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

In the Matter of the Accusation Against: **JONATHAN RIN FELMOCA** **2099 Avenida De Las Flores** **Santa Clara, CA 95054** **Advanced Emission Specialist Technician License No. EA 631916** Respondent.	Case No. 79/12-151 **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.

Advanced Emission Specialist Technician License

2. On or about March 30, 2010, the Bureau issued Advanced Emission Specialist Technician License Number EA 631916 ("technician license") to Jonathan Rin Felmoca ("Respondent"). The technician license was in full force and effect at all times relevant to the charges brought herein. The technician license was suspended on October 5, 2011, and will expire on June 30, 2012.

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STATUTORY PROVISIONS

3. Section 118 of the Business and Professions Code states, in pertinent part:

> (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

4. Section 477 of the Business and Professions Code 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.

5. 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.

6. Section 44050 of the Health and Safety Code states, in pertinent part:

> (a) In addition to or in lieu of any other remedy or penalty, including, but not limited to, education, training, or an office conference, the department may issue a citation to a licensee, contractor, or fleet owner for a violation of the requirements of this chapter or a regulation adopted pursuant to this chapter. The citation may contain an order of abatement or the assessment of an administrative fine, or both.
>
> (e) Failure to comply with an order of abatement or payment of an administrative fine issued by the department pursuant to this section is grounds for suspension or revocation of the license, or placing the license on probation.

7. Section 44055 of the Health and Safety Code, subdivision (b) states:

> (b) The department may deny an application for the renewal of a test station or repair station license if the applicant, or any partner, officer, or director thereof, has failed to pay any civil penalty or administrative fine in accordance with this article.

8. 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.

9. 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.

COST RECOVERY

10. Section 125.3 of the Code 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.

CAUSE FOR DISCIPLINE

(Failure to Complete Training)

11. Respondent has subjected his technician license to discipline pursuant to Health and Safety Code section 44050, subdivision (e), in that on or about May 25, 2011, the Bureau issued Citation No. M2011-1395 to Respondent 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). On June 8, 2011, the Bureau served Respondent with the citation, which required Respondent to complete a 16-Hour Training Course. However, Respondent did not appeal the citation within thirty (30) days of service of the citation nor has Respondent completed the required training.

OTHER MATTERS

12. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 631916, issued to Jonathan Rin Felmoca, 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.

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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 or suspending Advanced Emission Specialist Technician License Number EA 631916, issued to Jonathan Rin Felmoca;

2. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jonathan Rin Felmoca;

3. Ordering Jonathan Rin Felmoca 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,

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

DATED: May 30 2012

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

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