that he failed to comply with the
11 provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316,
12 subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 41 above.

13 **UNDERCOVER OPERATION #3: 1997 TOYOTA CAMRY**

14 47. On October 13, 2010, an undercover operator of the Bureau ("operator") took the
15 Bureau's 1997 Toyota Camry to Respondent's facility and told Respondent that he needed a
16 brake and lamp inspection and certificates for a salvage vehicle. The rear brake drums on the
17 Bureau-documented vehicle were machined beyond the manufacturer's drum discard
18 specifications, the left headlamp was out of adjustment, and the left rear side lamp was not
19 functioning. The operator signed and received a copy of a work order totaling \$50 for the
20 inspection. Respondent had the operator place the transmission in reverse gear, switch on the
21 lights and turn signals, and step on the brakes as Respondent walked around the vehicle.
22 Respondent then opened the hood and looked at the front brakes using a flashlight. Later, the
23 operator paid Respondent \$50 and received copies of an invoice, Certificate of Brake Adjustment
24 No. [REDACTED] and Certificate of Lamp Adjustment No. [REDACTED]. The operator never
25 observed Respondent or anyone else at the facility test drive the vehicle or remove the wheels.

26 48. Later that same day, the Bureau inspected the vehicle and found that the left
27 headlamp was still out of adjustment, the left rear side lamp still was not functioning, and the rear

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1 brake drums were not within manufacturer's specifications. The Bureau also found that the
2 wheels had not been removed from the vehicle.

3 **TWENTIETH CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 49. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
6 Code section 9884.7, subdivision (a)(1), Respondent made or authorized statements which he
7 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
8 follows:

9 a. Respondent certified under penalty of perjury on Brake Certificate No. [REDACTED]
10 that the applicable inspection was performed on the brake system on the Bureau's 1997 Toyota
11 Camry. In fact, Respondent failed to inspect the brakes on the vehicle.

12 b. Respondent certified under penalty of perjury on Brake Certificate No. [REDACTED]
13 that the rear brake drums on the Bureau's 1997 Toyota Camry were in a satisfactory condition. In
14 fact, the rear brake drums had been machined beyond the manufacturer's drum discard diameter
15 specifications.

16 c. Respondent certified under penalty of perjury on Brake Certificate No. [REDACTED]
17 that the Bureau's 1997 Toyota Camry had a stopping distance of 25 feet from a speed of 20 miles
18 per hour as a result of a road-test. In fact, Respondent never road tested the vehicle.

19 d. Respondent certified under penalty of perjury on Lamp Certificate No. [REDACTED]
20 that the applicable adjustment and repair had been performed on the lighting system on the
21 Bureau's 1997 Toyota Camry. In fact, the left headlamp was still out of adjustment and the left
22 rear side lamp still was not functioning.

23 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

24 **(Fraud)**

25 50. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
26 Code section 9884.7, subdivision (a)(4), Respondent committed acts constituting fraud, as
27 follows: Respondent obtained payment from the operator for performing the applicable
28 inspections, adjustments, or repairs of the brake and lighting systems on the Bureau's 1997

1 Toyota Camry as specified by the Bureau and in accordance with the Vehicle Code. In fact,
2 Respondent failed to perform the necessary inspections, adjustments, and repairs in compliance
3 with Bureau Regulations or the Vehicle Code.

4 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with the Bus. & Prof. Code)**

6 51. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
7 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9889.16
8 of that Code in the following material respects: Respondent issued Brake Certificate No.
9 [REDACTED] and Lamp Certificate No. [REDACTED] as to the Bureau's 1997 Toyota Camry when
10 the vehicle was not in compliance with Bureau Regulations or the requirements of the Vehicle
11 Code.

12 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

13 **(Violations of Regulations)**

14 52. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
15 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of
16 California Code of Regulations, title 16, in the following material respects:

17 a. **Section 3305, subdivision (a):** Respondent failed to perform the inspection of the
18 brake system and inspection, adjustment, and repair of the lighting system on the Bureau's 1997
19 Toyota Camry in accordance with the specifications, instructions, and directives issued by the
20 Bureau and the vehicle manufacturer.

21 b. **Section 3316, subdivision (d)(2):** Respondent issued Lamp Certificate No.
22 [REDACTED] as to the Bureau's 1997 Toyota Camry when all of the lamps, lighting equipment,
23 and/or related electrical systems on the vehicle were not in compliance with Bureau regulations.

24 c. **Section 3321, subdivision (c)(2):** Respondent issued Brake Certificate No.
25 [REDACTED] as to the Bureau's 1997 Toyota Camry when the brake system on the vehicle had not
26 been completely tested or inspected.

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TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Bus. & Prof. Code)

53. Respondent's brake and lamp station licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent violated Bus. & Prof. Code section 9889.16 relating to his licensed activities, as set forth in paragraph 51 above.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

54. Respondent's brake and lamp station licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 52 above.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

55. Respondent's brake and lamp station licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph 50 above.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Bus. & Prof. Code)

56. Respondent's brake and lamp adjuster licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivisions (a) and (h), in that Respondent violated Bus. & Prof. Code section 9889.16 relating to his licensed activities, as set forth in paragraph 51 above.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

57. Respondent's brake and lamp adjuster licenses are subject to disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that he failed to comply with the

1 provisions of California Code of Regulations, title 16, sections 3305, subdivision (a), 3316,
2 subdivision (d)(2), and 3321, subdivision (c)(2), as set forth in paragraph 51 above.

3 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

5 58. Respondent's smog check station and technician licenses are subject to disciplinary
6 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent
7 committed dishonest, fraudulent, or deceitful acts whereby another is injured, as set forth in
8 paragraphs 27, 39, and 50 above.

