

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 BRIAN S. TURNER
Deputy Attorney General
4 State Bar No. 108991
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0603
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 and Petition to
12 Revoke Probation Against:

13 **P & S 76**
PIOTR JOSEF BARAN, OWNER
14 **1912 Nevada City Highway**
Grass Valley, CA 95945
15 **Mailing Address:**
3634 Farm Hill Boulevard
16 **Redwood City, CA 94061**

17 **Automotive Repair Dealer Reg. No. ARD 242996**
Smog Check Station License No. RC 242996

18 **and**

19 **ROBERT PAUL EACOBACCI**
20 **515 Nimrod Street, Apt-D**
21 **Nevada City, CA 95959**

22 **Smog Check Inspector License No. EO 001259**
Smog Check Repair Technician License No. EI
23 **001259 (formerly Basic Emission Specialist**
Technician License No. EB 001259)

24 Respondents.

Case No. **79/15-96**

ACCUSATION AND PETITION TO
REVOKE PROBATION

(Smog Check)

25
26 ///

27 ///

28 ///

1 Complainant alleges:

2 **PARTIES**

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

6 **P & S 76; Piotr Josef Baran, Owner**

7 2. On or about January 30, 2006, the Director of Consumer Affairs ("Director") issued
8 Automotive Repair Dealer Registration Number ARD 242996 ("registration") to Piotr Josef
9 Baran ("Respondent Baran"), owner of P & S 76. The registration was in effect at all times
10 relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.

11 3. On or about March 3, 2006, the Director issued Smog Check Station License Number
12 RC 242996 to Respondent Baran. The smog check station license was in effect at all times
13 relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.

14 **Robert Paul Eacobacci**

15 4. In or about 1998, the Director issued Basic Emission Specialist Technician License
16 Number EB 001259 to Robert Paul Eacobacci ("Respondent Eacobacci"). Respondent's basic
17 emission specialist technician license was due to expire on December 31, 2012. Pursuant to
18 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
19 renewed, pursuant to Respondent's election, as Smog Check Inspector License Number EO
20 001259 and Smog Check Repair Technician License Number EI 001259 ("smog technician
21 licenses"), effective December 31, 2012.¹ Respondent's smog technician licenses will expire on
22 December 31, 2016, unless renewed.

23 ///

24 ///

25 ///

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 **DISCIPLINARY HISTORY**

2 5. In a disciplinary matter captioned "In the Matter of the Accusation Against Piotr Josef
3 Baran; P & S 76", Case No. 79/12-168, the Director issued a Decision and Order effective June
4 10, 2013, that revoked Respondent Baran's registration and smog check station license and
5 Respondent Eacobacci's smog check inspector and smog check repair licenses. The revocations
6 were stayed in exchange for which Respondent Baran's registration and smog check station
7 license and Respondent Eacobacci's smog check and repair licenses were suspended for fifteen
8 (15) consecutive days followed by probation for three (3) years with certain terms and conditions
9 effective June 10, 2013. A true and correct copy of the Order and Stipulated Settlement and
10 Disciplinary Order for Respondent Baran is attached as Exhibit 1 and by this reference is
11 incorporated herein. The Stipulated Settlement and Disciplinary Order for Respondent Eccobacci
12 is attached as Exhibit 2 and by this reference is incorporated herein.

13 **JURISDICTION**

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

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

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

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

27 ///

28 ///

10. Health & Saf. 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.

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

STATUTORY PROVISIONS

12. Bus. & Prof. 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 deny, suspend, revoke, or place on probation 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.

• • • •

(4) Any other conduct that constitutes fraud.

• • • •

(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.

13. Bus. & Prof. Code section 477 provides, in pertinent part, that “Board” includes “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

14. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

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

The director may suspend, revoke, or take other disciplinary action

1 against a license as provided in this article if the licensee, or any partner, officer, or
2 director thereof, does any of the following:

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

6

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

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

11 COST RECOVERY

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

16 ACCUSATION

17 UNDERCOVER OPERATION: 1997 HONDA

18 17. On August 20, 2014, an undercover operator of the Bureau ("operator") was assigned
19 to take a Bureau documented 1997 Honda to Respondent Baran's smog check station for a smog
20 inspection. The Bureau documented the Honda prior to the undercover run with a defective fuel
21 evaporative emission (EVAP) canister, the evaporative canister inlet hose was removed, and the
22 pipe from the vehicle's fuel tank was capped. In this condition, the Honda could not pass a smog
23 check inspection. At Respondent Baran's station, the operator requested a smog inspection and
24 then was provided with a signed copy of the written estimate for the inspection. Smog check
25 technician Eccobacci performed the smog check and certified the vehicle as passing the test. The
26 operator paid \$57.75 and received copies of the invoice and vehicle inspection report ("VIR").
27 The VIR states Respondent Baran's smog check technician, Respondent Eacobacci, performed
28 the smog inspection and that the Honda had passed the smog check. The electronic smog
Certificate of Compliance No. [REDACTED] was issued by Respondents for the Honda.

18 18. The Honda was returned to Complainant's premises where it was maintained in a
28 secure location. On September 24 and 25, 2014, the Bureau conducted a post-run inspection of

1 the Honda and a smog check test. The inspection revealed all of the induced documented defects
2 identified in paragraph 17 were still present and the vehicle should not have passed a smog check
3 inspection.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 19. Paragraphs 17 and 18 are incorporated herein as though set forth at length.
7 Respondent Baran's registration is subject to disciplinary action pursuant to Bus. & Prof. Code
8 section 9884.7(a)(1), in that Respondent made or authorized a statement known or in the exercise
9 of reasonable care should have been known to be untrue or misleading. Respondent Baran's
10 smog check technician, Respondent Eacobacci, certified under penalty of perjury on the VIR that
11 the Bureau's 1997 Honda passed the smog inspection and was in compliance with applicable
12 California laws and regulations. The true facts were that the EVAP system components were
13 defective and/or missing. In the documented condition at the time of Respondents' inspection,
14 the Honda could not have passed the inspection required by Health & Saf. Code section 44012.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 20. Paragraphs 17 and 18 are incorporated herein as though set forth at length.
18 Respondent Baran's registration is subject to disciplinary action pursuant to Bus. & Prof. Code
19 section 9884.7(a)(4), in that Respondent committed an act that constitutes fraud by issuing an
20 electronic smog certificate of compliance for the Bureau's 1997 Honda without ensuring that a
21 bona fide inspection was performed of the emission control devices and systems on the vehicle,
22 thereby depriving the People of the State of California of the protection afforded by the Motor
23 Vehicle Inspection Program.

24 **THIRD CAUSE FOR DISCIPLINE**

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

26 21. Paragraphs 17 and 18 are incorporated herein as though set forth at length.
27 Respondent Baran's smog check station license is subject to disciplinary action pursuant to

28 ///

1 Health & Saf. Code section 44072.2(a), in that Respondent failed to comply with the following
2 sections of that Code:

3 a. **Section 44012, subdivision (f)**: Respondent failed to ensure that the visual
4 inspection of the emission control components on the Bureau's 1997 Honda, including the EVAP
5 system components, was performed in accordance with procedures prescribed by the department.

6 b. **Section 44015**: Respondent issued an electronic smog certificate of compliance for
7 the Bureau's 1997 Honda without ensuring that the vehicle was properly tested and inspected to
8 determine if it was in compliance with Health & Saf. Code section 44012.

