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

In the Matter of the Accusation Against: **BACC TEST ONLY** **495 Military East** **Benicia, CA 94510** **CHIED POU SAECHIN, PARTNER** **NAI CHOY SAELEE, PARTNER** **Automotive Repair Dealer Registration No. ARD 249321** **Smog Check Test Only Station License No. TC 249321,** **and** **BENICIA AUTO CARE CENTER** **1301 East 5th Street** **Benicia, CA 94510** **NAI C. SAELEE, PARTNER** **CHIED P. SAECHIN, PARTNER** **Automotive Repair Dealer Registration No. ARD 241567** **and** **CHIED POU SAECHIN** **1034 Lassen Street** **Richmond, CA 94805** **Advanced Emission Specialist Technician License No. EA 148227**	Case No. 79/12-92 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 27, 2012, Complainant John Wallauch, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed First Amended Accusation No. 79/12-92 against BACC Test Only, Benicia Auto Care Center, Nai Choy Saelee, and Chied Pou Saechin (Respondents) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On a date uncertain in 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 249321 to Nai Choy Saelee and Chied Pou Saechin as Partners, doing business as Bacc Test Only (Respondent BACC). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 79/12-92 and expired on December 31, 2012, and has not been renewed.

3. On or about May 2, 2007, the Bureau of Automotive Repair issued Smog Check, Test Only, Station License No. TC 249321 to Respondent BACC. The Smog Check, Test Only, Station License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/12-92 and expired on February 28, 2013, and has not been renewed.

4. On a date uncertain in 2004, the Bureau issued Advanced Emission Specialist Technician License Number EA 148227 ("technician license") to Chied Pou Saechin ("Respondent Saechin"). The technician license was in full force and effect at all times relevant to the charges brought in Accusation 79/12-92 and expires on June 30, 2014, unless renewed.

5. On a date uncertain in 2005, the Bureau issued Automotive Repair Dealer Registration Number ARD 241567 to Nai C. Saelee and Chied P. Saechin as Partners, doing business as Benicia Auto Care Center (Respondent Benicia). The registration was in full force and effect at all times relevant to the charges brought in Accusation 79/12-92 and expires on September 30, 2013, unless renewed.

6. On or about February 27, 2013, Respondents were served by Certified and First Class Mail copies of the First Amended Accusation No. 79/12-92, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondents' addresses of record which, pursuant to Business and

Professions Code section 136, is required to be reported and maintained with the Bureau.

Respondent's address of record was and is:

BACC Test Only
Chied Pou Saechin, Partner
Nai Choy Saelee, Partner
495 Military East
Benicia, CA 94510.

Benicia Auto Care Center
Chied Pou Saechin, Partner
Nai Choy Saelee, Partner
1301 East 5th Street
Benicia, CA 94510

Chied Pou Saechin
1034 Lassen Street
Richmond, CA 94805

7. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

8. On or about March 29, 2013, the documents sent certified mail to Chied Pou Saechin at 1034 Lassen Street in Richmond, California were returned by the U.S. Postal Service marked "Unable to Forward."

9. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

10. Respondents failed to file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No. 79/12-92.

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11. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

12. Pursuant to its authority under Government Code section 11520, the Director after having reviewed the proof of service dated February 27, 2013, signed by Joy Hanek, (and return envelopes or USPS Track & Confirm Notice) finds Respondents are in default. The Director will take action without further hearing and, based on Accusation No. 79/12-92, proof of service, and on the Affidavit of Bureau Representative Matthew Rodriguez, finds that the allegations in Accusation are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent BACC has subjected its Automotive Repair Dealer Registration No. ARD 249321 and its Smog Check Test Only Station License No. TC 249321, to discipline. Further, Respondent Chied Pou Saechin has subjected his Advanced Emission Specialist Technician License Number EA 148227, to discipline. Also, Respondents Nai Choy Saelee and Chied Pou Saechin as Partners, doing business as Benicia Auto Care Center, have subjected its Automotive Repair Dealer Registration Number ARD 241567, to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondents' Automotive Repair Dealer Registrations, Smog Check Test Only Station License, and Advanced Emission Specialist Technician License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the affidavit of Bureau Representative Matthew Rodriguez in this case:

a. Violation of Business and Professions Code section 9884.7, subdivision (a)(1), for making misleading statements with regard to the issuance of electronic Certificate of Compliance No. [redacted]

b. Violation of Business and Professions Code section 9884.7, subdivision (a)(4), for committing acts constituting fraud with regard to the issuance of electronic Certificate of Compliance No. [redacted]

c. Violation of Business and Professions Code section 9884.7, subdivision (a)(6), by failing to provide the operator with a written estimated price for parts and labor for the smog inspection;

d. Violation of Business and Professions Code section 9884.7, subdivision (a)(6), by failing to comply with California Code of Regulations, title 16, section 3356, subdivision (a)(1), in that Respondent failed to set forth its automotive repair dealer registration number on Estimate Reference No. [redacted]

e. Violation of Health and Safety Code sections 44072.2, subdivision (a), 44012, subdivisions (a) and (f), and 44015, subdivision (b), for failing to comply with the Motor Vehicle Inspection Program;

f. Violation of Health and Safety Code sections 44072.2, subdivision (c), by violating California Code of Regulations, title 16, sections 3340.35, subdivision (c), and 3340.42, by failing to comply with the Motor Vehicle Inspection Program;

g. Violation of Health and Safety Code sections 44072.2, subdivision (d), for committing acts involving dishonesty, fraud, or deceit with regard to issuing electronic Certificate of Compliance No. [redacted]

h. Violation of Business and Professions Code section 9884.7, subdivision (a)(1), for making misleading statements with regard to the issuance of electronic Certificate of Compliance No. [redacted]

i. Violation of Business and Professions Code section 9884.7, subdivision (a)(4), for committing acts constituting fraud with regard to the issuance of electronic Certificate of Compliance No. [redacted]

j. Violation of Business and Professions Code section 9884.7, subdivision (a)(6), by failing to provide the operator with a written estimated price for parts and labor for the smog inspection;

k. Violation of Business and Professions Code section 9884.7, subdivision (a)(6), by failing to comply with California Code of Regulations, title 16, section 3356, subdivision (a)(1), in that Respondent failed to set forth its automotive repair dealer registration number on Estimate Reference No. [redacted]

l. Violation of Health and Safety Code sections 44072.2, subdivision (a), 44012, subdivisions (a) and (f), and 44015, subdivision (b), for failing to comply with the Motor Vehicle Inspection Program;

m. Violation of Health and Safety Code sections 44072.2, subdivision (c), by violating California Code of Regulations, title 16, sections 3340.35, subdivision (c), and 3340.42, by failing to comply with the Motor Vehicle Inspection Program;

n. Violation of Health and Safety Code sections 44072.2, subdivision (d), for committing acts involving dishonesty, fraud, or deceit with regard to issuing electronic Certificate of Compliance No. [redacted]

o. Violation of Health and Safety Code sections 44072.2, subdivision (a), 44012, subdivisions (a) and (f), and 44032, for failing to comply with the Motor Vehicle Inspection Program;

p. Violation of Health and Safety Code sections 44072.2, subdivision (c), by violating California Code of Regulations, title 16, sections 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42, by failing to comply with the Motor Vehicle Inspection Program;

q. Violation of Health and Safety Code sections 44072.2, subdivision (d), for committing acts involving dishonesty, fraud, or deceit with regard to issuing electronic Certificate of Compliance No. [redacted]

ORDER

IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 249321, Smog Check Test Only Station License No. TC 249321, heretofore issued to Respondents Nai Choy Saelee and Chied Pou Saechin doing business as BACC, is revoked. Also, Automotive Repair Dealer Registration No. ARD 241567, heretofore issued to Respondents Nai Choy Saelee and Chied Pou Saechin, doing business as Benicia Auto Care Center, is revoked. It is further ordered

that Advanced Emission Specialist Technician License Number EA 148227, issued to Respondent Chied Pou Saechin, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on SEP 27 2013.

