

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

In the Matter of the Accusation Against:

**BENICIA AUTO CARE CENTER; NAI C.
SAELEE, MEMBER**
1301 East 5th Street
Benicia, CA 94510

Automotive Repair Dealer Registration No.
ARD 241567

Respondent.

Case No. 79/12-92

OAH No. 2014011063

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; except that the following typographical error is corrected as follows:

1. Page 2, line 7: The expiration date of "September 30, 2015" is corrected to "September 30, 2014."

This Decision shall become effective January 23, 2015.

DATED: January 2, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
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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:
13 **BENICIA AUTO CARE CENTER; NAI C.**
SAELEE, MEMBER
14 **1301 East 5th Street**
Benicia, CA 94510
15
16 **Automotive Repair Dealer Registration No.**
ARD 241567
17
18 Respondent.

Case No. 79/12-92

OAH No. 2014011063

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair. He
24 brought this action solely in his official capacity and is represented in this matter by Kamala D.
25 Harris, Attorney General of the State of California, by Timothy J. McDonough, Deputy Attorney
26 General.

27 2. Respondent Nai C. Saelee (Respondent) is represented in this proceeding by attorney
28 William Dean Ferreira, Esq., whose address is:

1 582 Market Street, Suite 1608
2 San Francisco, CA 94104

3 3. On or about a date uncertain in 2005, the Bureau of Automotive Repair issued
4 Automotive Repair Dealer Registration No. ARD 241567 to Nai C. Saelee (Respondent) and
5 Chied P. Saechin as Partners, doing business as Benicia Auto Care Center. The Automotive
6 Repair Dealer Registration was in full force and effect at all times relevant to the charges brought
7 in First Amended Accusation No. 79/12-92 and will expire on September 30, 2015, unless
8 renewed.

9 JURISDICTION

10 4. First Amended Accusation No. 79/12-92 was filed before the Director of Consumer
11 Affairs (Director), for the Bureau of Automotive Repair (Bureau), against Respondent, Chied P.
12 Saechin, BACC Test Only, and Benicia Auto Care Center. The First Amended Accusation and
13 all other statutorily required documents were properly served on Respondent on February 27,
14 2013. Respondent and his partner failed to timely file a Notice of Defense contesting the First
15 Amended Accusation. As a result, on or about September 5, 2013, a Default Decision and Order
16 (Decision) issued against BACC, Benicia Auto Care Center Only, and Saechin's technician
17 license. The Decision revoked BACC's ARD Registration No. ARD 249321 and Smog Check
18 Test Only Station License No. TC 249321. The Decision also revoked Benicia Auto Care
19 Center's ARD Registration No. ARD 241567 and Saechin's Advanced Emission Specialist
20 Technician license No. EA 148227. The effective date of the Default Decision (Case No. 79/12-
21 92) was September 27, 2013.

22 5. On or about October 2, 2013, Respondent Nai C. Saelee, filed a Notice of Motion to
23 Set Aside Default Decision and Order regarding the September 5, 2013 Default Decision in
24 Accusation No. 79/12-92. In his motion, Respondent only requested that the decision be set aside
25 regarding the revocation of the Benicia Auto Care Center's ARD license no. ARD 241567. On
26 October 31, 2013, the Bureau set aside the September 5, 2013 Default Decision and Order in Case
27 No. 79/12-92 as to Benicia Auto Care Center's ARD license no. ARD 241567 only. Respondent
28

1 Nai C. Saelee, alone, requested a hearing regarding the First Amended Accusation with regards to
2 the Benicia Auto Care Center ARD license no. ARD 241567.

3 6. A copy of First Amended Accusation No. 79/12-92 is attached as exhibit A and
4 incorporated by reference.

5 ADVISEMENT AND WAIVERS

6 7. Respondent has carefully read, fully discussed with counsel, and understands the
7 charges and allegations in First Amended Accusation No. 79/12-92. Respondent has also
8 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
9 Settlement and Disciplinary Order.

10 8. Respondent is fully aware of its legal rights in this matter, including the right to a
11 hearing on the charges and allegations in the First Amended Accusation; the right to be
12 represented by counsel at its own expense; the right to confront and cross-examine the witnesses
13 against them; the right to present evidence and to testify on its own behalf; the right to the
14 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
15 the right to reconsideration and court review of an adverse decision; and all other rights accorded
16 by the California Administrative Procedure Act and other applicable laws.

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

19 CULPABILITY

20 10. Respondent admits the truth of each and every charge and allegation in First
21 Amended Accusation No. 79/12-92.

22 11. Respondent agrees that its Automotive Repair Dealer Registration is subject to
23 discipline and agrees to be bound by the Director's imposition of discipline as set forth in the
24 Disciplinary Order below.

25 RESERVATION

26 12. The admissions made by Respondent herein are only for the purposes of this
27 proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of
28

1 Automotive Repair, or other professional licensing agency is involved, and shall not be
2 admissible in any other criminal or civil proceeding.

