

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
4 State Bar No. 117576
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

12 **REDLINE SMOG AND OIL CHANGE**
13 **JESUS MARCOS PONCE, OWNER**
14 **620 E. Elm Avenue**
Coalinga, CA 93210

15 **Automotive Repair Dealer Reg. No. ARD 264338**
16 **Smog Check, Test Only, Station License No.**
TC 264338,

17 **JESUS MARCOS PONCE**
18 **280 Buckeye Springs**
Coalinga, CA 93210

19 **Smog Check Inspector License No. EO 152765**
20 **Smog Check Repair Technician License No.**
21 **EI 152765 (formerly Advanced Emission**
Specialist Technician License No. EA 152765),

22 **and**

23 **GARY LEE POPEJOY**
24 **P.O. Box 1231**
Coalinga, CA 93210-2100

25 **Smog Check Inspector License No. EO 17896**
26 **Smog Check Repair Technician License No.**
EI 17896 (formerly Advanced Emission Specialist
Technician License No. EA 17896)

27 Respondents.
28

Case No. **79/14-114**

A C C U S A T I O N

(SMOG CHECK)

1 Complainant alleges:

2 **PARTIES**

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

5 **Redline Smog and Oil Change, Jesus Marcos Ponce, Owner**

6 2. On or about March 11, 2011, the Director of Consumer Affairs ("Director") issued
7 Automotive Repair Dealer Registration Number ARD 264338 ("registration") to Jesus Marcos
8 Ponce ("Respondent Ponce"), owner of Redline Smog and Oil Change. The registration was in
9 full force and effect at all times relevant to the charges brought herein and will expire on March
10 31, 2015, unless renewed.

11 3. On or about March 22, 2011, the Director issued Smog Check, Test Only, Station
12 License Number TC 264338 ("smog check station license") to Respondent. The smog check
13 station license was in full force and effect at all times relevant to the charges brought herein and
14 will expire on March 31, 2015, unless renewed.

15 **Jesus Marcos Ponce**

16 4. In or about 2006, the Director issued Advanced Emission Specialist Technician
17 License Number EA 152765 to Respondent Ponce. Respondent's advanced emission specialist
18 technician license was due to expire on August 31, 2012. Pursuant to California Code of
19 Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to
20 Respondent's election, as Smog Check Inspector License Number EO 152765 and Smog Check
21 Repair Technician License Number EI 152765 ("technician licenses"), effective August 10,
22 2012.¹ The technician licenses will expire on August 31, 2014.

23 **Gary Lee Popejoy**

24 5. In or about 2002, the Director issued Advanced Emission Specialist Technician
25 License Number EA 17896 to Gary Lee Popejoy ("Respondent Popejoy"). Respondent's

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 advanced emission specialist technician license was due to expire on January 31, 2013. Pursuant
2 to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
3 renewed, pursuant to Respondent's election, as Smog Check Inspector License Number EO 17896
4 and Smog Check Repair Technician License Number EI 17896 ("technician licenses"), effective
5 December 19, 2012. The technician licenses will expire on January 31, 2015.

6 **JURISDICTION**

7 6. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
8 the Director may revoke an automotive repair dealer registration.

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

13 8. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
14 part, that the Director has all the powers and authority granted under the Automotive Repair Act
15 for enforcing the Motor Vehicle Inspection Program.

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

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

23 11. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
24 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
25 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
26 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

27 ///

28 ///

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

2 16. Health & Saf. Code section 44072.10 states, in pertinent part:

3

4 (c) The department shall revoke the license of any smog check technician
5 or station licensee who fraudulently certifies vehicles or participates in the fraudulent
6 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
the following:

7 (1) Clean piping, as defined by the department . . .

8 17. California Code of Regulations, title 16, section 3340, states, in pertinent part, that
9 "[c]lean piping' for the purposes of Health and Safety Code section 44072.10(c)(1), means the
10 use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order
11 to cause the EIS to issue a certificate of compliance for the test vehicle".