It is so ORDERED September 5, 2013

DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

90326978.DOC
DOJ Matter ID:SF2011203652

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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BEFORE THE
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FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **BACC TEST ONLY** **495 Military East** **Benicia, CA 94510** **CHIED POU SAECHIN, PARTNER** **NAI CHOY SAELEE, PARTNER** **Automotive Repair Dealer Registration No. ARD 249321** **Smog Check Test Only Station License No. TC 249321,** **and** **BENICIA AUTO CARE CENTER** **1301 East 5th Street** **Benicia, CA 94510** **NAI C. SAELEE, PARTNER** **CHIED P. SAECHIN, PARTNER** **Automotive Repair Dealer Registration No. ARD 241567** **and** **CHIED POU SAECHIN** **1034 Lassen Street** **Richmond, CA 94805** **Advanced Emission Specialist Technician License No. EA 148227** Respondents.	Case No. 79/12-92 **FIRST AMENDED ACCUSATION** **SMOG CHECK**

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. On a date uncertain in 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 249321 ("registration") to Nai Choy Saelee and Chied Pou Saechin as Partners, doing business as Bacc Test Only ("Respondent Bacc"). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

Smog Check Test Only Station License

3. On or about May 2, 2007, the Bureau issued Smog Check Test Only Station License Number TC 249321 ("station license") to Respondent Bacc. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2013, unless renewed.

Advanced Emission Specialist Technician License

4. On a date uncertain in 2004, the Bureau issued Advanced Emission Specialist Technician License Number EA 148227 ("technician license") to Chied Pou Saechin ("Respondent Saechin"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

Automotive Repair Dealer Registration

5. On a date uncertain in 2005, the Bureau issued Automotive Repair Dealer Registration Number ARD 241567 ("registration") to Nai C. Saelee and Chied P. Saechin as Partners, doing business as Benicia Auto Care Center. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

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STATUTORY PROVISIONS

6. 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 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.
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> (4) Any other conduct that constitutes fraud.
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> (6) Failure in a material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
>
> (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 suspend, revoke, or place on probation 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 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.

7. Code section 9884.9 states, in pertinent part:

> (a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order .

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

_____

(signature or initials)"

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

REGULATORY PROVISION

14. California Code of Regulations, title 16, section 3356, subdivision (a)(1) states:

> (a) All invoices for service and repair work performed, and parts supplied, as provided for in Section 9884.8 of the Business and Professions Code, shall comply with the following:
>
> (1) The invoice shall show the automotive repair dealer's registration number and the corresponding business name and address as shown in the Bureau's records. If the automotive repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b) of Section 3371 of this chapter.

COST RECOVERY

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

UNDERCOVER OPERATION – OCTOBER 4, 2011

16. On or about October 4, 2011, a Bureau undercover operator drove a Bureau-documented 1995 Chevrolet Beretta to Respondent Bacc's facility and requested a smog inspection. The vehicle could not pass the functional portion of a smog inspection because the vehicle's EGR system was inoperative. The operator did not sign nor was she provided with any paperwork prior to the smog inspection. Respondent Saechao performed the smog inspection and issued electronic Certificate of Compliance No. [redacted] for that vehicle. The operator paid Respondent Saechao $65 for the smog inspection and was asked to sign one copy of the invoice, which she did; however, the operator received a copy of the unsigned invoice and the Vehicle Inspection Report ("VIR").

