

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

In the Matter of the Accusation Against:

**RENTERIAS TIRE SERVICE & MECHANIC**

305 Salinas Road #B  
Watsonville, CA 95076

**Mailing Address:**

300 Salinas Road  
Watsonville, CA 95076

**EFRAIN RENTERIA, PARTNER  
MARIA G. MARTINEZ, PARTNER**

Automotive Repair Dealer Registration No. ARD  
251157

Smog Check Station License No. RC 251157  
Lamp Station License No. LS 251157, Class A  
Brake Station License No. BS 251157, Class A

and

**JOHN VIZCAINO GUTIERREZ**

95 Bisceglia Avenue  
Morgan Hill, CA 95037  
Advanced Emission Specialist Technician  
License No. EA 042382

Respondents.

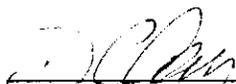
Case No. 79/13-01

**DECISION**

The attached Stipulated Settlement and Disciplinary Order as to John Vizcaino Gutierrez Only 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 John Vizcaino Gutierrez, Advanced Emission Specialist Technician License No. EA 042382. The typographical error on page 2, line 13, is noted: The date "February 28, 2014" should be "February 19, 2013."

This Decision shall become effective 5/2/13.

DATED: April 12, 2013

  
\_\_\_\_\_  
DONALD CHANG  
Assistant Chief Counsel  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 NICHOLAS TSUKAMAKI  
Deputy Attorney General  
4 State Bar No. 253959  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1188  
6 Facsimile: (415) 703-5480  
E-mail: Nicholas.Tsukamaki@doj.ca.gov  
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. 79/13-01

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**MECHANIC**  
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**Mailing Address:**  
15 **300 Salinas Road**  
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16 **EFRAIN RENTERIA, PARTNER**  
**MARIA G. MARTINEZ, PARTNER**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER AS TO JOHN**  
**VIZCAINO GUTIERREZ ONLY**

17 **Automotive Repair Dealer Registration**  
18 **No. ARD 251157**  
19 **Smog Check Station License No. RC 251157**  
**Lamp Station License No. LS 251157, Class**  
20 **A**  
**Brake Station License No. BS 251157, Class**  
21 **A**

22 **and**

23 **JOHN VIZCAINO GUTIERREZ**  
24 **95 Bisceglia Avenue**  
**Morgan Hill, CA 95037**  
25 **Advanced Emission Specialist Technician**  
**License No. EA 042382**

26 Respondents.

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

3 PARTIES

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

8 2. Respondent John Vizcaino Gutierrez (Respondent) is representing himself in this  
9 proceeding and has chosen not to exercise his right to be represented by counsel.

10 3. In or around 1997, the Bureau of Automotive Repair issued Smog Check Technician -  
11 Advanced Emission Specialist License No. EA 042382 to Respondent. The Smog Check  
12 Technician - Advanced Emission Specialist License was in full force and effect at all times  
13 relevant to the charges brought in Accusation No. 79/13-01 and will expire on February 28, 2014,  
14 unless renewed.

15 JURISDICTION

16 4. Accusation No. 79/13-01 was filed before the Director of Consumer Affairs  
17 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against  
18 Respondent. The Accusation and all other statutorily required documents were properly served  
19 on Respondent on July 31, 2012. Respondent timely filed his Notice of Defense contesting the  
20 Accusation.

21 5. A copy of Accusation No. 79/13-01 is attached as exhibit A and incorporated herein  
22 by reference.

23 ADVISEMENT AND WAIVERS

24 6. Respondent has carefully read and understands the charges and allegations in  
25 Accusation No. 79/13-01. Respondent has also carefully read and understands the effects of this  
26 Stipulated Settlement and Disciplinary Order.

27 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
28 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 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
7 every right set forth above.

#### 8 CULPABILITY

9 9. Respondent admits the truth of each and every charge and allegation in Accusation  
10 No. 79/13-01.

11 10. Respondent agrees that his Smog Check Technician - Advanced Emission Specialist  
12 License is subject to discipline and he agrees to be bound by the Director's probationary terms as  
13 set forth in the Disciplinary Order below.

#### 14 CONTINGENCY

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

25 12. The parties understand and agree that facsimile copies of this Stipulated Settlement  
26 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
27 effect as the originals.  
28



1 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

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

6 7. **Violation of Probation.** Should the Director of Consumer Affairs determine that  
7 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
8 after giving notice and opportunity to be heard, suspend or revoke Smog Check Technician -  
9 Advanced Emission Specialist License No. EA 042382.