12 **COST RECOVERY**

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

17 **VIDEO SURVEILLANCE OPERATION OF JANUARY 16, 2014**

18 19. On January 16, 2014, at approximately 0630 hours, Bureau Representative E. L.
19 commenced a video surveillance operation of Respondent Ponce's ("Ponce") smog check facility.
20 At approximately 0830 hours, Bureau Representative J. G. visited the facility and spoke to
21 Respondent Popejoy ("Popejoy"). J. G. observed that there were no vehicles parked inside the
22 facility. The surveillance operation was concluded at approximately 1719 hours. Later, E. L.
23 reviewed the surveillance video and information obtained from the Bureau's vehicle information
24 database ("VID"). The VID data showed that between 1340 and 1402 hours, Popejoy performed
25 a smog inspection on a 1978 GMC K3500 pickup, License No. 4T09445 ("1978 GMC"), on
26 behalf of Ponce, resulting in the issuance of electronic smog Certificate of Compliance No.
27 YB847909C. In fact, the surveillance video revealed that the EIS (Emissions Inspection System)
28 exhaust sample probe was inserted into the tailpipe of a 1992 Chevrolet C2500 pickup, License

1 No. 4N01823, at the time the inspection was conducted, that the 1978 GMC was not in the
2 vicinity of the testing area during the inspection, and that Ponce was present at the facility during
3 the time the 1978 GMC was smog certified. The Bureau concluded that Popejoy performed the
4 smog inspection on the 1978 GMC using clean piping methods, resulting in the issuance of a
5 fraudulent certificate of compliance for the vehicle.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Untrue or Misleading Statements)**

8 20. Respondent Ponce's registration is subject to disciplinary action pursuant to Bus. &
9 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement
10 which he knew or in the exercise of reasonable care should have known to be untrue or
11 misleading, as follows: Respondent Ponce's smog check technician, Respondent Popejoy,
12 certified that the 1978 GMC had passed inspection and was in compliance with applicable laws
13 and regulations. In fact, Popejoy used clean piping methods in order to issue a certificate for the
14 vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 21. Respondent Ponce's registration is subject to disciplinary action pursuant to Bus. &
18 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
19 constitutes fraud by issuing an electronic smog certificate of compliance for the 1978 GMC
20 without ensuring that a bona fide inspection was performed of the emission control devices and
21 systems on the vehicle, thereby depriving the People of the State of California of the protection
22 afforded by the Motor Vehicle Inspection Program.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

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

3 22. Respondent Ponce's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
5 comply with provisions of that Code, as follows:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on the 1978 GMC in accordance with procedures prescribed by the department.

8 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
9 the 1978 GMC without ensuring that the vehicle was properly tested and inspected to determine if
10 it was in compliance with Health & Saf. Code section 44012.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant**
13 **to the Motor Vehicle Inspection Program)**

14 23. Respondent Ponce's smog check station license is subject to disciplinary action
15 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
16 comply with provisions of California Code of Regulations, title 16, as follows:

17 a. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
18 of compliance for the 1978 GMC even though the vehicle had not been inspected in accordance
19 with section 3340.42.

20 b. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
21 conducted on the 1978 GMC in accordance with the Bureau's specifications.

22 **FIFTH CAUSE FOR DISCIPLINE**

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

24 24. Respondent Ponce's smog check station license is subject to disciplinary action
25 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
26 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
27 certificate of compliance for the 1978 GMC without ensuring that a bona fide inspection was
28 performed of the emission control devices and systems on the vehicle, thereby depriving the

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 25. Respondent Popejoy's technician licenses are subject to disciplinary action pursuant
6 to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
7 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the
8 emission control tests on the 1978 GMC in accordance with procedures prescribed by the
9 department.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant**
12 **to the Motor Vehicle Inspection Program)**

13 26. Respondent Popejoy's technician licenses are subject to disciplinary action pursuant
14 to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
15 provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 1978
17 GMC in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of
18 Regulations, title 16, section 3340.42.

19 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
20 by entering vehicle identification information or emission control system identification data for a
21 vehicle other than the one being tested.

22 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1978
23 GMC in accordance with the Bureau's specifications.