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FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

17. Respondent Bacc has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about October 4, 2011, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading when it issued electronic Certificate of Compliance No. [redacted] for the 1995 Chevrolet Beretta, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's EGR system was inoperable.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

18. Respondent Bacc has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about October 4, 2011, it committed acts which constitute fraud by issuing electronic Certificate of Compliance No. [redacted] for the 1995 Chevrolet Beretta, without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate)

19. Respondent Bacc has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about October 4, 2011, Respondent Bacc failed to comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for parts and labor for the smog inspection.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply Regulations)

20. Respondent Bacc has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about October 4, 2011, Respondent Bacc failed to comply with California Code of Regulations, title 16, section 3356, subdivision (a)(1). Regarding

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Estimate Reference No.[redacted] Respondent failed to set forth its automotive repair dealer registration number as is shown on Bureau records.

FIFTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

21. Respondent Bacc has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about October 4, 2011, regarding the 1995 Chevrolet Beretta, it violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Bacc failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Bacc failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Bacc issued electronic Certificate of Compliance No.[redacted] without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

SIXTH CAUSE FOR DISCIPLINE

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

22. Respondent Bacc has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about October 4, 2011, regarding the 1995 Chevrolet Beretta, it violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c)**: Respondent Bacc issued electronic Certificate of Compliance No.[redacted] even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

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

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SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

23. Respondent Bacc has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about October 4, 2011, regarding the 1995 Chevrolet Beretta, it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. [redacted] for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

UNDERCOVER OPERATION – FEBRUARY 13, 2012

24. On or about February 13, 2012, a Bureau undercover operator drove a Bureau-documented 2002 Dodge Dakota to Respondent Bacc's facility and requested a smog inspection. The vehicle could not pass the visual portion of a smog inspection because the vehicle's evaporative emission control ("EVAP") system was missing. The operator did not sign nor was he provided with any paperwork prior to the smog inspection. Respondent Saechin performed the smog inspection and issued electronic Certificate of Compliance No. [redacted] for that vehicle. The operator paid Respondent Saechin $65 for the smog inspection and was provided with a copy of Estimate Ref. No. [redacted] and the VIR.

EIGHTH CAUSE FOR DISCIPLINE

(Misleading Statements)

25. Respondent Bacc has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about February 13, 2012, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading when it issued electronic Certificate of Compliance No. [redacted] for the 2002 Dodge Dakota, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's EVAP system was missing.

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NINTH CAUSE FOR DISCIPLINE

(Fraud)

26. Respondent Bacc has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about February 13, 2012, it committed acts which constitute fraud by issuing electronic Certificate of Compliance No. [redacted] for the 2002 Dodge Dakota, without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TENTH CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate)

27. Respondent Bacc has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about February 13, 2012, Respondent Bacc failed to comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for parts and labor for the smog inspection.

ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply Regulations)

28. Respondent Bacc has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about February 13, 2012, Respondent Bacc failed to comply with California Code of Regulations, title 16, section 3356, subdivision (a)(1). Regarding Estimate Reference No. [redacted] Respondent failed to set forth its automotive repair dealer registration number as is shown on Bureau records.

TWELFTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

29. Respondent Bacc has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about February 13, 2012, regarding the 2002 Dodge Dakota, it violated sections of that Code, as follows:

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a. **Section 44012, subdivision (a)**: Respondent Bacc failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Bacc failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Bacc issued electronic Certificate of Compliance No. [redacted] without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

THIRTEENTH CAUSE FOR DISCIPLINE

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

30. Respondent Bacc has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about February 13, 2012, regarding the 2002 Dodge Dakota, it violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c)**: Respondent Bacc issued electronic Certificate of Compliance No. [redacted] even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

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

FOURTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

31. Respondent Bacc has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about February 13, 2012, regarding the 2002 Dodge Dakota, it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. [redacted] for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FIFTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

32. Respondent Saechin has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about February 13, 2012, regarding the 2002 Dodge Dakota, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Saechin failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Saechin failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent Saechin failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code.