10 8. **Continuing Education Course.** During the period of probation, Respondent shall  
11 attend and successfully complete a Bureau certified Licensed Inspector Training (Level 2) course.  
12 Said course shall be completed and proof of completion submitted to the Bureau within 180 days  
13 of the effective date of this decision and order. If proof of completion of the course is not  
14 furnished to the Bureau within the 180-day period, Respondent's license shall be immediately  
15 suspended until such proof is received.

16 9. **Cost Recovery.** Payment to the Bureau of cost recovery in the amount of \$2,506.92  
17 payable in twenty-four (24) equal installments, with the final payment received no later than  
18 twelve (12) months before probation terminates. Failure to complete payment of cost recovery  
19 within this time frame shall constitute a violation of probation which may subject Respondent's  
20 Smog Check Technician - Advanced Emission Specialist License No. EA 042382 to outright  
21 revocation. However, the Director or the Director's Bureau of Automotive Repair designee may  
22 elect to continue probation until such time as reimbursement of the entire cost recovery amount  
23 has been made to the Bureau.

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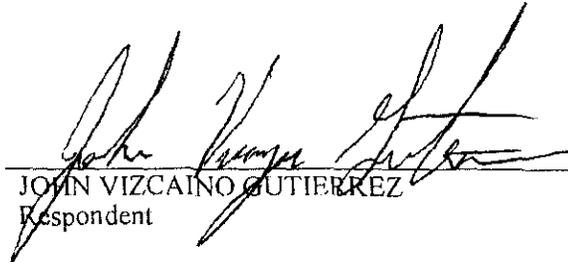
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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Smog Check Technician - Advanced Emission Specialist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 11/19/12

  
JOHN VIZCAINO GUTIERREZ  
Respondent

ENDORSEMENT

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

Dated: 12/3/12

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

  
NICHOLAS TSUKAMAKI  
Deputy Attorney General  
*Attorneys for Complainant*

SF2012204055

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 NICHOLAS TSUKAMAKI  
Deputy Attorney General  
4 State Bar No. 253959  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1188  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*  
7

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24 **Lamp Station License No. LS 251157, Class A**  
25 **Brake Station License No. BS 251157, Class A**

26 and

27 **JOHN VIZCAINO GUTIERREZ**  
28 **95 Bisceglia Avenue**  
29 **Morgan Hill, CA 95037**  
30 **Advanced Emission Specialist Technician License**  
31 **No. EA 042382**

Respondents.

Case No. 79/13-01

**ACCUSATION**

**SMOG CHECK**

Complainant alleges:

**PARTIES**

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



1 (a) The director, where the automotive repair dealer cannot show there  
2 was a bona fide error, may refuse to validate, or may invalidate temporarily or  
3 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.

4 (1) Making or authorizing in any manner or by any means whatever any  
5 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.

6 (4) Any other conduct which constitutes fraud.

7 (b) Except as provided for in subdivision (c), if an automotive repair  
8 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  
9 specific place of business which has violated any of the provisions of this chapter.  
10 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.

11 (c) Notwithstanding subdivision (b), the director may invalidate  
12 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  
13 has, or is, engaged in a course of repeated and willful violations of this chapter, or  
regulations adopted pursuant to it.

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

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

22 10. Code section 9889.1 provides, in pertinent part, that the Director may suspend or  
23 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the  
24 Automotive Repair Act.

25 11. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a  
26 license by operation of law or by order or decision of the Director or a court of law, or the  
27 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any  
28 disciplinary proceedings.

1 12. Code section 9889.3 states, in pertinent part:

2 The director may suspend, revoke, or take other disciplinary action  
3 against a license as provided in this article [Article 7 (commencing with section  
4 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or  
5 director thereof:

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

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

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

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

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

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

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

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

26 16. Section 44072.8 of the Health and Safety Code states:

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

#### COST RECOVERY

17. 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.