24 **EIGHTH CAUSE FOR DISCIPLINE**

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

26 27. Respondent Popejoy's technician licenses are subject to disciplinary action pursuant
27 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
28 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog

1 certificate of compliance for the 1978 GMC without performing a bona fide inspection of the
2 emission control devices and systems on the vehicle, thereby depriving the People of the State of
3 California of the protection afforded by the Motor Vehicle Inspection Program.

4 **VIDEO SURVEILLANCE OPERATION OF JANUARY 21, 2014**

5 28. On January 21, 2014, at approximately 0635 hours, E. L. commenced a video
6 surveillance operation of Ponce's smog check facility. At approximately 1645 hours, E. L. and
7 J. G. observed Ponce and Popejoy both present at the facility. The surveillance operation was
8 concluded at approximately 1725 hours. Later, E. L. reviewed the surveillance video and
9 information obtained from the Bureau's VID. The VID data showed that between 1441 and 1514
10 hours, Popejoy performed a smog inspection on a 1979 Pontiac Firebird ("1979 Pontiac"),
11 License No. 4ALC693, on behalf of Ponce, resulting in the issuance of electronic smog
12 Certificate of Compliance No. YB847945C. In fact, the surveillance video revealed that the EIS
13 exhaust sample probe was inserted into the tailpipe of a 1975 Jeep CJ5, License No. 5FHC486,
14 during the time the inspection was conducted, that a Chevrolet truck was also driven into the east
15 service bay during the time the 1979 Pontiac was certified, and that the 1979 Pontiac was not in
16 the vicinity of the testing area during the inspection. The Bureau concluded that Popejoy
17 performed the smog inspection on the 1979 Pontiac using clean piping methods, resulting in the
18 issuance of a fraudulent certificate of compliance for the vehicle.

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 29. Respondent Ponce's registration is subject to disciplinary action pursuant to Bus. &
22 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement
23 which he knew or in the exercise of reasonable care should have known to be untrue or
24 misleading, as follows: Respondent Ponce's smog check technician, Respondent Popejoy,
25 certified that the 1979 Pontiac had passed inspection and was in compliance with applicable laws
26 and regulations. In fact, Popejoy used clean piping methods in order to issue a certificate for the
27 vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

28 ///

1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 30. Respondent Ponce's registration is subject to disciplinary action pursuant to Bus. &
4 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
5 constitutes fraud by issuing an electronic smog certificate of compliance for the 1979 Pontiac
6 without ensuring that a bona fide inspection was performed of the emission control devices and
7 systems on the vehicle, thereby depriving the People of the State of California of the protection
8 afforded by the Motor Vehicle Inspection Program.

9 **ELEVENTH CAUSE FOR DISCIPLINE**

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

11 31. Respondent Ponce's smog check station license is subject to disciplinary action
12 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
13 comply with provisions of that Code, as follows:

14 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
15 performed on the 1979 Pontiac in accordance with procedures prescribed by the department.

16 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
17 the 1979 Pontiac without ensuring that the vehicle was properly tested and inspected to determine
18 if it was in compliance with Health & Saf. Code section 44012.

19 **TWELFTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations Pursuant**
21 **to the Motor Vehicle Inspection Program)**

22 32. Respondent Ponce's smog check station license is subject to disciplinary action
23 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
24 comply with provisions of California Code of Regulations, title 16, as follows:

25 a. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
26 of compliance for the 1979 Pontiac even though the vehicle had not been inspected in accordance
27 with section 3340.42.

28 ///

1 2012, Respondent issued a certificate of compliance to a Bureau undercover vehicle with a
2 missing positive crankcase ventilation valve and vacuum hose. Further, the vehicle's crankcase
3 vent breather hose was missing and the crankcase was open to the atmosphere. The Bureau
4 assessed a civil penalty of \$1,500 against Respondent for the violation. Respondent paid the fine
5 on July 20, 2012.