9 **FOURTH CAUSE FOR DISCIPLINE**

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

12 22. Respondent Baran's smog check station license is subject to disciplinary action
13 pursuant to Health & Safety. Code section 44072.2(c), in that Respondent failed to comply with
14 provisions of California Code of Regulations, title 16, as follows:

15 a. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate
16 of compliance for the Bureau's 1997 Honda even though the vehicle had not been inspected in
17 accordance with section 3340.42.

18 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were
19 conducted on the Bureau's 1997 Honda in accordance with the Bureau's specifications.

20 **FIFTH CAUSE FOR DISCIPLINE**

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

22 23. Paragraphs 17 and 18 are incorporated herein as though set forth at length.
23 Respondent Baran's smog check station license is subject to disciplinary action pursuant to
24 Health & Safety Code section 44072.2(d), in that Respondent committed a dishonest, fraudulent,
25 or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
26 for the Bureau's 1997 Honda without ensuring that a bona fide inspection was performed of the
27 emission control devices and systems on the vehicle, thereby depriving the People of the State of
28 California of the protection afforded by the Motor Vehicle Inspection Program.

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 24. Paragraphs 17 and 18 are incorporated herein as though set forth at length.
4 Respondent Eacobacci's smog check and repair licenses are subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2(a), in that Respondent failed to comply with
6 section 44012(f), of that Code, as follows: Respondent failed to properly perform the visual
7 inspection of the emission control components on the Bureau's 1997 Honda, including the EVAP
8 system components, in accordance with procedures prescribed by the department.

9 **SEVENTH CAUSE FOR DISCIPLINE**

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

12 25. Paragraphs 17 and 18 are incorporated herein as though set forth at length.
13 Respondent Eacobacci's smog check and repair licenses are subject to disciplinary action
14 pursuant to Health & Saf. Code section 44072.2(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 Bureau's
17 1997 Honda in accordance with Health & Saf. Code sections 44012 and 44035, and California
18 Code of Regulations, title 16, section 3340.42.
19 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
20 Bureau's 1997 Honda in accordance with the Bureau's specifications.

21 **EIGHTH CAUSE FOR DISCIPLINE**

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

23 26. Paragraphs 17 and 18 are incorporated herein as though set forth at length.
24 Respondent Eacobacci's smog check and repair licenses are subject to disciplinary action
25 pursuant to Health & Saf. Code section 44072.2(d), in that Respondent committed a dishonest,
26 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
27 compliance for the Bureau's 1997 Honda without performing a bona fide inspection of the

28 ///

1 emission control devices and systems on the vehicle, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **PETITION TO REVOKE PROBATION**

4 27. Complainant incorporates by reference as though fully set forth herein the allegations
5 contained in paragraphs 1 through 26 above.

6 28. Condition 8 of Respondent Baran's probation and Condition 6 of Respondent
7 Eacobacci's probation state that should the Director determine that Respondents have failed to
8 comply with the terms and conditions of probation, the Department may, after giving notice and
9 opportunity to be heard, revoke Respondent Baran's registration and smog check station license
10 and Respondent Eacobacci's smog technician licenses.

11 29. Grounds exist to revoke Respondent Baran's probation, registration, and smog check
12 station license and Respondent Eacobacci's probation and smog technician licenses, as follows:

13 **CAUSE TO REVOKE PROBATION**

14 **(Failure to Obey all Laws)**

15 30. Condition 2 of Respondent Baran's and Eacobacci's probation states that
16 Respondents shall comply with all statutes, regulations and rules governing automotive
17 inspections, estimates, and repairs.

18 31. Respondent Baran's and Eacobacci's probation are subject to revocation in that they
19 failed to comply with all statutes, regulations, and rules governing automotive inspections, as set
20 forth in paragraphs 17 through 26 above.

21 **PRIOR CITATIONS**

22 32. To determine the degree of penalty, if any, to be imposed upon Respondents Baran
23 and Eacobacci, Complainant alleges, as follows:

24 a. On August 22, 2007, the Bureau issued Citation No. C08-0151 to Respondent Baran
25 against his registration and smog check station license for violations of Health & Saf. Code
26 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
27 devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35,
28 subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent

1 Baran issued a certificate of compliance to a Bureau vehicle with a missing pulse air injection
2 system. The Bureau assessed a civil penalty of \$500. Respondent Baran complied with this
3 citation on September 24, 2007.

4 b. On September 27, 1999, the Bureau issued Citation No. M2000-0166 to Respondent
5 Eacobacci against his technician license for violations of Health & Saf. Code section 44032,
6 (qualified technicians shall perform tests of emission control systems and devices in accordance
7 with section 44012 of that Code) and Regulation section 3340.41, subdivision (c) (no person shall
8 enter into the test analyzer system any vehicle identification information or emission control
9 system identification data for any vehicle other than the one being tested. Nor shall any person
10 knowingly enter into the test analyzer system any false information about the vehicle being
11 tested). Respondent Eacobacci certified 44 vehicles between the dates of July 1, 1999, and July
12 16, 1999, by entering false vehicle license plate numbers into the Test Analyzer System.
13 Respondent Eacobacci was required to attend an 8-hour training course. Respondent Eacobacci
14 complied with this citation on March 18, 2000.

15 c. On April 9, 2003, the Bureau issued Citation No. M03-1046 to Respondent Eacobacci
16 against his technician license(s) for violations of Health & Saf. Code section 44032 (qualified
17 technicians shall perform tests of emission control systems and devices in accordance with
18 section 44012 of that Code) and Regulation section 3340.30, subdivision (a) (qualified
19 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
20 the Health & Saf. Code, and Regulation section 3340.42). Respondent Eacobacci issued a
21 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the
22 manufacturer's specifications. Respondent Eacobacci was required to attend an 8-hour training
23 course. Respondent complied with this citation on May 30, 2003.

24 d. On August 22, 2007, the Bureau issued Citation No. M08-0152 to Respondent
25 Eacobacci against his technician license for violations of Health & Saf. Code section 44032
26 (qualified technicians shall perform tests of emission control systems and devices in accordance
27 with section 44012 of that Code) and Regulation section 3340.30, subdivision (a) (qualified
28 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of

1 the Health & Saf. Code, and Regulation section 3340.42). Respondent Eacobacci issued a
2 certificate of compliance to a Bureau vehicle with a missing pulse air injection system.
3 Respondent Eacobacci was required to attend an 8-hour training course. Respondent complied
4 with this citation on October 10, 2007.

5 OTHER MATTERS

6 33. 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 Piotr Josef Baran, owner of P & S 76, upon a finding that Respondent has, or
9 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
10 an automotive repair dealer.

11 34. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
12 Number RC 242996, issued to Respondent Piotr Josef Baran, owner of P & S 76, is revoked or
13 suspended, any additional license issued under this chapter in the name of said licensee may be
14 likewise revoked or suspended by the Director.

15 35. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
16 Number EO 001259 and Smog Check Repair Technician License No. EI 001259, issued to
17 Respondent Eacobacci, are revoked or suspended, any additional license issued under this chapter
18 in the name of said licensee may be likewise revoked or suspended by the Director.