3 CONTINGENCY

4 13. This stipulation shall be subject to approval by the Director of Consumer Affairs or
5 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
6 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
7 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
8 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands
9 and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the
10 time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the
11 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
12 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
13 and the Director shall not be disqualified from further action by having considered this matter.

14 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
15 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
16 (PDF) and facsimile signatures, shall have the same force and effect as the originals.

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

23 16. In consideration of the foregoing admissions and stipulations, the parties agree that
24 the Director may, without further notice or formal proceeding, issue and enter the following
25 Disciplinary Order:

26 ///

27 ///

28 ///

ENDORSEMENT

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

Dated: 10-10-2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General



TIMOTHY J. MCDONOUGH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 79/12-92

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7 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 79/12-92

13 **BACC TEST ONLY**
14 **495 Military East**
Benicia, CA 94510
15 **CHIED POU SAECHIN, PARTNER**
NAI CHOY SAELEE, PARTNER
16 **Automotive Repair Dealer Registration No.**
ARD 249321
17 **Smog Check Test Only Station License No.**
TC 249321,

FIRST AMENDED ACCUSATION
SMOG CHECK

18 and

19 **BENICIA AUTO CARE CENTER**
20 **1301 East 5th Street**
Benicia, CA 94510
21 **NAI C. SAELEE, PARTNER**
CHIED P. SAECHIN, PARTNER
22 **Automotive Repair Dealer Registration No.**
ARD 241567

23 and

24 **CHIED POU SAECHIN**
25 **1034 Lassen Street**
Richmond, CA 94805
26 **Advanced Emission Specialist Technician**
License No. EA 148227

27 Respondents.

28

1 Complainant alleges:

2 **PARTIES**

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

6 **Automotive Repair Dealer Registration**

7 2. On a date uncertain in 2007, the Bureau issued Automotive Repair Dealer
8 Registration Number ARD 249321 ("registration") to Nai Choy Saelee and Chied Pou Saechin as
9 Partners, doing business as Bacc Test Only ("Respondent Bacc"). The registration was in full
10 force and effect at all times relevant to the charges brought herein and will expire on December
11 31, 2012, unless renewed.

12 **Smog Check Test Only Station License**

13 3. On or about May 2, 2007, the Bureau issued Smog Check Test Only Station License
14 Number TC.249321 ("station license") to Respondent Bacc. The station license was in full force
15 and effect at all times relevant to the charges brought herein and will expire on February 28,
16 2013, unless renewed.

17 **Advanced Emission Specialist Technician License**

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

22 **Automotive Repair Dealer Registration**

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

28 ///

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

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

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

6 _____
7 (signature or initials)"

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

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

16 10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
17 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
18 the Motor Vehicle Inspection Program.

19 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

27 12. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
28 expiration or suspension of a license by operation of law, or by order or decision of the Director

1 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
2 the Director of jurisdiction to proceed with disciplinary action.

3 13. Section 44072.8 of the Health and Safety Code states:

4 When a license has been revoked or suspended following a hearing under
5 this article, any additional license issued under this chapter in the name of the
6 licensee may be likewise revoked or suspended by the director.

6 **REGULATORY PROVISION**

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

8 (a) All invoices for service and repair work performed, and parts
9 supplied, as provided for in Section 9884.8 of the Business and Professions Code,
10 shall comply with the following:

11 (1) The invoice shall show the automotive repair dealer's registration
12 number and the corresponding business name and address as shown in the Bureau's
13 records. If the automotive repair dealer's telephone number is shown, it shall comply
14 with the requirements of subsection (b) of Section 3371 of this chapter.

13 **COST RECOVERY**

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

18 **UNDERCOVER OPERATION - OCTOBER 4, 2011**

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

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

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 18. Respondent Bacc has subjected its registration to discipline under Code section
12 9884.7, subdivision (a)(4), in that on or about October 4, 2011, it committed acts which constitute
13 fraud by issuing electronic Certificate of Compliance No. [REDACTED] for the 1995 Chevrolet
14 Beretta, without performing a bona fide inspection of the emission control devices and systems on
15 that vehicle, thereby depriving the People of the State of California of the protection afforded by
16 the Motor Vehicle Inspection Program.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Failure to Provide a Written Estimate)**

19 19. Respondent Bacc has subjected its registration to discipline under Code section
20 9884.7, subdivision (a)(6), in that on or about October 4, 2011, Respondent Bacc failed to comply
21 with Code section 9884.9, subdivision (a), by failing to provide the operator with a written
22 estimated price for parts and labor for the smog inspection.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Failure to Comply Regulations)**

25 20. Respondent Bacc has subjected its registration to discipline under Code section
26 9884.7, subdivision (a)(6), in that on or about October 4, 2011, Respondent Bacc failed to comply
27 with California Code of Regulations, title 16, section 3356, subdivision (a)(1). Regarding