6 c. On or about October 4, 2010, the Bureau issued Citation No. M2011-0373 against
7 Respondent's technician license for violations of Health & Saf. Code section 44032 (qualified
8 technicians shall perform tests of emission control systems and devices in accordance with Health
9 & Saf. Code section 44012); and California Code of Regulations, title 16, section 3340.30,
10 subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with
11 Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). On or about August 24,
12 2010, Respondent issued a certificate of compliance to a Bureau undercover vehicle with the
13 ignition timing adjusted beyond specifications. Respondent was directed to complete an 8 hour
14 training course and to submit proof of completion to the Bureau within 30 days from receipt of
15 the citation. Respondent completed the training on November 19, 2010.

16 d. On or about October 3, 2011, the Bureau issued Citation No. M2012-0245 against
17 Respondent's technician license for violation of Health & Saf. Code section 44032 (qualified
18 technicians shall perform tests of emission control systems and devices in accordance with Health
19 & Saf. Code section 44012). On or about August 18, 2011, Respondent issued a certificate of
20 compliance to a Bureau undercover vehicle with a missing EGR valve, and failed to perform a
21 required timing functional test. Respondent was directed to complete a 16 hour training course
22 and to submit proof of completion to the Bureau within 30 days from receipt of the citation.
23 Respondent completed the training on December 11, 2011.

24 e. On or about June 27, 2012, the Bureau issued Citation No. M2012-1863 against
25 Respondent's technician license for violation of Health & Saf. Code section 44032 (qualified
26 technicians shall perform tests of emission control systems and devices in accordance with Health
27 & Saf. Code section 44012). On or about May 17, 2012, Respondent issued a certificate of
28 compliance to a Bureau undercover vehicle with a missing positive crankcase ventilation valve

1 and vacuum hose. Further, the vehicle's crankcase vent breather hose was missing and the
2 crankcase was open to the atmosphere. Respondent was directed to complete the Basic Clean Air
3 Car Course and to submit proof of completion to the Bureau within 30 days from receipt of the
4 citation. Respondent completed the training on November 26, 2012.

5 **OTHER MATTERS**

6 38. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
7 suspend, revoke, or place on probation the registration for all places of business operated in this
8 state by Respondent Jesus Marcos Ponce, owner of Redline Smog and Oil Change, upon a finding
9 that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
10 regulations pertaining to an automotive repair dealer.

11 39. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
12 License Number TC 264338, issued to Respondent Jesus Marcos Ponce, owner of Redline Smog
13 and Oil Change, is revoked or suspended, any additional license issued under this chapter in the
14 name of said licensee, including, but not limited to, Smog Check Inspector License Number EO
15 152765 and Smog Check Repair Technician License Number EI 152765, may be likewise
16 revoked or suspended by the Director.

17 40. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
18 Number EO 17896 and Smog Check Repair Technician License Number EI 17896, issued to
19 Respondent Gary Lee Popejoy, are revoked or suspended, any additional license issued under this
20 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

21 **PRAYER**

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

24 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
25 264338, issued to Jesus Marcos Ponce, owner of Redline Smog and Oil Change;

26 2. Revoking or suspending any other automotive repair dealer registration issued to
27 Jesus Marcos Ponce;

28 ///

1 3. Revoking or suspending Smog Check, Test Only, Station License Number
2 TC 264338, issued to Jesus Marcos Ponce, owner of Redline Smog and Oil Change;

3 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
4 and Safety Code in the name of Jesus Marcos Ponce, including, but not limited to, Smog Check
5 Inspector License Number EO 152765 and Smog Check Repair Technician License Number EI
6 152765;

7 5. Revoking or suspending Smog Check Inspector License Number EO 17896 and
8 Smog Check Repair Technician License Number EI 17896, issued to Gary Lee Popejoy;

9 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
10 and Safety Code in the name of Gary Lee Popejoy;

11 7. Ordering Jesus Marcos Ponce, owner of Redline Smog and Oil Change, and Gary Lee
12 Popejoy to pay the Director of Consumer Affairs the reasonable costs of the investigation and
13 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

15
16 DATED: April 11, 2014



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

17
18
19
20
21
22
23
24
25
26
27
28

SA2014115103