19 PRAYER

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

22 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
23 242996, issued to Piotr Josef Baran, owner of P & S 76;

24 2. Revoking probation and reimposing the order of revocation of Automotive Repair
25 Dealer Registration Number ARD 242996, issued to Piotr Josef Baran, owner of P & S 76;

26 3. Revoking or suspending any other automotive repair dealer registration issued to
27 Piotr Josef Baran;

1 4. Revoking or suspending Smog Check Station License Number RC 242996, issued to
2 Piotr Josef Baran, owner of P & S 76;

3 5. Revoking probation and reimposing the order of revocation of Smog Check Station
4 License Number RC 242996, issued to Piotr Josef Baran, owner of P & S 76;

5 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of Piotr Josef Baran;

7 7. Revoking or suspending Smog Check Inspector License Number EO 001259 and
8 Smog Check Repair Technician License No. EI 001259, issued to Robert Paul Eacobacci;

9 8. Revoking probation and reimposing the order of revocation of Smog Check Inspector
10 License Number EO 001259 and Smog Check Repair Technician License No. EI 001259, issued
11 to Robert Paul Eacobacci;

12 9. Revoking or suspending any additional license issued under Chapter 5 of the Health
13 and Safety Code in the name of Robert Paul Eacobacci;

14 10. Ordering Piotr Josef Baran, owner of P & S 76, and Robert Paul Eacobacci to pay the
15 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
16 case, pursuant to Business and Professions Code section 125.3;

17 11. Taking such other and further action as deemed necessary and proper.
18
19

20 DATED: February 18, 2015



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

28 SA2014120066

EXHIBIT 1

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

In the Matter of the Accusation Against:

**PIOTR JOSEF BARAN
P & S 76**

3634 Farm Hill Boulevard
Redwood City, CA 94061
Automotive Repair Dealer Registration No.
ARD 242996
Smog Check Station License No.
RC 242996

Case No. 79/12-168

and

ROBERT PAUL EACOBACCI

515 Nimrod Street, Apt. D
Nevada City, CA 95959
Basic Emission Specialist Technician
License No. EB 001259, Renewed as
Smog Check Inspector License No. EO
001259 and Smog Check Repair
Technician License No. EI 0001259

Respondents.


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 only as to respondent Piotr Josef Baran, owner, Automotive Repair Dealer, Registration No. ARD 242996 and Smog Check Station License No. RC 242996. The typographical errors on page 2, lines 11 and 14, are noted: The expiration date of the Automotive Repair Dealer Registration No. ARD 242996 and the Smog Check Station License No. RC 242996 should be changed from "December 31, 2014" to "December 31, 2013."

The suspension of Automotive Repair Dealer Registration No. ARD 242996 and Smog Check Station License No. RC 242996 shall commence on the effective date of this Decision.

This Decision shall become effective 6/10/13.

DATED: MAY 16 2013


DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 BRIAN S. TURNER
Deputy Attorney General
4 State Bar No. 108991
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0603
Facsimile: (916) 327-8643
7 E-mail: Brian.Turner@dej.ca.gov
Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:

Case No. 79/12-168

13 **PIOTR JOSEF BARAN**
P & S 76
14 3634 Farm Hill Boulevard
Redwood City, CA 94061
15 Automotive Repair Dealer Registration No.
ARD 242996
16 Smog Check Station License No. RC 242996

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17 and

18 **ROBERT PAUL EACOBACCI**
515 Nimrod Street, Apt. D
19 Nevada City, CA 95959
Basic Emission Specialist Technician
20 License No. EB 001259, Renewed as Smog
Check Inspector License No. EO 001259 and
21 Smog Check Repair Technician License No.
EI 0001259
22

23 Respondents.
24
25
26

27 **IT IS STIPULATED AND AGREED** by and between the Complainant and Respondent,
28 Piotr Josef Baran, P & S 76, to the above-entitled proceedings that the following matters are true:

PARTIES

1. John Wallaugh (Complainant) is the Chief of the Bureau of Automotive Repair (Bureau). He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Brian S. Turner, Deputy Attorney General.

2. Respondent Piotr Josef Baran, P & S 76 (Respondent) is represented in this proceeding by attorney Peter Lemmon, whose address is: 505 Coyote Street, Suite C, Nevada City, California, 95959, (530) 265-6100.

3. On or about January 1, 2005, the Bureau issued Automotive Repair Dealer Registration No. ARD 242996 to Piotr Josef Baran, P & S 76 (Respondent). The Automotive Repair Dealer Registration expires on December 31, 2014, unless renewed.

4. On or about March 3, 2006, the Bureau issued Smog Check Station License No: RC 242996 to Piotr Josef Baran, P & S 76 (Respondent). The Smog Check Station License expires on December 31, 2014, unless renewed.

JURISDICTION

5. Accusation No. 79/12-168 was filed before the Director of Consumer Affairs (Director), for the Bureau, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 30, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

6. A copy of Accusation No. 79/12-168 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 79/12-168. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at

1 his own expense; the right to confront and cross-examine the witnesses against him; the right to
2 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
3 the attendance of witnesses and the production of documents; the right to reconsideration and
4 court review of an adverse decision; and all other rights accorded by the California
5 Administrative Procedure Act and other applicable laws.

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

8 CULPABILITY

9 10. Respondent admits the truth of each and every charge and allegation in Accusation
10 No. 79/12-168.

11 11. Respondent agrees that his Automotive Repair Dealer Registration and Smog Check
12 Station License are subject to discipline and he agrees to be bound by the Director's probationary
13 terms as set forth in the Disciplinary Order below.

14 CONTINGENCY

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

25 13. The parties understand and agree that facsimile and email copies of this Stipulated
26 Settlement and Disciplinary Order, including facsimile and email signatures thereto, shall have
27 the same force and effect as the originals.

28 ///

1 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
2 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
3 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
4 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
5 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
6 writing executed by an authorized representative of each of the parties.

7 15. In consideration of the foregoing admissions and stipulations, the parties agree that
8 the Director may, without further notice or formal proceeding, issue and enter the following
9 Disciplinary Order:

10 **DISCIPLINARY ORDER**

11 **IT IS ORDERED** that Automotive Repair Dealer Registration No. ARD 242996, and
12 Smog Check Station License No. RC 242996 issued to Respondent Piotr Josef Baran, P & S 76
13 (Respondent) are revoked. However, the revocations are stayed and Respondent is placed on
14 probation for three (3) years on the following terms and conditions.

15 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 242996 and
16 Smog Check Station License No. RC242996 issued to Respondent Piotr Josef Baran are
17 suspended for fifteen (15) consecutive days.

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

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

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

28 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report

any financial interest which any partners, officers, or owners of the Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

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

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

8. **Violation of Probation.** Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, petition for revocation of ARD 242996 and RC 242996.

9. **Restrictions.** During the period of probation, Respondent shall not perform any form of smog inspection, or emission system diagnosis or repair, until Respondent has purchased, installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to properly perform such work, and BAR has been given 10 days notice of the availability of the equipment for inspection by a BAR representative.

10. **Cost Recovery.** Payment to the Bureau of the full amount of costs in the amount of \$4,097.00 in twenty-four equal monthly installments with the final payment due no later than 12 months before probation terminates. Failure to complete payment of cost recovery within this time frame shall constitute a violation of probation which may subject Respondent's registration and license to outright revocation; however, the Director or the Director's designee may elect to continue probation until such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter Lemmon. I understand the stipulation and the effect it will

1 have on my Automotive Repair Dealer Registration, and Smog Check Station License. I enter
2 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
3 and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

4
5 DATED: 3-28-2013 [Signature]

6 PIOTR JOSEF BARAN, P & S 76
Respondent

7
8 I have read and fully discussed with Respondent Piotr Josef Baran, P & S 76 the terms and
9 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
10 I approve its form and content.