9 **MATTERS IN AGGRAVATION**

10 59. To determine the degree of discipline, if any, to be imposed on Respondent,
11 Complainant alleges as follows:

12 a. On or about June 12, 2007, the Bureau issued Citation No. C07-1011 against
13 Respondent, in his capacity as owner of Ponce's Smog Check, for violations of Health & Saf.
14 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
15 control devices according to procedures prescribed by the department), and California Code of
16 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
17 compliance to a vehicle that was improperly tested). Respondent had issued a certificate of
18 compliance to a Bureau undercover vehicle with a missing charcoal canister. The Bureau
19 assessed civil penalties totaling \$500 against Respondent for the violations. Respondent
20 complied with the citation; i.e., paid the fine, on August 23, 2007.

21 b. On or about January 7, 2008, the Bureau issued Citation No. C08-0597 against
22 Respondent, in his capacity as owner of Ponce's Smog Check, for violations of Health & Saf.
23 Code section 44012, subdivision (f) (failure to determine that emission control devices and
24 systems required by State and Federal law are installed and functioning correctly in accordance
25 with test procedures), and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
26 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
27 Bureau undercover vehicle with the ignition timing adjusted beyond specifications. The Bureau

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1 assessed civil penalties totaling \$1,000 against Respondent for the violations. Respondent
2 complied with the citation; i.e., paid the fine, on February 21, 2008.

3 c. On or about June 12, 2007, the Bureau issued Citation No. M07-1012 against
4 Respondent, in his capacity as smog check technician for Ponce's Smog Check, for violations of
5 Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control
6 systems and devices in accordance with Health & Saf. Code section 44012); and Regulation
7 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance
8 with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). Respondent had
9 issued a certificate of compliance to a Bureau undercover vehicle with a missing charcoal
10 canister. Respondent was directed to complete an 8 hour training course and to submit proof of
11 completion to the Bureau within 30 days from receipt of the citation. Respondent complied with
12 the citation and completed the required training on August 23, 2007.

13 d. On or about January 7, 2008, the Bureau issued Citation No. M08-0598 against
14 Respondent, in his capacity as smog check technician for Ponce's Smog Check, for violations of
15 Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control
16 systems and devices in accordance with Health & Saf. Code section 44012); and Regulation
17 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance
18 with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). Respondent had
19 issued a certificate of compliance to a Bureau undercover vehicle with the ignition timing
20 adjusted beyond specifications. Respondent was directed to complete a 16 hour training course
21 and to submit proof of completion to the Bureau within 30 days from receipt of the citation.
22 Respondent complied with the citation and completed the required training on February 14, 2008.

23 **OTHER MATTERS**

24 60. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
25 suspend, revoke or place on probation the registration for all places of business operated in this
26 state by Respondent Gumaro Ponce, owner of Ponce's Smog Check, upon a finding that
27 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
28 regulations pertaining to an automotive repair dealer.

1 61. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test & Repair
2 Station License Number RC 240046, issued to Respondent Gumaro Ponce, owner of Ponce's
3 Smog Check, is revoked or suspended, any additional license issued under Chapter 5 of the
4 Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the
5 Director.

6 62. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Station License Number
7 LS 240046, issued to Respondent Gumaro Ponce, owner of Ponce's Smog Check, is revoked or
8 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. &
9 Prof. Code in the name of said licensee may be likewise revoked or suspended by the Director.

10 63. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Station License Number
11 BS 240046, issued to Respondent Gumaro Ponce, owner of Ponce's Smog Check, is revoked or
12 suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Bus. &
13 Prof. Code in the name of said licensee may be likewise revoked or suspended by the Director.

14 64. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
15 Technician License Number EA 145832, issued to Respondent Gumaro Ponce, is revoked or
16 suspended, any additional license issued under Chapter 5 of the Health & Saf. Code in the name
17 of said licensee may be likewise revoked or suspended by the Director.

18 65. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Adjuster License Number
19 BA 145832, issued to Respondent Gumaro Ponce, is revoked or suspended, any additional license
20 issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said
21 licensee may be likewise revoked or suspended by the Director.

22 66. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Adjuster License Number
23 LA 145832, issued to Respondent Gumaro Ponce, is revoked or suspended, any additional license
24 issued under Articles 5 and 6 of Chapter 20.3 of the Bus. & Prof. Code in the name of said
25 licensee may be likewise revoked or suspended by the Director.

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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 Number ARD 240046, issued to Gumaro Ponce, owner of Ponce's Smog Check;
2. Revoking or suspending any other automotive repair dealer registration issued to Gumaro Ponce;
3. Revoking or suspending Smog Check Test & Repair Station License Number RC 240046, issued to Gumaro Ponce, owner of Ponce's Smog Check;
4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 145832, issued to Gumaro Ponce;
5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Gumaro Ponce;
6. Revoking or suspending Lamp Station License Number LS 240046, issued to Gumaro Ponce, owner of Ponce's Smog Check;
7. Revoking or suspending Brake Station License Number BS 240046, issued to Gumaro Ponce, owner of Ponce's Smog Check;
8. Revoking or suspending Brake Adjuster License Number BA 145832, issued to Gumaro Ponce;
9. Revoking or suspending Lamp Adjuster License Number LA 145832, issued to Gumaro Ponce;
10. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Gumaro Ponce;
11. Ordering Gumaro Ponce, individually, and as owner of Ponce's Smog Check, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

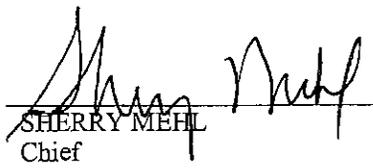
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12. Taking such other and further action as deemed necessary and proper.

DATED: 9/9/11



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

LA2011501505