1 **FACTUAL BACKGROUND**

2 18. On or about October 3, 2011, the Bureau conducted a detailed review of the Vehicle  
3 Information Database (“VID”) for all smog inspections performed at Respondent Renterias’  
4 facility, for the period August 5, 2011, through September 30, 2011. The VID showed that for  
5 vehicles 1 through 9, set forth in Table 1, below, the malfunction indicator lamp (“MIL”) status  
6 line was blank, indicating the vehicle’s power train control module (“PCM”) had not been  
7 scanned. Although vehicles 1 through 9 received smog certificates, none of those vehicles were  
8 tested during the OBD II functional test. Instead, when prompted by the Emission Inspection  
9 System (“EIS”) about whether or not the vehicle required an OBD II test, Respondent Gutierrez  
10 entered “No” and continued on with the inspection and issued the certificates of compliance for  
11 those vehicles.

12 **TABLE 1**

13

<b>Date &amp; Time of Inspection</b>	<b>Vehicle Certified &amp; License Number</b>	<b>Certificate Number</b>
14 1. 8/5/2011 1046 - 1051 hours	2001 Honda Accord, Lic. No. 6DMX417	OE733544
15 2. 8/23/2011 1705 - 1712 hours	1996 Plymouth Voyager, Lic. No. 3RSP220	OG058249
16 3. 8/24/2011 1206 - 1212 hours	2001 Dodge Dakota, Lic. No. 6G27106	OG058250
17 4. 8/29/2011 1509 - 1515 hours	2003 Dodge Ram, License No. 8X32907	OG329616
18 5. 9/1/2011 1613 - 1622 hours	2003 Chevrolet Silverado, Lic. No. 8V50260	OG329627
19 6. 9/13/2011 1044 - 1048 hours	2000 Chevrolet Tahoe, Lic. No. 4KPN169	OG329647
20 7. 9/23/2011 1806 - 1814 hours	2003 Toyota Tacoma, Lic. No. 7Z17655	OG621123
21 8. 9/29/2011 1559 - 1608 hours	2001 Toyota Tacoma, Lic. No. 6R14130	OG621132
22 9. 9/30/2011 1500 - 1518 hours	2001 Cadillac Deville, Lic. No. 6APG551	OG621135

23

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Misleading Statements)**

26  
27 19. Respondent Renterias has subjected its registration to discipline under Code section  
28 9884.7, subdivision (a)(1), in that between August 5, and September 30, 2011, it made statements

1 which it knew or which by exercise of reasonable care it should have known were untrue or  
2 misleading as follows: Respondent Renterias certified that vehicles 1 through 9, identified in  
3 Table 1, above, had passed inspection and were in compliance with applicable laws and  
4 regulations. In fact, Respondent Renterias conducted the inspections without performing the  
5 required OBD II functional tests in order to issue smog certificates of compliance for the 9  
6 vehicles, and did not test or inspect those vehicles as required by Health and Safety Code section  
7 44012.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 20. Respondent Renterias has subjected its registration to discipline under Code section  
11 9884.7, subdivision (a)(4), in that between August 5, 2011, and September 30, 2011, it committed  
12 acts which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through  
13 9, identified in Table 1, above, without performing bona fide inspections of the emission control  
14 devices and systems on those vehicles, thereby depriving the People of the State of California of  
15 the protection afforded by the Motor Vehicle Inspection Program.

16 **THIRD CAUSE FOR DISCIPLINE**

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

18 21. Respondent Renterias has subjected its station license to discipline under Health and  
19 Safety Code section 44072.2, subdivision (a), in that between August 5, 2011, and September 30,  
20 2011, regarding vehicles 1 through 9, identified in Table 1, above, it violated sections of that  
21 Code, as follows:

22 a. **Section 44012:** Respondent Renterias failed to ensure that the emission control tests  
23 were performed on those vehicles in accordance with procedures prescribed by the department.

24 b. **Section 44015:** Respondent Renterias issued electronic certificates of compliance for  
25 those vehicles without ensuring that the vehicles were properly tested and inspected to determine  
26 if they were in compliance with Health and Safety Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent Renterias has subjected its station license to discipline under Health and  
4 Safety Code section 44072.2, subdivision (c), in that between August 5, 2011, and September 30,  
5 2011, regarding vehicles 1 through 9, identified in Table 1, above, it violated sections of the  
6 California Code of Regulations, title 16, as follows:

7 a. **Section 3340.35, subdivision (c):** Respondent Renterias issued electronic certificates  
8 of compliance even though those vehicles had not been inspected in accordance with section  
9 3340.42 of that Code.

10 b. **Section 3340.42:** Respondent Renterias failed to conduct the required smog tests and  
11 inspections on those vehicles in accordance with the Bureau's specifications.