11
12 DATED: 3/28/13 [Signature]

13 Peter Lemmon
14 Attorney for Respondent

15 ENDORSEMENT

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

18
19 Dated: 3/29/13

Respectfully submitted,

20 KAMALA D. HARRIS
Attorney General of California
21 JANICE K. LACHMAN
Supervising Deputy Attorney General

22 [Signature]
23 BRIAN S. TURNER
24 Deputy Attorney General
25 Attorneys for Complainant

26
27 SA2012104802
28 Stipulation.rtf

Exhibit A

Accusation No. 79/12-168

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 BRIAN S. TURNER
Deputy Attorney General
4 State Bar No. 108991
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0603
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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. 79/12-168

13 P & S 76
1912 Nevada City Highway
Nevada City, CA 95945
14 Mailing Address:
3634 Farm Hill Boulevard
15 Redwood City, CA 94061
16 PIOTR JOSEF BARAN, OWNER
Automotive Repair Dealer Registration No.
ARD 242996
17 Smog Check Station License No. RC 242996,

ACCUSATION
SMOG CHECK

18 and

19 ROBERT PAUL EACOBACCI
515 Nimrod Street, Apt. D
20 Nevada City, CA 95959
Basic Emission Specialist Technician
21 License No. EB 001259

22 Respondents.

23
24 Complainant alleges:

25 **PARTIES**

26 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity
27 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

28 ///

Automotive Repair Dealer Registration

2. On a date uncertain in 2005, the Bureau issued Automotive Repair Dealer Registration Number ARD 242996 ("registration") to Piotr Josef Baran ("Respondent P & S"), doing business as P & S 76. The registration will expire on December 31, 2012, unless renewed.

Smog Check Station License

3. On or about March 3, 2006, the Bureau issued Smog Check Station License Number RC 242996 ("station license") to Respondent P & S. The station license will expire on December 31, 2012, unless renewed.

Basic Emission Specialist Technician License

4. On a date uncertain in 1998, the Bureau issued Basic Emission Specialist Technician License Number EB 001259 ("technician license") to Robert Paul Eacobacci ("Respondent Eacobacci"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

STATUTORY PROVISIONS

5. Section 9884.7 of the Business and Professions Code ("Code") 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.

(4) Any other conduct which constitutes fraud.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may invalidate temporarily or permanently, 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.

6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

7. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

8. Section 44002 of the Health and Safety Code 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. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

10. Section 44072.6 of the Health and Safety Code 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.

11. Section 44072.8 of the Health and Safety Code states:

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.

///

1 COST RECOVERY

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

6 FACTUAL BACKGROUND

7 13. In or about March, 2011, the Bureau was contacted by an unidentified person, who
8 alleged that Respondent Eacobacci, who was employed by Respondent P & S, had performed an
9 illegal smog inspection. The informant indicated that a 1999 Land Rover Discovery ("Vehicle
10 1"), owned by Respondent P & S had failed a prior smog inspection due to the Malfunction
11 Indicator Light ("MIL") being illuminated and that Respondent Eacobacci was unable to repair
12 the vehicle to turn off the MIL.

13 14. On or about June 1, 2011, the Bureau conducted a detailed review of the Vehicle
14 Information Database ("VID"), which showed that Vehicle 1 had failed the earlier smog
15 inspection performed on May 24, 2010. The VID also showed that on August 20, 2010, Vehicle
16 1 passed, with all monitors completed, no history fault codes, and emission repairs performed. A
17 further review of the VID revealed that another 1999 Land Rover Discovery ("Vehicle 2") had
18 also been tested and passed on August 20, 2010, within minutes after the passing test on Vehicle
19 1. Respondent Eacobacci issued Certificate of Compliance Number NW349717C for Vehicle 1.
20 In fact, Vehicle 1 was not tested during the OBD II functional test¹ and Vehicle 2 was used,
21 constituting clean plugging.

22 ¹ The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97
23 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from
24 the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through
25 the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer
about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the
vehicle fails the OBD II functional test, it will fail the overall inspection.

26 Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble
27 code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle
28 that is not in compliance due to a failure to complete the minimum number of self tests, known as
monitors, or due to the presence of a stored fault code that indicates an emission control system or
component failure.

1 15. On July 20, 2011, the Bureau visited Respondent P & S's facility and spoke with
2 Respondent Eacobacci regarding these vehicles. Respondent Eacobacci admitted to the Bureau
3 that he had used Vehicle 2, which belonged to a customer, to pass the OBD-II functional test for
4 Vehicle 1.

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Misleading Statements)

7 16. Respondent P & S has subjected his registration to discipline under Code section
8 9884.7, subdivision (a)(1), in that on or about August 20, 2010, he made statements which he
9 knew or which by exercise of reasonable care he should have known were untrue or misleading as
10 follows: Respondent P & S certified that vehicle 1 had passed inspection and was in compliance
11 with applicable laws and regulations. In fact, Respondent P & S conducted the inspection on
12 Vehicle 1 using clean plugging methods by substituting or using Vehicle 2 during the OBD II
13 functional tests in order to issue the smog certificate of compliance for Vehicle 1, and did not test
14 or inspect that vehicle as required by Health and Safety Code section 44012.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Fraud)

17 17. Respondent P & S has subjected his registration to discipline under Code section
18 9884.7, subdivision (a)(4), in that on or about August 20, 2010, he committed acts which
19 constitute fraud by issuing electronic Certificate of Compliance Number NW349717C for Vehicle
20 1 without performing a bona fide inspection of the emission control devices and systems on that
21 vehicle, thereby depriving the People of the State of California of the protection afforded by the
22 Motor Vehicle Inspection Program.

23 **THIRD CAUSE FOR DISCIPLINE**

24 (Violation of the Motor Vehicle Inspection Program)

25 18. Respondent P & S has subjected his station license to discipline under Health and
26 Safety Code section 44072.2, subdivision (a), in that on or about August 20, 2010, regarding
27 Vehicle 1, he violated sections of that Code, as follows:

28 ///

1 a. Section 44012: Respondent P & S failed to ensure that the emission control tests
2 were performed on that vehicle, in accordance with procedures prescribed by the department.

3 b. Section 44015: Respondent P & S issued electronic Certificate of Compliance
4 Number NW349717C for that vehicle, without ensuring that the vehicle was properly tested and
5 inspected to determine if it was in compliance with Health and Safety Code section 44012.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

8 19. Respondent P & S has subjected his station license to discipline under Health and
9 Safety Code section 44072.2, subdivision (c), in that on or about August 20, 2010, regarding
10 Vehicle 1, he violated sections of the California Code of Regulations, title 16, as follows:

11 a. Section 3340.35, subdivision (c): Respondent P & S issued the electronic certificate
12 of compliance even though that vehicle had not been inspected in accordance with section
13 3340.42 of that Code.

