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

10  
11 In the Matter of the Accusation Against:

12 **RENTERIAS TIRE SERVICE & MECHANIC**  
13 **305 Salinas Road #B**  
**Watsonville, CA 95076**  
14 **Mailing Address:**  
**300 Salinas Road**  
**Watsonville, CA 95076**  
15 **EFRAIN RENTERIA, PARTNER**  
16 **MARIA G. MARTINEZ, PARTNER**  
**Automotive Repair Dealer Registration**  
**No. ARD 251157**  
17 **Smog Check Station License No. RC 251157**  
18 **Lamp Station License No. LS 251157, Class A**  
**Brake Station License No. BS 251157, Class A**

19 and

20 **JOHN VIZCAINO GUTIERREZ**  
21 **95 Bisceglia Avenue**  
**Morgan Hill, CA 95037**  
22 **Advanced Emission Specialist Technician License**  
**No. EA 042382**

23 Respondents.

Case No. 79/13-01

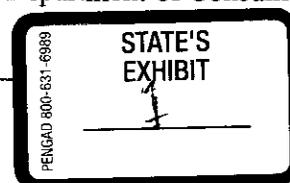
[AMENDED]  
ACCUSATION

SMOG CHECK

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25 Complainant alleges:

26 **PARTIES**

27 1. John Wallauch (Complainant) brings this Accusation solely in his official capacity as  
28 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  
4 acts or omissions related to the conduct of the business of the automotive repair  
5 dealer, which are done by the automotive repair dealer or any automotive technician,  
6 employee, partner, officer, or member of the automotive repair dealer.

7 (1) Making or authorizing in any manner or by any means whatever any  
8 statement written or oral which is untrue or misleading, and which is known, or which  
9 by the exercise of reasonable care should be known, to be untrue or misleading.

10 (4) Any other conduct which constitutes fraud.

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

17 (c) Notwithstanding subdivision (b), the director may invalidate  
18 temporarily or permanently, the registration for all places of business operated in this  
19 state by an automotive repair dealer upon a finding that the automotive repair dealer  
20 has, or is, engaged in a course of repeated and willful violations of this chapter, or  
21 regulations adopted pursuant to it.

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

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

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

13 11. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a  
14 license by operation of law or by order or decision of the Director or a court of law, or the  
15 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any  
16 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 licensee 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") *for the OBD II portion of the test, Gutierrez entered "P" for*  
 10 *Pass, but did not do the required OBD II test. Gutierrez then*  
 11 *entered "No" and continued on with the inspection and issued the certificates of compliance for*  
*those vehicles.*  
 11 those vehicles.

12 **TABLE 1**

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

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25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Misleading Statements)**

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.*  
*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.  
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6 DATED: July 3, 2012



7 JOHN WALLAUCH  
8 Chief  
9 Bureau of Automotive Repair  
10 Department of Consumer Affairs  
11 State of California  
12 *Complainant*

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