12 **FIFTH CAUSE FOR DISCIPLINE**

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

14 23. Respondent Renterias has subjected its station license to discipline under Health and  
15 Safety Code section 44072.2, subdivision (d), in that between August 5, 2011, and September 30,  
16 2011, regarding vehicles 1 through 9, identified in Table 1, above, it committed acts involving  
17 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of  
18 compliance for those vehicles without performing bona fide inspections of the emission control  
19 devices and systems on the vehicles, thereby depriving the People of the State of California of the  
20 protection afforded by the Motor Vehicle Inspection Program.

21 **SIXTH CAUSE FOR DISCIPLINE**

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

23 24. Respondent Gutierrez has subjected his technician license to discipline under Health  
24 and Safety Code section 44072.2, subdivision (a), in that between August 5, 2011, and September  
25 30, 2011, regarding vehicles 1 through 9, identified in Table 1, above, he violated sections of that  
26 Code, as follows:

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1 a. **Section 44012, subdivision (a):** Respondent Gutierrez 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 Gutierrez failed to perform emission  
5 control tests on that vehicle in accordance with procedures prescribed by the department.

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

8 **SEVENTH CAUSE FOR DISCIPLINE**

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

10 25. Respondent Gutierrez has subjected his technician license to discipline under Health  
11 and Safety Code section 44072.2, subdivision (c), in that between August 5, 2011, and September  
12 30, 2011, regarding vehicles 1 through 9, identified in Table 1, above, he violated sections of the  
13 California Code of Regulations, title 16, as follows:

14 a. **Section 3340.30, subdivision (a):** Respondent Gutierrez failed to inspect and test  
15 those vehicles in accordance with Health and Safety Code section 44012.

16 b. **Section 3340.41, subdivision (c):** Respondent Gutierrez entered false information  
17 into the EIS by entering "No" when prompted about whether the vehicle required an OBD II  
18 functional test when, in fact, vehicles 1 through 9 all required the OBD II functional test.

19 c. **Section 3340.42:** Respondent Gutierrez failed to conduct the required smog tests and  
20 inspections on those vehicles in accordance with the Bureau's specifications.

21 **EIGHTH CAUSE FOR DISCIPLINE**

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

23 26. Respondent Gutierrez has subjected his technician license to discipline under Health  
24 and Safety Code section 44072.2, subdivision (d), in that between August 5, 2011, and September  
25 30, 2011, regarding vehicles 1 through 9, identified in Table 1, above, he committed acts  
26 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic  
27 certificates of compliance without performing bona fide inspections of the emission control

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

3 **NINTH CAUSE FOR DISCIPLINE**

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

5 27. Respondent Renterias has subjected its lamp and brake station licenses to discipline  
6 under Code section 9889.3, subdivision (d), in that between August 5, 2011, and September 30,  
7 2011, regarding vehicles 1 through 9, identified in Table 1, above, it committed acts involving  
8 dishonesty, fraud or deceit whereby another was injured, as more particularly set forth in  
9 paragraphs 20, 23, and 26, above.

10 **OTHER MATTERS**

11 28. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
12 or permanently or refuse to validate, the registrations for all places of business operated in this  
13 state by Renterias Tire Service & Mechanic, upon a finding that it has, or is, engaged in a course  
14 of repeated and willful violations of the laws and regulations pertaining to an automotive repair  
15 dealer.

16 29. Under Health and Safety Code section 44072.8, if Smog Check Station License  
17 Number RC 251157, issued to Renterias Tire Service & Mechanic, is revoked or suspended, any  
18 additional license issued under this chapter in the name of said licensee may be likewise revoked  
19 or suspended by the director.

20 30. Under Code section 9889.9, if Lamp Station License Number LS 251157, Class A,  
21 issued to Renterias Tire Service & Mechanic, is revoked or suspended, any additional license  
22 issued under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be  
23 likewise revoked or suspended by the Director.

24 31. Under Code section 9889.9, if Brake Station License Number BS 251157, Class, A,  
25 issued to Renterias Tire Service & Mechanic, is revoked or suspended, any additional license  
26 issued under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee may be  
27 likewise revoked or suspended by the Director.

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1           10.   Ordering Renterias Tire Service & Mechanic and John Vizcaino Gutierrez to pay the  
2 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this  
3 case, pursuant to Business and Professions Code section 125.3; and,

4           11.   Taking such other and further action as deemed necessary and proper.

5  
6  
7 DATED: July 3, 2012

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

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