14 c. Section 3340.42: Respondent P & S failed to conduct the required smog tests and
15 inspections on that vehicle in accordance with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 20. Respondent P & S has subjected his station license to discipline under Health and
19 Safety Code section 44072.2, subdivision (d), in that on or about August 20, 2010, regarding
20 Vehicle 1, he committed acts involving dishonesty, fraud or deceit whereby another was injured
21 by issuing electronic Certificate of Compliance Number NW349717C for that vehicle without
22 performing a bona fide inspection of the emission control devices and systems on that vehicle,
23 thereby depriving the People of the State of California of the protection afforded by the Motor
24 Vehicle Inspection Program.

25 **SIXTH CAUSE FOR DISCIPLINE**

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

27 21. Respondent Eacobacci has subjected his technician license to discipline under Health
28 and Safety Code section 44072.2, subdivision (a), in that on or about August 20, 2010, regarding

1 Vehicle 1, above, he failed to comply with section 44012 of that Code in a material respect, as
2 follows: Respondent Eacobacci failed to perform the emission control tests on Vehicle 1 in
3 accordance with procedures prescribed by the department.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

6 22. Respondent Eacobacci has subjected his technician license to discipline under Health
7 and Safety Code section 44072.2, subdivision (c), in that on or about August 20, 2010, regarding
8 Vehicle 1, he violated sections of the California Code of Regulations, title 16, as follows:

9 a. Section 3340.30, subdivision (a): Respondent Eacobacci failed to inspect and test
10 that vehicle in accordance with Health and Safety Code section 44012.

11 b. Section 3340.42: Respondent Eacobacci failed to conduct the required smog tests
12 and inspections on that vehicle in accordance with the Bureau's specifications.

13 **EIGHTH CAUSE FOR DISCIPLINE**

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

15 23. Respondent Eacobacci has subjected his technician license to discipline under Health
16 and Safety Code section 44072.2, subdivision (d), in that on or about August 20, 2010, Vehicle 1,
17 above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
18 issuing electronic Certificate of Compliance Number NW349717C without performing a bona
19 fide inspection of the emission control devices and systems on that vehicle, thereby depriving the
20 People of the State of California of the protection afforded by the Motor Vehicle Inspection
21 Program.

22 **PRIOR CITATIONS**

23 24. To determine the degree of penalty, if any, to be imposed upon Respondents P & S
24 and Eacobacci, Complainant alleges, as follows:

25 a. On August 22, 2007, the Bureau issued Citation No. CO8-0151 to Respondent P & S
26 against his registration and station licenses for violations of Health and Safety Code section
27 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
28 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)

1 (issuing a certificate of compliance to a vehicle improperly tested). Respondent P & S issued a
2 certificate of compliance to a Bureau vehicle with a missing pulse air injection system. The
3 Bureau assessed a civil penalty of \$500. Respondent P & S complied with this citation on
4 September 24, 2007.

5 b. On September 27, 1999, the Bureau issued Citation No. M2000-0166 to Respondent
6 Eacobacci against his technician license for violations of Health and Safety Code section 44032,
7 (qualified technicians shall perform tests of emission control systems and devices in accordance
8 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")
9 section 3340.41, subdivision (c) (no person shall enter into the test analyzer system any vehicle
10 identification information or emission control system identification data for any vehicle other
11 than the one being tested. Nor shall any person knowingly enter into the test analyzer system any
12 false information about the vehicle being tested). Respondent Eacobacci certified 44 vehicles
13 between the dates of July 1, 1999, and July 16, 1999, by entering false vehicle license plate
14 numbers into the Test Analyzer System. Respondent Eacobacci was required to attend an 8-hour
15 training course. Respondent Eacobacci complied with this citation on March 18, 2000.

16 c. On April 9, 2003, the Bureau issued Citation No. M03-1046 to Respondent Eacobacci
17 against his technician license for violations of Health and Safety Code section 44032, (qualified
18 technicians shall perform tests of emission control systems and devices in accordance with
19 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
20 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
21 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
22 3340.42). Respondent Eacobacci issued a certificate of compliance to a Bureau vehicle with the
23 ignition timing adjusted beyond the manufacturer's specifications. Respondent Eacobacci was
24 required to attend an 8-hour training course. Respondent complied with this citation on May 30,
25 2003.

26 d. On August 22, 2007, the Bureau issued Citation No. M08-0152 to Respondent
27 Eacobacci against his technician license for violations of Health and Safety Code section 44032,
28 (qualified technicians shall perform tests of emission control systems and devices in accordance

1 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")
2 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
3 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
4 3340.42). Respondent Eacobacci issued a certificate of compliance to a Bureau vehicle with a
5 missing pulse air injection system. Respondent Eacobacci was required to attend an 8-hour
6 training course. Respondent complied with this citation on October 10, 2007.

7 **OTHER MATTERS**

8 25. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
9 or may invalidate temporarily or permanently, the registrations for all places of business operated
10 in this state by Piotr Josef Baran upon a finding that he has, or is, engaged in a course of repeated
11 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

12 26. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
13 Number RC 242996, issued to Piotr Josef Baran, doing business as P & S 76, is revoked or
14 suspended, any additional license issued under this chapter in the name of said licensee may be
15 likewise revoked or suspended by the director.

16 27. Pursuant to Health & Safety Code section 44072.8, if Basic Emission Specialist
17 Technician License Number EB 001259, issued to Robert Paul Eacobacci, is revoked or
18 suspended, any additional license issued under this chapter in the name of said licensee may be
19 likewise revoked or suspended by the director.

20 **PRAYER**

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

23 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
24 Number ARD 242996, issued to Piotr Josef Baran, doing business as P. & S 76;

25 2. Revoking, suspending or placing on probation any other automotive repair dealer
26 registration issued to Piotr Josef Baran;

27 3. Revoking or suspending Smog Check Station License Number RC 242996, issued to
28 Piotr Josef Baran, doing business as P & S 76;

1 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Piotr Josef Baran;

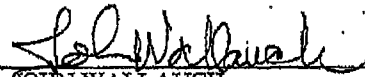
3 5. Revoking or suspending Basic Emission Specialist Technician License Number EB
4 001259, issued to Robert Paul Eacobacci;

5 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of Robert Paul Eacobacci;

7 7. Ordering Piotr Josef Baran and Robert Paul Eacobacci to pay the Bureau of
8 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3; and,

10 8. Taking such other and further action as deemed necessary and proper.
11
12

13 DATED: June 18, 2010

14 
15 JOHN WALLAUCH
16 Chief
17 Bureau of Automotive Repair
18 Department of Consumer Affairs
19 State of California
20 Complainant
21
22
23
24
25
26

27 SA2012104802
28 10909199.doc

EXHIBIT 2

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

In the Matter of the Accusation Against:

PIOTR JOSEF BARAN

P & S 76

3634 Farm Hill Boulevard

Redwood City, CA 94061

Automotive Repair Dealer Registration No.

ARD 242996

Smog Check Station License No.

RC 242996

Case No. 79/12-168

and

ROBERT PAUL EACOBACCI

515 Nimrod Street, Apt. D

Nevada City, CA 95959

Basic Emission Specialist Technician

License No. EB 001259, Renewed as

Smog Check Inspector License No. EO

0001259 and Smog Check Repair

Technician License No. EI 0001259

Respondents.