SIXTEENTH CAUSE FOR DISCIPLINE

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

33. Respondent Saechin has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about February 13, 2012, regarding the 2002 Dodge Dakota, he violated sections of the California Code of Regulations, title 16, as follows:

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

b. **Section 3340.41, subdivision (c)**: Respondent Saechin entered false information into the Emission Inspection System for electronic Certificate of Compliance No. [redacted] by entering "Pass" for the visual inspection of the EVAP system when, in fact, the vehicle could not pass the visual inspection because the vehicle's EVAP system was missing.

c. **Section 3340.42**: Respondent Saechin failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

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SEVENTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

34. Respondent Saechin has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about February 13, 2012, regarding the 2002 Dodge Dakota, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. [redacted] without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

PRIOR CITATIONS

35. To determine the degree of penalty, if any, to be imposed upon Respondent Bacc, Complainant alleges as follows:

a. On January 13, 2010, the Bureau issued Citation No. C2010-0665 to Respondent Bacc against its station license for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent Bacc issued a certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil penalty of $500. Respondent Bacc complied with this citation on March 2, 2010.

b. On September 30, 2010, the Bureau issued Citation No. C2011-0355 to Respondent Bacc against its station license for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent BACC issued a certificate of compliance to a Bureau vehicle with a missing EVAP canister. The Bureau assessed a civil penalty of $1,500. Respondent Bacc complied with this citation on November 16, 2010.

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c. On April 25, 2011, the Bureau issued Citation No. C2011-1242 to Respondent Bacc against its station license for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices). Respondent Bacc issued a certificate of compliance to a Bureau vehicle with a missing PCV system. The Bureau assessed a civil penalty of $1,500. Respondent Bacc complied with this citation on July 14, 2011.

d. On January 13, 2010, the Bureau issued Citation No. M2010-0666 to Respondent Saechin against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42). Respondent Saechin issued a certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's specifications. Respondent Saechin was required to attend an 8-hour training course. Respondent Saechin complied with this citation on February 27, 2010.

e. On September 30, 2010, the Bureau issued Citation No. M2010-0356 to Respondent Saechin against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42). Respondent Saechin issued a certificate of compliance to a Bureau vehicle with a missing EVAP canister. Respondent Saechin was required to attend a 16-hour training course. Respondent Saechin complied with this citation on December 2, 2010.

f. On April 25, 2011, the Bureau issued Citation No. M2011-1243 to Respondent Saechin against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code). Respondent Saechin issued a certificate of compliance to a

Bureau vehicle with a missing positive crankcase ventilation system. Respondent Saechin was required to attend a Basic Clean Air Car Course. Respondent Saechin complied with this citation on August 25, 2011.

OTHER MATTERS

36. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by Nai Choy Saelee and Chied Pou Saechin, upon a finding that they have, or are, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer, including but not limited to Automotive Repair Dealer Registration Number ARD 241567, issued to Nai C. Saelee and Chied P. Saechin, as Partners, doing business as Benicia Auto Care Center.

37. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 249321, issued to Nai Choy Saelee and Chied Pou Saechin as Partners, doing business as Bacc Test Only, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

38. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 148227, issued to Chied Pou Saechin, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration Number ARD 249321, issued to Nai Choy Saelee and Chied Pou Saechin as Partners, doing business as Bacc Test Only;

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2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued to Nai Choy Saelee and Chied Pou Saechin as Partners, including but not limited to Automotive Repair Dealer Registration Number ARD 241567, issued to Nai Choy Saelee and Chied Pou Saechin as Partners, doing business as Benicia Auto Care Center;

3. Revoking or suspending Smog Check Test Only Station License Number TC 249321, issued to Nai Choy Saelee and Chied Pou Saechin as Partners, doing business as Bacc Test Only;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Nai Choy Saelee and Chied Pou Saechin;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 148227, issued to Chied Pou Saechin;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Chied Pou Saechin;

7. Ordering Nai Choy Saelee and Chied Pou Saechin to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 6/27/12

John Wallauch by Doug Balatti

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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