28 ///

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

3 **FIFTH CAUSE FOR DISCIPLINE**

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

5 21. Respondent Bacc has subjected its station license to discipline under Health and
6 Safety Code section 44072.2, subdivision (a), in that on or about October 4, 2011, regarding the
7 1995 Chevrolet Beretta, it violated sections of that Code, as follows:

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

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

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

16 **SIXTH CAUSE FOR DISCIPLINE**

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

18 22. Respondent Bacc has subjected its station license to discipline under Health and
19 Safety Code section 44072.2, subdivision (c), in that on or about October 4, 2011, regarding the
20 1995 Chevrolet Beretta, it violated sections of the California Code of Regulations, title 16, as
21 follows:

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

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

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28 ///

1 SEVENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 23. Respondent Bacc has subjected its station license to discipline under Health and
4 Safety Code section 44072.2, subdivision (d), in that on or about October 4, 2011, regarding the
5 1995 Chevrolet Beretta, it committed acts involving dishonesty, fraud or deceit whereby another
6 was injured by issuing electronic Certificate of Compliance No. [REDACTED] for that vehicle
7 without performing a bona fide inspection of the emission control devices and systems on the
8 vehicle, thereby depriving the People of the State of California of the protection afforded by the
9 Motor Vehicle Inspection Program.

10 UNDERCOVER OPERATION – FEBRUARY 13, 2012

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

19 EIGHTH CAUSE FOR DISCIPLINE

20 (Misleading Statements)

21 25. Respondent Bacc has subjected its registration to discipline under Code section
22 9884.7, subdivision (a)(1), in that on or about February 13, 2012, it made statements which it
23 knew or which by exercise of reasonable care it should have known were untrue or misleading
24 when it issued electronic Certificate of Compliance No. [REDACTED] for the 2002 Dodge Dakota,
25 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
26 the vehicle's EVAP system was missing.

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28 ///

1 NINTH CAUSE FOR DISCIPLINE

2 (Fraud)

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

9 TENTH CAUSE FOR DISCIPLINE

10 (Failure to Provide a Written Estimate)

11 27. Respondent Bacc has subjected its registration to discipline under Code section
12 9884.7, subdivision (a)(6), in that on or about February 13, 2012, Respondent Bacc failed to
13 comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a
14 written estimated price for parts and labor for the smog inspection.

15 ELEVENTH CAUSE FOR DISCIPLINE

16 (Failure to Comply Regulations)

17 28. Respondent Bacc has subjected its registration to discipline under Code section
18 9884.7, subdivision (a)(6), in that on or about February 13, 2012, Respondent Bacc failed to
19 comply with California Code of Regulations, title 16, section 3356, subdivision (a)(1). Regarding
20 Estimate Reference No. [REDACTED] Respondent failed to set forth its automotive repair dealer
21 registration number as is shown on Bureau records.

22 TWELFTH CAUSE FOR DISCIPLINE

23 (Violation of the Motor Vehicle Inspection Program)

24 29. Respondent Bacc has subjected its station license to discipline under Health and
25 Safety Code section 44072.2, subdivision (a), in that on or about February 13, 2012, regarding the
26 2002 Dodge Dakota, it violated sections of that Code, as follows:

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

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

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

9 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

20 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

22 31. Respondent Bacc has subjected its station license to discipline under Health and
23 Safety Code section 44072.2, subdivision (d), in that on or about February 13, 2012, regarding the
24 2002 Dodge Dakota, it committed acts involving dishonesty, fraud or deceit whereby another was
25 injured by issuing electronic Certificate of Compliance No. [REDACTED] for that vehicle without
26 performing a bona fide inspection of the emission control devices and systems on the vehicle,
27 thereby depriving the People of the State of California of the protection afforded by the Motor
28 Vehicle Inspection Program.

1 FIFTEENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

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

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

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

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

13 SIXTEENTH CAUSE FOR DISCIPLINE

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

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

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

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

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

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1 SEVENTEENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

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

10 PRIOR CITATIONS

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

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

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

28 ///

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

6 d. On January 13, 2010, the Bureau issued Citation No. M2010-0666 to Respondent
7 Saechin against his technician license for violations of Health and Safety Code section 44032,
8 (qualified technicians shall perform tests of emission control systems and devices in accordance
9 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")
10 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
11 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
12 3340.42). Respondent Saechin issued a certificate of compliance to a Bureau vehicle with the
13 ignition timing adjusted beyond the manufacturer's specifications. Respondent Saechin was
14 required to attend an 8-hour training course. Respondent Saechin complied with this citation on
15 February 27, 2010.

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

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

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

4 OTHER MATTERS

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

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

16 38. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
17 Technician License Number EA 148227, issued to Chied Pou Saechin, is revoked or suspended,
18 any additional license issued under this chapter in the name of said licensee may be likewise
19 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 249321, issued to Nai Choy Saelee and Chied Pou Saechin as Partners, doing
25 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 Balaff
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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