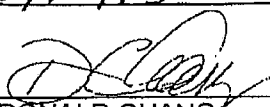
DECISION

The attached Eacobacci 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 only as to respondent Robert Paul Eacobacci, Smog Check Inspector License No. EO 0001259 and Smog Check Repair Technician License No. EI 0001259. The following typographical errors are noted:

1. Page 1, caption: The name "Ecobacci" should be "Eacobacci."
2. Page 1, caption; page 3, lines 16 and 1; and page 3, lines 16 and 17: "Smog Check Inspector License No. EI 0001259" should be "Smog Check Inspector License No. EO 0001259" and "Smog Check Repair Technician License No. EO 0001259" should be "Smog Check Repair Technician License No. EI 0001259."
3. Page 5, line 21: "Smog Check Repair License No. EO 0001259" should be "Smog Check Repair License No. EI 0001259."

This Decision shall become effective 6/10/13.

DATED: MAY 16 2013


DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 BRIAN S. TURNER
Deputy Attorney General
4 State Bar No. 108991
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0603
Facsimile: (916) 327-8643
7 E-mail: Brian.Turner@doj.ca.gov
Attorneys for Complainant
8

9 **BEFORE THE**
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. 79/12-168

13 **PIOTR JOSEF BARAN**
P & S 76
14 3634 Farm Hill Boulevard
Redwood City, CA 94061
15 Automotive Repair Dealer Registration No.
ARD 242996
16 Smog Check Station License No. RC 242996

**ECOBACCI STIPULATED
SETTLEMENT AND DISCIPLINARY
ORDER**

17 and

18 **ROBERT PAUL ECOBACCI**
515 Nimrod Street, Apt. D
19 Nevada City, CA 95959
Basic Emission Specialist Technician
20 License No. EB 001259, Renewed as
Smog Check Inspector License
21 No. EI 0001259 and Smog Check Repair
Technician License No. EO 0001259
22

23 Respondents
24
25
26
27
28

1 IT IS HEREBY STIPULATED AND AGREED by and between the Complainant and
2 Robert Paul Ecobacci in the above-entitled proceedings that the following matters are true:

3 PARTIES

4 1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair
5 (Bureau). He brought this action solely in his official capacity and is represented in this matter by
6 Kamala D. Harris, Attorney General of the State of California, by Brian S. Turner, Deputy
7 Attorney General.

8 2. Respondent Robert Paul Ecobacci (Respondent) is represented in this proceeding by
9 attorney Peter Lemmon, whose address is ^{505 Coyote St., Ste. C} 356 Providence Mine Road, Nevada City, CA 95959.

10 3. On or about January 1, 1998, the Bureau issued Basic Emission Specialist Technician
11 License No. EB 001259 to Robert Paul Ecobacci (Respondent). The Basic Emission Specialist
12 Technician License was in full force and effect at all times relevant to the charges brought in
13 Accusation No. 79/12-168. Respondent's Basic Emission Specialist license was set to expire
14 on December 31, 2012 but pursuant to Title 16 California Code of Regulations Section
15 3340.28(e) Respondent renewed the Basic Emission Specialist License as Smog Check
16 Inspector License No. EO 0001259 and Smog Check Repair Technician License No. EI 0001259.
17 Both the Smog Check Inspector license and Smog Check Repair Technician license are in full
18 force and effect and will expire on December 31, 2014 unless renewed.

19 JURISDICTION

20 4. Accusation No. 79/12-168 was filed before the Director of Consumer Affairs
21 (Director), for the Bureau, and is currently pending against Respondent. The Accusation and all
22 other statutorily required documents were properly served on Respondent on July 30, 2012.
23 Respondent timely filed his Notice of Defense contesting the Accusation.

24 5. A copy of Accusation No. 79/12-168 is attached as exhibit A and incorporated herein
25 by reference.

26 ADVISEMENT AND WAIVERS

27 6. Respondent has carefully read, fully discussed with counsel, and understands the
28 charges and allegations in Accusation No. 79/12-168. Respondent has also carefully read, fully

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

3 7. 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 be represented by counsel at
5 his own expense; the right to confront and cross-examine the witnesses against him; the right to
6 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
7 the attendance of witnesses and the production of documents; the right to reconsideration and
8 court review of an adverse decision; and all other rights accorded by the California
9 Administrative Procedure Act and other applicable laws.

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

12 CULPABILITY

13 9. Respondent admits the truth of each and every charge and allegation in Accusation
14 No. 79/12-168.

15 10. Respondent agrees that his Basic Emission Specialist Technician License renewed as
16 Smog Check Inspector License No. EI 0001259 and Smog Check Repair License
17 No. EO 0001259 are subject to discipline and he agrees to be bound by the Director's
18 probationary terms as set forth in the Disciplinary Order below.

19 CONTINGENCY

20 11. This stipulation shall be subject to approval by the Director or his designee.
21 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau may
22 communicate directly with the Director and staff of the Department regarding this stipulation and
23 settlement, without notice to or participation by Respondent or his counsel. By signing the
24 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
25 to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director
26 fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and
27 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible
28

1 in any legal action between the parties, and the Director shall not be disqualified from further
2 action by having considered this matter.

3 12. The parties understand and agree that facsimile or emailed copies of this Stipulated
4 Settlement and Disciplinary Order, including facsimile or emailed signatures thereto, shall have
5 the same force and effect as the originals.

6 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
7 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
8 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
9 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
10 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
11 writing executed by an authorized representative of each of the parties.

12 14. In consideration of the foregoing admissions and stipulations, the parties agree that
13 the Director may, without further notice or formal proceeding, issue and enter the following
14 Disciplinary Order:

15 **DISCIPLINARY ORDER**

16 **IT IS ORDERED** that Basic Emission Specialist Technician License No. EB 001259
17 renewed as Smog Check Inspector License No. EO 0001259 and Smog Check Repair License
18 No. EI 0001259 issued to Respondent Robert Paul Bacobacci (Respondent) are revoked.
19 However, the revocations are stayed and Respondent is placed on probation for three (3) years on
20 the following terms and conditions.

21 1. **Actual Suspension.** Smog Check Inspector License No. EO 0001259 and Smog
22 Check Repair License No. EI 0001259 issued to Respondent Robert Paul Bacobacci are
23 suspended for fifteen consecutive days following the effective date ^{of} this decision and order.

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

26 3. **Reporting.** Respondent or Respondent's authorized representative must report in
27 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
28 Bureau, but no more frequently than each quarter, on the methods used and success achieved in

1 maintaining compliance with the terms and conditions of probation.

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

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

8 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
9 Respondent has failed to comply with the terms and conditions of probation, the Department may,
10 after giving notice and opportunity to be heard revoke Respondent's license.

11 7. **Continuing Education Courses.** During the period of probation, Respondent shall
12 attend and successfully complete a Bureau Certified License Inspector Training Course, Level II,
13 applicable to the class of license held by the Respondent. The course shall be completed and
14 proof of completion submitted to the Bureau within 180 days of the effective date of this decision
15 and order. If proof of completion of the course is not furnished to the Bureau within the ¹⁸⁰~~60~~-day
16 period, Respondents' license shall be immediately suspended until such proof is received.

17 ACCEPTANCE

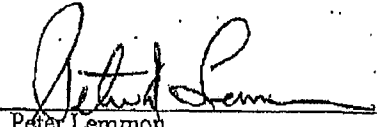
18 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
19 discussed it with my attorney, Peter Lemmon. I understand the stipulation and the effect it will
20 have on my Basic Emission Specialist License No. EB 0001259 renewed as Smog Check
21 Inspector License No EO 0001259 and Smog Check Repair License No. EO 0001259. I enter into
22 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
23 agree to be bound by the Decision and Order of the Director of Consumer Affairs.

24
25 DATED: 3-20-13

Robert Paul Eacobacci
26 ROBERT PAUL EACOBACCI
27 Respondent
28

1 I have read and fully discussed with Respondent Robert Paul Eacobacci the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED: 3/28/13


Peter Lemmon
Attorney for Respondent

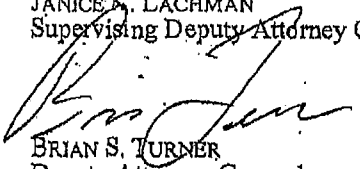
7
8 ENDORSEMENT

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

11 Dated: 3/29/13

Respectfully submitted;

12
13 KAMALA D. HARRIS
Attorney General of California
14 JANICE K. LACHMAN
Supervising Deputy Attorney General


15
16 BRIAN S. TURNER
Deputy Attorney General
17 Attorneys for Complainant

18
19 SA2012104802

Exhibit A

Accusation No. 79/12-168

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 BRIAN S. TURNER
Deputy Attorney General
4 State Bar No: 108991
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0603
Facsimile: (916) 327-8643
7 *Attorneys for Complainant ~*

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 79/12-168

12 P & S 76
13 1912 Nevada City Highway
Nevada City, CA 95945
14 Mailing Address:
3634 Farm Hill Boulevard
15 Redwood City, CA 94061
16 PIOTR JOSEF BARAN, OWNER
Automotive Repair Dealer Registration No.
ARD 242996
17 Smog Check Station License No. RC 242996,

ACCUSATION
SMOG CHECK

18 and

19 ROBERT PAUL EACOBACCI
515 Nimrod Street, Apt. D
20 Nevada City, CA 95959
Basic Emission Specialist Technician
21 License No. EB 001259

22 Respondents.

24 Complainant alleges:

25 PARTIES

26 1. John Wallaugh ("Complainant") brings this Accusation solely in his official capacity
27 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

28 ///

1 **Automotive Repair Dealer Registration**

2 2. On a date uncertain in 2005, the Bureau issued Automotive Repair Dealer
3 Registration Number ARD 242996 ("registration") to Piotr Josef Baran ("Respondent P & S"),
4 doing business as P & S 76. The registration will expire on December 31, 2012, unless renewed.

5 **Smog Check Station License**

6 3. On or about March 3, 2006, the Bureau issued Smog Check Station License Number
7 RC 242996 ("station license") to Respondent P & S. The station license will expire on December
8 31, 2012, unless renewed.

9 **Basic Emission Specialist Technician License**

10 4. On a date uncertain in 1998, the Bureau issued Basic Emission Specialist Technician
11 License Number EB 001259 ("technician license") to Robert Paul Hacobacei ("Respondent
12 Hacobacei"). The technician license was in full force and effect at all times relevant to the
13 charges brought herein and will expire on December 31, 2012, unless renewed.

14 **STATUTORY PROVISIONS**

15 5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
16 part:

17 (a) The director, where the automotive repair dealer cannot show there
18 was a bona fide error, may refuse to validate, or may invalidate temporarily or
19 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
20 dealer, which are done by the automotive repair dealer or any automotive technician,
employee, partner, officer, or member of the automotive repair dealer.

21 (1) Making or authorizing in any manner or by any means whatever any
22 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.

23 (4) Any other conduct which constitutes fraud.

24 (b) Except as provided for in subdivision (c), if an automotive repair
25 dealer operates more than one place of business in this state, the director pursuant to
26 subdivision (a) shall only invalidate temporarily or permanently the registration of the
specific place of business which has violated any of the provisions of this chapter.
This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate his or her other places of business.

27 (c) Notwithstanding subdivision (b), the director may invalidate
28 temporarily or permanently, 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.

6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

7. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

8. Section 44002 of the Health and Safety Code 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. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

10. Section 44072.6 of the Health and Safety Code 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.

11. Section 44072.8 of the Health and Safety Code states:

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.

///

1 COST RECOVERY

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

6 FACTUAL BACKGROUND

7 13. In or about March, 2011, the Bureau was contacted by an unidentified person, who
8 alleged that Respondent Eacobacci, who was employed by Respondent P & S, had performed an
9 illegal smog inspection. The informant indicated that a 1999 Land Rover Discovery ("Vehicle
10 1"), owned by Respondent P & S had failed a prior smog inspection due to the Malfunction
11 Indicator Light ("MIL") being illuminated and that Respondent Eacobacci was unable to repair
12 the vehicle to turn off the MIL.

13 14. On or about June 1, 2011, the Bureau conducted a detailed review of the Vehicle
14 Information Database ("VID"), which showed that Vehicle 1 had failed the earlier smog
15 inspection performed on May 24, 2010. The VID also showed that on August 20, 2010, Vehicle
16 1 passed, with all monitors completed, no history fault codes, and emission repairs performed. A
17 further review of the VID revealed that another 1999 Land Rover Discovery ("Vehicle 2") had
18 also been tested and passed on August 20, 2010, within minutes after the passing test on Vehicle
19 1. Respondent Eacobacci issued Certificate of Compliance Number NW349717C for Vehicle 1.
20 In fact, Vehicle 1 was not tested during the OBD II functional test¹ and Vehicle 2 was used,
21 constituting clean plugging.

22 ¹ The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97
23 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from
24 the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through
25 the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer
about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the
vehicle fails the OBD II functional test, it will fail the overall inspection.

26 Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble
27 code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle
28 that is not in compliance due to a failure to complete the minimum number of self tests, known as
monitors, or due to the presence of a stored fault code that indicates an emission control system or
component failure.

1 15. On July 20, 2011, the Bureau visited Respondent P & S's facility and spoke with
2 Respondent Bacobacci regarding these vehicles. Respondent Bacobacci admitted to the Bureau
3 that he had used Vehicle 2, which belonged to a customer, to pass the OBD-II functional test for
4 Vehicle 1.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Misleading Statements)**

7 16. Respondent P & S has subjected his registration to discipline under Code section
8 9884.7, subdivision (a)(1), in that on or about August 20, 2010, he made statements which he
9 knew or which by exercise of reasonable care he should have known were untrue or misleading as
10 follows: Respondent P & S certified that vehicle 1 had passed inspection and was in compliance
11 with applicable laws and regulations. In fact, Respondent P & S conducted the inspection on
12 Vehicle 1 using clean plugging methods by substituting or using Vehicle 2 during the OBD II
13 functional tests in order to issue the smog certificate of compliance for Vehicle 1, and did not test
14 or inspect that vehicle as required by Health and Safety Code section 44012.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 17. Respondent P & S has subjected his registration to discipline under Code section
18 9884.7, subdivision (a)(4), in that on or about August 20, 2010, he committed acts which
19 constitute fraud by issuing electronic Certificate of Compliance Number NW349717C for Vehicle
20 1 without performing a bona fide inspection of the emission control devices and systems on that
21 vehicle, thereby depriving the People of the State of California of the protection afforded by the
22 Motor Vehicle Inspection Program.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Violation of the Motor Vehicle Inspection Program)**

25 18. Respondent P & S has subjected his station license to discipline under Health and
26 Safety Code section 44072.2, subdivision (a), in that on or about August 20, 2010, regarding
27 Vehicle 1, he violated sections of that Code, as follows:

28 ///

1 a. Section 44012: Respondent P & S failed to ensure that the emission control tests
2 were performed on that vehicle, in accordance with procedures prescribed by the department.

3 b. Section 44015: Respondent P & S issued electronic Certificate of Compliance
4 Number NW349717C for that vehicle, without ensuring that the vehicle was properly tested and
5 inspected to determine if it was in compliance with Health and Safety Code section 44012.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

8 19. Respondent P & S has subjected his station license to discipline under Health and
9 Safety Code section 44072.2, subdivision (c), in that on or about August 20, 2010, regarding
10 Vehicle 1, he violated sections of the California Code of Regulations, title 16, as follows:

11 a. Section 3340.35, subdivision (c): Respondent P & S issued the electronic certificate
12 of compliance even though that vehicle had not been inspected in accordance with section
13 3340.42 of that Code.

14 c. Section 3340.42: Respondent P & S failed to conduct the required smog tests and
15 inspections on that vehicle in accordance with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 20. Respondent P & S has subjected his station license to discipline under Health and
19 Safety Code section 44072.2, subdivision (d), in that on or about August 20, 2010, regarding
20 Vehicle 1, he committed acts involving dishonesty, fraud or deceit whereby another was injured
21 by issuing electronic Certificate of Compliance Number NW349717C for that vehicle without
22 performing a bona fide inspection of the emission control devices and systems on that vehicle,
23 thereby depriving the People of the State of California of the protection afforded by the Motor
24 Vehicle Inspection Program.

25 **SIXTH CAUSE FOR DISCIPLINE**

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

27 21. Respondent Eacobacci has subjected his technician license to discipline under Health
28 and Safety Code section 44072.2, subdivision (a), in that on or about August 20, 2010, regarding

1 Vehicle 1, above, he failed to comply with section 44012 of that Code in a material respect, as
2 follows: Respondent Eacobacci failed to perform the emission control tests on Vehicle 1 in
3 accordance with procedures prescribed by the department.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

6 22. Respondent Eacobacci has subjected his technician license to discipline under Health
7 and Safety Code section 44072.2, subdivision (c), in that on or about August 20, 2010, regarding
8 Vehicle 1, he violated sections of the California Code of Regulations, title 16, as follows:

9 a. Section 3340.30, subdivision (a): Respondent Eacobacci failed to inspect and test
10 that vehicle in accordance with Health and Safety Code section 44012.

11 b. Section 3340.42: Respondent Eacobacci failed to conduct the required smog tests
12 and inspections on that vehicle in accordance with the Bureau's specifications.

13 **EIGHTH CAUSE FOR DISCIPLINE**

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

15 23. Respondent Eacobacci has subjected his technician license to discipline under Health
16 and Safety Code section 44072.2, subdivision (d); in that on or about August 20, 2010, Vehicle 1,
17 above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
18 issuing electronic Certificate of Compliance Number NW349717C without performing a bona
19 fide inspection of the emission control devices and systems on that vehicle, thereby depriving the
20 People of the State of California of the protection afforded by the Motor Vehicle Inspection
21 Program.

22 **PRIOR CITATIONS**

23 24. To determine the degree of penalty, if any, to be imposed upon Respondents P & S
24 and Eacobacci, Complainant alleges, as follows:

25 a. On August 22, 2007, the Bureau issued Citation No. C08-0151 to Respondent P & S
26 against his registration and station licenses for violations of Health and Safety Code section
27 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
28 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)

1 (issuing a certificate of compliance to a vehicle improperly tested). Respondent P & S issued a
2 certificate of compliance to a Bureau vehicle with a missing pulse air injection system. The
3 Bureau assessed a civil penalty of \$500. Respondent P & S complied with this citation on
4 September 24, 2007.

5 b. On September 27, 1999, the Bureau issued Citation No. M2000-0166 to Respondent
6 Eacobacci against his technician license for violations of Health and Safety Code section 44032,
7 (qualified technicians shall perform tests of emission control systems and devices in accordance
8 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")
9 section 3340.41, subdivision (c) (no person shall enter into the test analyzer system any vehicle
10 identification information or emission control system identification data for any vehicle other
11 than the one being tested. Nor shall any person knowingly enter into the test analyzer system any
12 false information about the vehicle being tested). Respondent Eacobacci certified 44 vehicles
13 between the dates of July 1, 1999, and July 16, 1999, by entering false vehicle license plate
14 numbers into the Test Analyzer System. Respondent Eacobacci was required to attend an 8-hour
15 training course. Respondent Eacobacci complied with this citation on March 18, 2000.

16 c. On April 9, 2003, the Bureau issued Citation No. M03-1046 to Respondent Eacobacci
17 against his technician license for violations of Health and Safety Code section 44032, (qualified
18 technicians shall perform tests of emission control systems and devices in accordance with
19 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
20 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
21 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
22 3340.42). Respondent Eacobacci issued a certificate of compliance to a Bureau vehicle with the
23 ignition timing adjusted beyond the manufacturer's specifications. Respondent Eacobacci was
24 required to attend an 8-hour training course. Respondent complied with this citation on May 30,
25 2003.

26 d. On August 22, 2007, the Bureau issued Citation No. M08-0152 to Respondent
27 Eacobacci against his technician license for violations of Health and Safety Code section 44032,
28 (qualified technicians shall perform tests of emission control systems and devices in accordance

1 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")
2 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
3 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
4 3340.42). Respondent Eacobacci issued a certificate of compliance to a Bureau vehicle with a
5 missing pulse air injection system. Respondent Eacobacci was required to attend an 8-hour
6 training course. Respondent complied with this citation on October 10, 2007.

7 OTHER MATTERS

8 25. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
9 or may invalidate temporarily or permanently, the registrations for all places of business operated
10 in this state by Piotr Josef Baran upon a finding that he has, or is, engaged in a course of repeated
11 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

12 26. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
13 Number RC 242996, issued to Piotr Josef Baran, doing business as P & S 76, is revoked or
14 suspended, any additional license issued under this chapter in the name of said licensee may be
15 likewise revoked or suspended by the director.

16 27. Pursuant to Health & Safety Code section 44072.8, if Basic Emission Specialist
17 Technician License Number EB 001259, issued to Robert Paul Eacobacci, is revoked or
18 suspended, any additional license issued under this chapter in the name of said licensee may be
19 likewise revoked or suspended by the director.

20 PRAYER

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

23 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
24 Number ARD 242996, issued to Piotr Josef Baran, doing business as P & S 76;

25 2. Revoking, suspending or placing on probation any other automotive repair dealer
26 registration issued to Piotr Josef Baran;

27 3. Revoking or suspending Smog Check Station License Number RC 242996, issued to
28 Piotr Josef Baran, doing business as P & S 76;

1 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Piotr Josef Baran;

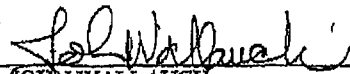
3 5. Revoking or suspending Basic Emission Specialist Technician License Number EB
4 001259, issued to Robert Paul Eacobacci;

5 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of Robert Paul Eacobacci;

7 7. Ordering Piotr Josef Baran and Robert Paul Eacobacci to pay the Bureau of
8 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3; and,

10 8. Taking such other and further action as deemed necessary and proper.
11
12

13 DATED: June 18, 2010



JOHN WALLAUCH
Chief

Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

14
15
16
17
18
19
20
21
22
23
24
25
26
27 SA2012104802
28 10909199.doc